



Ombudsman Report

**Investigation into a complaint about meetings
held by Council, the Corporate Services Committee,
and the Planning Advisory Committee
for the Township of Bonfield**

**Paul Dubé
Ombudsman of Ontario**

February 2026

Complaint

- 1 My Office received a complaint about meetings held by the Township of Bonfield's council, its Corporate Services Committee, and its Planning Advisory Committee.
- 2 First, the complaint alleged that prior to a regular meeting of council on July 23, 2024, council may have held an illegal closed meeting to discuss and coordinate a vote on a motion that was subsequently passed at the regular meeting.
- 3 Second, the complaint alleged that the topic discussed in closed session at a meeting of the Corporate Services Committee on July 30, 2024 did not fit within the exceptions to the open meeting rules under the *Municipal Act, 2001*.¹
- 4 Finally, the complaint raised that notice was not provided for the regular meeting of council on August 6, 2024, as well as the regular meeting of the Planning Advisory Committee on October 16, 2024 and its special meeting on November 12, 2024.
- 5 For the reasons set out below, I have concluded that the informal discussions that took place prior to the regular meeting of council on July 23, 2024 did not constitute an illegal meeting within the meaning of the *Municipal Act, 2001*. Furthermore, the Corporate Services Committee's discussion in closed session on July 30, 2024 fit within the exception for advice subject to solicitor-client privilege under section 239(2)(f) of the Act.
- 6 However, I have concluded that the Township violated the open meeting rules by failing to provide notice in accordance with its procedural by-law for the regular council meeting on August 6, 2024 and for the meetings of the Planning Advisory Committee on October 16, 2024 and November 12, 2024.

Ombudsman jurisdiction

- 7 Under the *Municipal Act, 2001*, all meetings of council, local boards, and committees of either must be open to the public, unless they fall within prescribed exceptions.
- 8 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. Municipalities may appoint their own investigator. The Act designates the Ombudsman as the default investigator for municipalities or local boards that have not appointed their own.

¹ SO 2001, c 25.

- 9 The Ombudsman is the closed meeting investigator for the Township of Bonfield.
- 10 When investigating closed meeting complaints, we consider whether the open meeting requirements in the Act and the applicable procedure by-law have been observed.
- 11 My Office has reviewed and investigated hundreds of closed meeting complaints 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/municipal-government/municipal-meeting-digest.
- 12 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/en/make-complaint/what-we-can-help-you/organizations-you-can-complain-about.

Investigative process

- 13 On February 19, 2025, my Office advised the Township of our intent to investigate this complaint.
- 14 Members of my Office's open meeting team reviewed the Township's procedural by-law, the open and closed meeting agendas and minutes, and relevant email communications. Where relevant to the complaint, we also reviewed video of the open portions of the meetings. We interviewed the Clerk and all members of council.
- 15 My Office received full co-operation in this matter.

July 23, 2024 council meeting

- 16 Council met on July 23, 2024, at 7:00 p.m. for a regular council meeting. The agenda included a delegation on building permit fees (the “Delegation”). The Township had recently passed a new building fees by-law in May 2024, and the Delegation was about the reasonableness of the fees and rates in the new by-law.
- 17 However, at the meeting, just prior to the start of the Delegation, council voted on a motion on whether to hear the Delegation. Only the Mayor voted in favour of hearing it, while the rest of council voted against it. As a result, council did not hear the Delegation.
- 18 The complaint alleged an illegal closed meeting of council members must have occurred sometime prior to the council meeting, where they would have discussed the Delegation and passing a motion to prevent it from proceeding. The complaint pointed out that the motion was not included on the agenda and alleged that its wording was confusing, yet council members seemed to understand it and voted on it quickly, without explanation or discussion.
- 19 The Clerk explained to us that the motion was included in the version of the agenda package that was sent to council on July 19, 2024, the Friday before the meeting. However, she told us it is her practice not to list motions on the agenda itself, and she does not include them with the public agenda package that is posted on the Township website. As a result, members of council are aware of motions in advance of meetings, while members of the public are not.
- 20 All members of council told us they did not meet as a group to discuss the Delegation. However, they did report that, after receiving the agenda package on July 19, 2024, one councillor emailed the rest of council and the Clerk, questioning whether the Delegation was allowed. The councillor expressed their belief that an individual could not delegate more than once per year on the same topic.
- 21 The only response to the email was from the Clerk, who responded to all members of council providing some background information about the Delegation and informing them they would need to pass a motion at the upcoming meeting before the Delegation could proceed. The Clerk explained to us that she believed the motion was necessary because, similar to the councillor who sent the email, she believed the procedural by-law prohibited anyone from delegating on a matter that had been decided by council within the same calendar year and, here, council had only recently passed a new building fees by-law. We were told no council members responded to the Clerk’s email.

- 22 We were told about three one-on-one telephone conversations between council members that occurred after they had received their colleague's email. During these calls, council members discussed whether the Delegation should be permitted, based on their understanding of the procedural rules, and sought to get a sense of their colleagues' stance on the matter.

Analysis

- 23 For a gathering to be considered a "meeting" under the *Municipal Act, 2001*, two criteria must be met:
- i. A quorum of council must be present; and
 - ii. The discussions must materially advance the business or decision-making of council.²

Quorum

- 24 I have previously determined that in order to constitute a quorum, members of council must be "present" as a group either physically or electronically.³ For the purposes of an electronic meeting, the meeting "place" is electronic and members may be "present" when they come together electronically to discuss and advance business.⁴ This includes the exchange of written electronic communications, such as text messages or emails.⁵
- 25 I have also determined that quorum is not met through a member of council's individual or sequential conversations with other members of council.⁶

² *Ibid*, s 238(1).

³ *Casselman (Municipality of) (Re)*, 2024 ONOMBUD 1 at para 31, online: <<https://canlii.ca/t/k235v>> ["Casselman"].

⁴ *Ibid* at para 31.

⁵ *The North Shore (Township of) (Re)*, 2025 ONOMBUD 1 at para 27, online: <<https://canlii.ca/t/k98j5>>; *Frontenac Islands (Township of) (Re)*, 2025 ONOMBUD 5 at paras 22-24, online: <<https://canlii.ca/t/kdx12>>.

⁶ *Hawkesbury (Town of) (Re)*, 2021 ONOMBUD 7 at para 18, online: <<https://canlii.ca/t/jdzm9>> ["Hawkesbury"]; *Letter from the Ontario Ombudsman to Township of Russell* (18 March 2025), online: <<https://www.ombudsman.on.ca/en/our-work/municipal-meetings/township-russell-march-21-2025>> ["Russell"].

Materially advancing business or decision-making

- 26** Discussions, debates, or decisions that are intended to lead to specific outcomes or to persuade decision-makers one way or another are likely to “materially advance” the business or decision-making of council.⁷ The mere receipt or exchange of information is unlikely to materially advance business or decision-making, as long as there is no attempt to discuss or debate that information as it relates to a specific matter that is or will be before council.⁸
- 27** I have previously noted that it is usually acceptable to inquire about another member’s position on a matter where the discussion is not intended to lead to a specific outcome or persuade decision-makers.⁹ I have also found that discussions about procedural options are less likely to materially advance council business.¹⁰ For example, in a report to the Town of Saugeen Shores, I determined that council did not materially advance business or decision-making when, during a recess, a quorum of councillors discussed procedural options to allow a resident to speak and one councillor indicated that, once back in open session, they would bring a motion to allow the resident to do so.¹¹
- 28** On the other hand, I have stated that members organizing a voting bloc to agree strategically ahead of time about a specific matter could be found to be materially advancing council’s business or decision-making.¹²

July 19, 2024 email

- 29** All members of council were included on the July 19, 2024 email in which a councillor questioned whether the Delegation should be allowed. Accordingly, a quorum of council was present on the July 19, 2024 email.
- 30** However, the July 19, 2024 email did not materially advance council’s business or decision-making. The councillor who sent the email raised a concern about the addition of the Delegation to the agenda, based on their belief that, under the procedural rules, a person was prohibited from delegating more than once per year on the same topic. The Clerk responded clarifying the procedure she believed

⁷ *Casselman (Village of) (Re)*, 2018 ONOMBUD 11 at para 31, online: <<https://canlii.ca/t/hvmtk>>.

⁸ *Ibid*.

⁹ *Letter from the Ontario Ombudsman to Loyalist Township* (6 December 2021), at 3, online: <<https://www.ombudsman.on.ca/en/our-work/municipal-meetings/loyalist-township-december-6-2021>> [“*Loyalist Township*”].

¹⁰ *Casselman*, *supra* note 3 at para 33; *London (City of) (Re)*, 2024 ONOMBUD 2 at para 36, online: <<https://canlii.ca/t/k27t7>> [“*London*”]; *Saugeen Shores (Town of) (Re)*, 2020 ONOMBUD 3 at paras 44-45 and 49-50, online: <<https://canlii.ca/t/j93c3>> [“*Saugeen Shores*”].

¹¹ *Ibid*, *Saugeen Shores*.

¹² *London*, *supra* note 10.

needed to be followed for the Delegation to proceed. There was no discussion of the issue by council members over email.

- 31 The email was an expression of concern over a procedural issue, rather than an effort to persuade the rest of council to adopt a particular position or to organize a voting bloc. Accordingly, I find the councillor's July 19, 2024 email was not an improperly closed meeting under the *Municipal Act, 2001*.

One-on-one phone calls

- 32 A quorum of council was not present during the one-on-one phone calls between members of council that occurred prior to the July 23, 2024 meeting, as none of the calls involved a member of council communicating with multiple members of council simultaneously. Accordingly, there was no meeting within the definition under the Act.
- 33 While these one-on-one phone conversations did not involve a quorum, members of council did discuss their respective positions on whether the Delegation was permissible. I have previously stated that, even if they are not technically captured by the open meeting rules, sequential conversations may be contrary to the principles of accountability, transparency, and openness where they materially advance council business or decision-making.¹³
- 34 I have also recognized the importance of council members being able to speak freely with one another outside the structure of a formal meeting.¹⁴ For example, in a 2021 letter to Loyalist Township, I stated: "It would not be realistic, nor respectful of democratic governance in municipalities, to implement a culture of absolute silence between council members outside of council chambers."¹⁵
- 35 Nevertheless, council members should be careful about having one-on-one conversations with other members that stray into advancing council business or decision-making. The complaint alleged that the vote on the motion about whether to hear the Delegation at the July 23, 2024 council meeting took place quickly and without any discussion. Had the one-on-one phone conversations not taken place, council members might have been inclined to express their opinions at the meeting itself on why the Delegation was or was not permissible. Discussion of this point in open session might have prevented the complaint to my Office.

¹³ *Hawkesbury and Russell, supra* note 6.

¹⁴ *Ibid; Loyalist Township, supra* note 9.

¹⁵ *Loyalist Township, supra* note 9 at 3-4.

July 30, 2024 Corporate Services Committee meeting

- 36 The Corporate Services Committee, which is comprised of all members of council, held a meeting on July 30, 2024 at 7:00 p.m. At 7:01 p.m., the committee entered closed session, citing the exceptions for litigation or potential litigation and advice subject to solicitor-client privilege under sections 239(2)(e) and (f) of the *Municipal Act, 2001*. The resolution stated that the committee would review advice related to the Township's draft short-term rental by-law. We were told the by-law was a contentious issue in the Township. At 8:18 p.m., the committee reconvened in open session.
- 37 According to the closed session minutes and those we interviewed, the meeting was held to receive legal advice on the draft short-term rental by-law. The Township's lawyer attended the closed meeting virtually. He participated in the committee's discussion and gave legal advice.

Analysis

Exception for litigation or potential litigation

- 38 The exception for litigation or potential litigation in section 239(2)(e) of the *Municipal Act, 2001* is reserved for circumstances where the subject matter discussed is ongoing litigation or involves a reasonable prospect of litigation. The exception exists to allow parties to litigation to prepare their positions in private without fear of premature disclosure.¹⁶
- 39 While the exception is not limited to information subject to litigation privilege, the case law on litigation privilege has informed my Office's interpretation of the exception. Courts have found that, while it is not necessary for litigation to have been commenced for litigation privilege to apply, there must be more than a mere suspicion of future litigation.¹⁷ I have found that anticipated litigation cannot be merely speculative; rather, there must be a reasonable prospect of litigation and council must use the closed meeting to explore that prospect in some way.¹⁸

¹⁶ *McMurrich/Monteith (Township of) (Re)*, 2022 ONOMBUD 4 at para 44, online: <<https://canlii.ca/t/jncmn>> ["McMurrich"].

¹⁷ *McGraw v Southgate (Township)*, 2021 ONSC 2785 at para 20, online: <<https://canlii.ca/t/jfc60>>; *CR, Re*, 2004 CanLII 34368 (ONSC) at para 21, online: <<https://canlii.ca/t/1qz4w>>, citing *Royal & Sun Alliance Insurance Co of Canada v Fiberglas Canada Inc.*, [2002] OJ No 3846 (ONSC) at para 17.

¹⁸ *Carleton Place (Town of) (Re)*, 2017 ONOMBUD 18 at para 26, online: <<https://canlii.ca/t/hqsph>>.

- 40 I have also found that council's belief that there is the possibility of litigation solely because of an issue's contentious nature and the tone of communications received from the public does not generally rise to the level of prospective litigation.¹⁹
- 41 In this case, those we interviewed told our Office that they anticipated litigation due to the contentious nature of the draft by-law. However, they also acknowledged they were unaware of any specific threat of litigation against the Township. In the circumstances, the potential litigation was merely speculative.
- 42 Moreover, according to the closed meeting minutes and those we interviewed, potential litigation against the Township was not discussed during the closed session. Rather, the Corporate Services Committee's discussion was focused on the draft by-law. In *RSJ Holdings Inc v London (City)*, the Court of Appeal stated that "[t]he fact that there might be, or inevitably would be, litigation arising from [a] by-law does not make the 'subject matter under consideration' potential litigation."²⁰
- 43 Accordingly, the discussion during the July 30, 2024 closed meeting did not fit within the exception in section 239(2)(e) for litigation or potential litigation.

Exception for solicitor-client privilege

- 44 The exception for solicitor-client privilege in section 239(2)(f) of the Act applies to discussions in closed session between municipal officials and their solicitor when they are seeking or receiving legal advice that is intended to be confidential.²¹
- 45 The purpose of this exception is to ensure that municipal officials can speak freely about legal advice without fear of disclosure.²² The Supreme Court of Canada has stated that solicitor-client privilege applies when the following conditions are met:
- i. There is communication between a lawyer and a client;
 - ii. Which entails the seeking or giving of legal advice; and
 - iii. Which is considered to be confidential by the parties.²³

¹⁹ *Midland (Town of) (Re)*, 2016 ONOMBUD 8 at paras 27-29, online: <<https://canlii.ca/t/h2stk>>; *Letter from the Ontario Ombudsman to the Township of Tiny* (1 February 2013), online: <<https://www.ombudsman.on.ca/en/our-work/municipal-meetings/township-tiny-february-1-2013>>.

²⁰ *RSJ Holdings Inc v London (City)*, 2005 CanLII 43895 (ONCA) at para 22, online: <<https://canlii.ca/t/1m32m>>, aff'd, 2007 SCC 29, online: <<https://canlii.ca/t/1rtq1>>.

²¹ *Timmins (City of) (Re)*, 2017 ONOMBUD 4 at para 28, online: <<https://canlii.ca/t/h4rwt>>.

²² *McMurrich*, *supra* note 20 at para 16.

²³ *Solosky v The Queen*, [1980] 1 SCR 821 (SCC) at 837, online: <<https://canlii.ca/t/1mjtq>>.

- 46 Here, the Township's lawyer was present during the closed session of the Corporate Services Committee. We were told, and the closed session minutes confirm, that he participated in the committee's review of the draft short-term rental by-law and provided legal advice.
- 47 Accordingly, the Corporate Services Committee's discussion in closed session about the draft short-term rental by-law fit within the exception in section 239(2)(f) for advice subject to solicitor-client privilege.

Lack of notice

- 48 The complaint alleged that no notice was provided for the August 6, 2024 council meeting, as well as for the October 16, 2024 regular meeting and November 12, 2024 special meeting of the Planning Advisory Committee. According to the complaint, although these meetings appeared on the Township website's list of upcoming meeting dates, along with the time and location, no agendas were posted on the website prior to the meetings.
- 49 The Township's procedural by-law requires the Clerk to provide public notice of regular council and committee meetings by posting the agenda on the Township's website and the municipal office front door on the Friday prior to the meeting date. For special meetings, like the one on November 12, 2024, the Clerk is only required to provide public notice by posting the agenda on the website at least 24 hours prior to the meeting.
- 50 The Clerk acknowledged that for all three meeting dates, the agenda was not posted on the Township website in advance. She told our Office she did not recall, and was unable to verify, whether the agenda for the August 6, 2024 council meeting had been posted on the municipal office front door. She also acknowledged that the agenda for the October 16, 2024 meeting was not posted on the municipal office front door.
- 51 During the August 6, 2024 council meeting, staff were alerted by a member of the public that the agenda for the meeting had not been posted on the website. Staff uploaded it on the website the following day.
- 52 The Clerk told us she was not sure why the agenda had not been posted on the website, though she suspected it may have been because of difficulties with the Township's website and/or because the staff member usually responsible for posting the agenda was on vacation at the time.

- 53 With respect to the Planning Advisory Committee meetings, the Clerk told us that there had been staffing changes at the Township and acknowledged that the agenda had not been posted as required under the procedural by-law due to oversight.

Analysis

- 54 Section 238 of the *Municipal Act, 2001* requires that every municipality pass a procedure by-law governing the calling, place, and proceeding of meetings, and that the by-law shall provide for public notice of meetings.²⁴
- 55 Pursuant to the Township's procedural by-law, the Township was required to provide notice for the August 6, 2024 council meeting and October 16, 2024 Planning Advisory Committee meeting by way of posting the agenda on the Township's website and municipal office front door, and for the November 12, 2024 special meeting of the Planning Advisory Committee by way of posting the agenda on the Township's website. The Clerk acknowledged that notice was not provided in accordance with the Township's procedural by-law for the three meetings.
- 56 Accordingly, I find the Township failed to provide notice of these meetings in accordance with its procedural by-law.
- 57 The Clerk advised our Office that the Township is aware of these violations and has already taken steps to prevent them in future.
- 58 The Chair of the Planning Advisory Committee apologized at the start of the meeting on November 12, 2024 for the failure to post the agenda on the website, and stated they would ensure it did not happen again. We were told the staff person responsible for preparing the committee's meeting materials thereafter created a "cheat sheet" for meeting preparation and has not neglected to post an agenda on the website since.
- 59 In addition, staff are now using different software to prepare agenda packages and the Township has a new, more user-friendly website, which has made meeting preparation easier.
- 60 In the interests of transparency and accountability, and to assist in any future investigations, the Township should implement a system to record that notice of all meetings of council and committees has been posted.²⁵

²⁴ *Supra* note 1.

²⁵ *Elliot Lake (City of) (Re)*, 2016 ONOMBUD 21, online: < <https://canlii.ca/t/h2stc>>.

Opinion

- 61 Council for the Township of Bonfield did not contravene the *Municipal Act, 2001* prior to the July 23, 2024 meeting when one councillor sent an email to the rest of council about the Delegation and council members had one-on-one phone conversations about it.
- 62 The Corporate Services Committee for the Township of Bonfield did not contravene the *Municipal Act, 2001* on July 30, 2024 when it went *in camera*, as its discussion fit within the exception for advice subject to solicitor-client privilege in section 239(2)(f) of the Act.
- 63 However, the Township of Bonfield contravened the open meeting rules by failing to provide public notice in accordance with its procedural by-law for the regular meeting of council on August 6, 2024, as well as the Planning Advisory Committee's regular meeting on October 16, 2024 and its special meeting on November 12, 2024.
- 64 I recognize that the failure to provide notice of these three meetings was due to oversight and that the Township did not knowingly contravene the Act. I acknowledge and commend the actions that staff have taken to put in place measures to prevent these types of oversights in the future.

Recommendations

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

Recommendation 1

All members of council for the Township of Bonfield and its committees 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*.

Recommendation 2

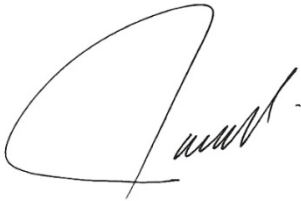
The Township of Bonfield should ensure that public notice of all meetings is provided in accordance with its procedural by-law.

Recommendation 3

To support accountability and transparency, the Township of Bonfield should implement a record-keeping system for all meeting notices.

Report

- 66 Council for the Township of Bonfield was given the opportunity to review a preliminary version of this report and provide comments to my Office. Council elected to provide no comments and indicated they were agreeable to the recommendations.
- 67 This report will be published on my Office's website and should be made public by the Township of Bonfield. In accordance with section 239.2(12) of the *Municipal Act, 2001*, the Township is required to pass a resolution stating how it intends to address this report.



Paul Dubé
Ombudsman of Ontario

Ce rapport est aussi disponible en français