



## **Ombudsman Report**

**Investigation into meetings  
held by council for the Town of Georgina  
on May 29 and September 11, 2024**

**Barbara Finlay  
Acting Ombudsman of Ontario**

**May 2026**

## Complaint

- 1 My Office received complaints that council for the Town of Georgina held closed meetings on May 29 and September 11, 2024 that did not fit within the cited open meeting exceptions in the *Municipal Act, 2001*<sup>1</sup> (the “Act”). The complainants also raised concerns about *in camera* voting by council at its September 11, 2024 meeting.
- 2 My investigation determined that the closed session discussion at council’s May 29 and September 11, 2024 meetings fit within the cited exception for advice subject to solicitor-client privilege.
- 3 My investigation also determined that although the closed meeting discussion on September 11, 2024 fit within the cited exception, the *in camera* vote was neither for a procedural matter nor a direction to staff, and was therefore contrary to section 239(6) of the Act.

## 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 Town of Georgina.
- 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 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

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<sup>1</sup> SO 2001, c 25 [“*Municipal Act*”].

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](http://www.ombudsman.on.ca/en/info-public-bodies-and-officials/municipal-government/municipal-meeting-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/en/make-complaint/what-we-can-help-you/organizations-you-can-complain-about](http://www.ombudsman.on.ca/en/make-complaint/what-we-can-help-you/organizations-you-can-complain-about).

## Investigative process

- 10 My Office notified the Town of our intent to investigate these complaints on January 24, 2025. We spoke with the Clerk, Mayor, and Director of Legislative Services. We also reviewed the meeting agendas, open and closed session minutes, and relevant material related to the meeting.
- 11 My Office received full co-operation in this matter.

## Background

- 12 The Mossington Bridge is a steel bridge over the Black River built in 1912 and designated as a heritage structure. My Office was told that youth in the Town often jump off the bridge into the river as a local tradition. This tradition turned into a tragedy in the summer of 2023 when an individual drowned in the river and it was reported that they had jumped from the bridge.
- 13 Following the completion of a safety study of the bridge in September 2023, council discussed possible modifications to the bridge during a closed session at its October 25, 2023 meeting.

## May 29, 2024 council meeting

- 14 Council met on May 29, 2024 at 9:00 a.m. for a regular meeting. After calling the meeting to order and discussing several unrelated items, council passed a resolution to move into closed session to discuss “Improvements to Town owned infrastructure” under the open meeting exception for advice subject to solicitor-client privilege. The Town’s solicitor, who is also its Director of Legislative Services, was present.
- 15 According to the closed session minutes and our interviews, the Town’s solicitor summarized the legal advice provided at council’s October 25, 2023 meeting, and provided updated advice regarding continuing liability concerns about the Mossington Bridge and its heritage status.
- 16 Staff then gave a presentation to council regarding proposed improvements to the bridge. Following the presentation, the Town’s solicitor responded to the questions that arose during the presentation.
- 17 The discussion lasted approximately 30 minutes. Council subsequently returned to open session and adjourned its meeting.

## Analysis

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

- 18 Council cited the open meeting exception for advice subject to solicitor-client privilege, which applies to discussions between a municipality and its solicitor in seeking or receiving legal advice intended to be confidential and includes communications for that purpose.<sup>2</sup> The purpose of the exception is to ensure that municipal officials can speak freely about legal advice without fear of disclosure.<sup>3</sup>
- 19 My Office has previously determined that communication will only be found to be subject to solicitor-client privilege if it is: (1) between a client and their solicitor, where the solicitor is acting in a professional capacity; (2) made in relation to the seeking or receiving of legal advice; and (3) intended to be confidential.<sup>4</sup>

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<sup>2</sup> *McMurrich/Monteith (Township of) (Re)*, 2022 ONOMBUD 4, at para 20, online: <<https://canlii.ca/t/jncmn>>.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid* at para 25.

- 20 The Town solicitor was present at the closed session and provided legal advice to council by summarizing previous advice, providing updated advice regarding legal liabilities and the bridge's heritage status, and remained present throughout the staff presentation to be able to advise on any questions posed by council. Consequently, these portions of the closed meeting fit within the exception.
- 21 However, no legal advice about the proposed improvements was raised or received during the staff presentation. The solicitor's advice was provided before and following the presentation. This portion of the closed meeting therefore does not fit within the exception. I will next consider whether it would have been possible to parse the discussion and move into open session for those parts that did not fit within the exception.

### Parsing the discussion

- 22 My Office has found it unrealistic to parse a discussion between topics that fit within the open meeting exceptions and those that do not when the topics of the discussion are significantly intertwined.<sup>5</sup> The Ontario Divisional Court has explained that it is unreasonable to expect subjects to be parsed where it would “detract from free, open and uninterrupted discussion.”<sup>6</sup>
- 23 My Office has also reviewed whether it would be realistic for council to parse presentations from ensuing discussions involving solicitor-client privileged consultation. My Office's September 2021 review of a meeting held by council for the Township of South Frontenac found that a presentation about a development project could not be parsed from its ensuing discussion of the project with a lawyer because the content of the presentation was so intertwined with the ensuing legal consultation.<sup>7</sup>
- 24 In the present case, it would have been similarly unrealistic for council to parse the presentation about proposed modifications to the bridge from the subsequent legal consultation about those proposed modifications. Consequently, the information within the presentation was too closely intertwined and foundational to subsequent legal advice to have been parsed between open and closed session.

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<sup>5</sup> Letter from the Ontario Ombudsman to Township of South Frontenac (29 September 2021) [*“South Frontenac”*], online: <<https://www.ombudsman.on.ca/en/our-work/municipal-meetings/township-south-frontenac-september-29-2021>>.

<sup>6</sup> *St. Catharines (City) v IPCO*, 2011 ONSC 2346 (CanLII), online: <<https://canlii.ca/t/fkqfr>>.

<sup>7</sup> *Temagami (Municipality of) (Re)*, 2021 ONOMBUD 3 (CanLII), online: <<https://canlii.ca/t/jcxs0>>; *South Frontenac*, *supra* note 5.

- 25 The entirety of the discussion that occurred in closed session on May 29, 2024 therefore fits within the exception for advice subject to solicitor-client privilege.

## September 11, 2024 meeting

- 26 On September 11, 2024, council met for a regular meeting at 9:00 a.m., and following discussion of unrelated items, resolved to move *in camera* to discuss “Legal advice regarding improvement to Town-owned infrastructure” under the open meeting exception for advice subject to solicitor-client privilege. The Town solicitor was not present at the meeting, but an external counsel attended.
- 27 In closed session, municipal staff presented a proposed design change to the bridge construction. During and after the presentation, external counsel provided legal advice about the proposal in relation to heritage designation requirements and legal liability.
- 28 Concluding its discussion, council voted on a three-part resolution. As part of this resolution, council approved additional funding to make the proposed design change presented at this meeting. Council subsequently returned to open session and adjourned its meeting.

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

- 29 As previously noted, this exception applies to discussions between a municipality and its solicitor in seeking or receiving legal advice intended to be confidential, including communications for that purpose.<sup>8</sup>
- 30 Unlike council’s meeting on May 29, 2024, which was more broadly about the entirety of the bridge modification project, the discussion at council’s September 11, 2024 meeting was narrower in scope, regarding one specific proposed change.
- 31 As external counsel was present throughout the discussion and provided legal advice on the implementation of this proposed change, the exception applies.

## Direction to staff

- 32 The complainants also raised concerns that elements of the bridge modification project were being approved *in camera*.

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<sup>8</sup> *Hamilton (City of) (Re)*, 2019 ONOMBUD 3, online: <<https://canlii.ca/t/j2b49>>.

- 33** 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.
- 34** My Office has generally determined that a substantive decision which binds the municipality to a course of action and does not include a specific direction to staff is not a procedural matter and should therefore only take place in open session.<sup>9</sup>
- 35** My Office has also previously found that votes in closed session to allocate funding and which do not contain explicit instructions as to next steps for particular staff are generally substantive in nature and therefore do not qualify as a direction to staff. In a 2023 letter to the Municipality of Casselman, I found that council’s vote in closed session to approve an offer of purchase in a property transaction amounted to a substantive decision and improper vote contrary to the Act.<sup>10</sup> Similarly, in a 2023 report to the Niagara Central Dorothy Rungeling Airport Commission, I found that the commission’s vote in closed session to approve a financial agreement was not permitted as it was not a direction to staff or procedural matter.<sup>11</sup>
- 36** At the conclusion of its September 11, 2024 *in camera* discussion, council voted on a three-part resolution, with all parts recorded under the heading “Direction.” One part of the resolution contained a specific direction to staff. Another part of the resolution, to “implement” specific measures, did not explicitly identify staff being directed but implicitly provides direction to staff whose identity can be inferred. Consequently, these qualify as directions to staff.
- 37** However, the remaining part of the resolution is an approval of a specified amount of additional funding for the modification discussed at the meeting, with no particular staff action mentioned or inferable. Council did not explicitly or implicitly direct staff to, for example, allocate funding; rather, council’s resolution as phrased was to “approve” funding. While it is recorded under the “Direction” heading, this part of the resolution does not refer to any particular

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<sup>9</sup> *Burk’s Falls / Armour (Village of / Township)*, 2015 ONOMBUD 26 at para 119, online: <<https://canlii.ca/t/gtp6w>>.

<sup>10</sup> Letter from the Ontario Ombudsman to Municipality of Casselman (23 January 2023), online: <<https://www.ombudsman.on.ca/en/our-work/municipal-meetings/municipality-casselman-january-23-2023>>.

<sup>11</sup> *Niagara Central Dorothy Rungeling Airport Commission (Re)*, 2023 ONOMBUD 8, online: <<https://canlii.ca/t/jx8pb>>.

staff member, or even to staff more generally, and there was no evidence that those participating in the meeting intended for this to be a direction to staff. I therefore find that it was not a direction to staff.

- 38 Along with giving directions or instructions, *in camera* votes are also permitted when they are procedural in nature. My Office has considered votes that engage with the process or mechanics of council or administration to be procedural matters. Procedural votes are not substantive decisions in nature.<sup>12</sup> As an example, my Office has previously found that a vote in closed session to consider in open session the matter that was being discussed *in camera* was procedural.<sup>13</sup>
- 39 In the present case, council's vote to, in part, approve additional funding is not procedural, but a substantive decision that bound the municipality to a particular course of action.
- 40 As the three parts of the resolution form a single vote, and the approval of additional funding was neither a direction to staff nor procedural, the resolution as a whole contravened section 239(6) of the Act.
- 41 I recognize that council may not have intended to vote on a substantive matter in closed session and believed it to be a direction to staff. However, it remains the responsibility of council to ensure that it does not vote on substantive matters during closed sessions in compliance with the Act.

## Opinion

- 42 Council for the Town of Georgina was permitted to conduct its closed sessions on May 29 and September 11, 2024 under the exception for advice subject to solicitor-client privilege.
- 43 However, council contravened section 239(6) of the Act by conducting an *in camera* vote on a matter that was neither a direction to staff nor procedural.

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<sup>12</sup> Letter from the Ontario Ombudsman to the Township of Black River-Matheson (8 November 2024), online: <<https://www.ombudsman.on.ca/en/our-work/municipal-meetings/township-black-river-matheson-november-8-2024>>.

<sup>13</sup> *Ibid.*

## Recommendations

- 44 I make the following recommendations to assist the Town of Georgina in fulfilling its obligations under the Act, and enhancing the transparency of its meetings:

### Recommendation 1

**All members of council for the Town of Georgina should be vigilant in adhering to their individual and collective obligation to ensure that the Town complies with its responsibilities under the *Municipal Act, 2001*.**

### Recommendation 2

**Council for the Town of Georgina should ensure that its closed session votes are limited to giving directions or instructions to staff, or to procedural matters, to comply with section 239(6) of the *Municipal Act, 2001*.**

## Report

- 45 Council for the Town of Georgina was given the opportunity to review a preliminary version of this report and provide comments to my Office. All comments were received and considered in the preparation of this final report.
- 46 This report will be published on my Office's website and should be made public by the Town of Georgina. In accordance with section 239.2(12) of the *Municipal Act, 2001*, the Town is required to pass a resolution stating how it intends to address this report.



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**Barbara Finlay**  
Acting Ombudsman of Ontario

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