



## **Ombudsman Report**

**Investigation into a complaint about a meeting  
of the Committee of the Whole for the  
Municipality of Markstay-Warren**

**Barbara Finlay  
Acting Ombudsman of Ontario**

**June 2026**

## Complaint

- 1 My Office received a complaint about a meeting of the Committee of the Whole (the “Committee”) for the Municipality of Markstay-Warren (the “Municipality”) that was held on June 24, 2025. The complaint alleged that the Committee failed to provide the public with information about the topic to be discussed in the closed session and that it held an illegal vote during the closed meeting.
- 2 For the reasons set out below, I have concluded that the Committee of the Whole for the Municipality of Markstay-Warren failed to provide a description of the general nature of the matter to be considered in its resolution to move into closed session, thereby contravening section 239(4)(b) of the *Municipal Act, 2001*.<sup>1</sup> I have also found the Municipality contravened the Act by failing to record minutes that accurately reflected the proceedings of the June 24, 2025 meeting. Finally, my investigation found that the Committee did not vote on making changes to its noise by-law during the closed meeting, and accordingly, there was no violation of section 239(5) of the Act.

## Ombudsman jurisdiction

- 3 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.
- 4 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.
- 5 The Ombudsman is the closed meeting investigator for the Municipality of Markstay-Warren.
- 6 When investigating closed meeting complaints, we consider whether the open meeting requirements in the Act and the applicable procedure by-law have been observed.
- 7 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

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<sup>1</sup> SO 2001, c 25.

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](http://www.ombudsman.on.ca/en/info-public-bodies-and-officials/municipal-government/municipal-meeting-digest).

- 8 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

- 9 Members of my Office's open meeting team reviewed the June 24, 2025 open and closed meeting agendas and minutes. We also reviewed two staff reports prepared for the closed meeting and the Municipality's noise by-law. On October 3, 2025, my Office advised the Municipality of our intent to investigate this complaint.
- 10 We spoke with both the former and current CAO/Clerk, and we interviewed the three current members of council who were present during the June 24, 2025 closed meeting of the Committee of the Whole. We also reviewed notes taken by a councillor during the meeting.
- 11 At the time, the Municipality did not make audio or video recordings of committee meetings or closed meetings. As a result, there was no recording of the meeting to review.
- 12 We received full co-operation in this matter.

## June 24, 2025 Committee of the Whole meeting

- 13 On June 24, 2025, the Committee of the Whole held a meeting at 5:30 p.m. Item 3 of the open meeting agenda was identified only as "closed session." No further information was given on the agenda about the topic for discussion in closed session.

- 14 The open meeting minutes state that the Committee passed a resolution to move into closed session at 5:31 p.m. According to the minutes, the resolution did not provide any further information about the topic for discussion.
- 15 Those we spoke with told us they believed the meeting was closed under the exception for personal matters about an identifiable individual under section 239(2)(b) of the *Municipal Act, 2001*, but this is not stated in the agenda or minutes.
- 16 During the closed meeting, the Committee heard from two representatives from the Municipality's contracted by-law department, Sudbury East Building & By-Law Services, and discussed a noise by-law issue involving a resident.
- 17 The Committee adjourned the closed meeting and resolved to move back into open session at 6:49 p.m. According to the open meeting minutes, there was no report back on the closed session discussion and those we interviewed did not recall giving one.
- 18 Following the closed session, the Committee considered in open session a report from Sudbury East Building & By-Law Services on whether the Municipality's noise by-law required clarification. The Committee carried a motion outlining its desired approach to enforcement of the noise by-law, based on a recommendation from Sudbury East Building & By-Law Services.

## Analysis

### Resolution to go into closed session

- 19 Under section 239(4)(a) of the *Municipal Act, 2001*, a council, local board, or committee of either of them is to state by resolution the general nature of the matter(s) to be discussed in closed session.
- 20 In *Farber v Kingston City*, the Court of Appeal held that “the resolution to go into closed session should provide a general description of the issue to be discussed in a way that maximizes the information available to the public while not undermining the reason for excluding the public.”<sup>2</sup> The court held that the “clear legislative purpose” behind section 239 of the *Municipal Act, 2001* is to “maximize the transparency of municipal governance so far as possible in the circumstances.”<sup>3</sup>

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<sup>2</sup> 2007 ONCA 173, at para 21 online: <<https://canlii.ca/t/1qtz/>>.

<sup>3</sup> *Ibid*, at para 19.

- 21 My Office has affirmed there is a requirement that municipalities add a “level of informative detail” to the resolution to move into a closed meeting.<sup>4</sup> My Office previously described this requirement as meaning that council should provide a “brief description of the subject matter to be considered in closed session.”<sup>5</sup>
- 22 In a December 2024 report, then-Ombudsman Paul Dubé found that the Municipality of Markstay-Warren breached section 239(4)(a) of the Act by failing to include any description of the topic for discussion in closed session on two different occasions.<sup>6</sup>
- 23 Although the Municipality accepted Ombudsman Dubé’s recommendation that it “should ensure that all resolutions to proceed *in camera* provide a general description of the issue to be discussed in a way that maximizes the information available to the public while not undermining the reason for excluding it,” it failed to do so on June 24, 2025.
- 24 In the present case, while the Mayor told my Office that he believed he had stated as part of the resolution that the Committee was moving into closed session based on the exception for personal matters about an identifiable individual, there is no record of this. According to the minutes, the Committee stated only that it was moving into closed session and the time at which it was doing so.
- 25 No additional information was shared with the public about the general nature of the issue to be discussed. Accordingly, I find that the Committee violated section 239(4)(a) of the Act.
- 26 While there may be some instances where it is not possible for a municipality to provide more information to the public about the closed meeting topic of discussion beyond the wording of the open meeting exception being relied upon, in my view, those instances should be rare. In most cases, council should be able to provide some brief description or “level of informative detail” to the public about the topic for discussion, without undermining the reason for going into the closed meeting.
- 27 Here, for example, the Committee could have described the closed meeting topic as being about “enforcement of the noise by-law” or simply, a “noise complaint.”

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<sup>4</sup> See e.g. *Brockville (City of)*, 2016 ONOMBUD 12 at para 45, online: <<https://canlii.ca/t/h2ssr>>, citing Local Authority Services, *A Report to the corporation of the Municipality of Kincardine* (July 2014) at 8.

<sup>5</sup> See e.g. *South Huron (Municipality of) (Re)*, 2015 ONOMBUD 6, at para 58, online: <<https://canlii.ca/t/gtp80>>.

<sup>6</sup> See *Markstay-Warren (Municipality of) (Re)*, 2024 ONOMBUD 21, online: <<https://canlii.ca/t/k8b2t>>.

- 28 I wish to emphasize to the Municipality that publicly identifying the nature of the topics of discussion is not a mere procedural technicality.<sup>7</sup> The purpose of this obligation is to enhance the transparency of local democracy and ensure that decision-makers are accountable when they discuss matters behind closed doors. Failing to comply with this requirement can result in a loss of public confidence in municipal governance.
- 29 Going forward, I strongly urge the Municipality's council and committee members to familiarize themselves with the open meeting rules, and to be vigilant in ensuring that they include a brief description of the topic(s) for discussion, in addition to the open meeting exception being relied upon, in all resolutions to move into closed session.

## Voting

- 30 The complaint we received also alleged that the Committee discussed and voted on making changes to the Municipality's noise by-law during the June 24, 2025 closed meeting, and that this was a violation of the open meeting rules.
- 31 Sections 239(5) and (6) of the *Municipal Act, 2001* together prohibit the taking of a vote during a closed meeting, unless the discussion fits within an exception under the Act and the vote is for a procedural matter or for giving directions or instructions to municipal staff.
- 32 My investigation found there was no vote to make changes to the noise by-law during the closed meeting.
- 33 All three council members interviewed were consistent in their recollections that the discussion in closed session was about a situation involving a resident. Two of the three members specifically recalled that the Committee's discussion of the noise by-law took place in the open meeting that followed the closed session. Though the third council member could not recall, the notes they took during the meeting are consistent with this version of events. In addition, the vote on the noise by-law is reflected in the open meeting minutes.
- 34 Accordingly, I find that the Committee did not contravene section 239(5) of the Act on June 24, 2025.

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<sup>7</sup> See *Casselman (Municipality of) (Re)*, 2022 ONOMBUD 14 at para 18, online: <<https://canlii.ca/t/jrnx7>> ["Casselman"].

## Meeting minutes

- 35** The three council members we spoke with told us they believed the meeting had been closed under the open meeting exception for personal matters about an identifiable individual under section 239(2)(b) of the *Municipal Act, 2001*. Two of the three members told us they thought the resolution the Committee passed prior to moving into the closed meeting had included the open meeting exception. The minutes, however, do not reflect this, and simply refer to the fact of closing the meeting and the time.
- 36** Moreover, those we interviewed told us that the Committee discussed and voted on changes to the noise by-law in open session. While the minutes show that the Committee voted on a motion about the Municipality's desired approach to the noise by-law's enforcement, they do not reflect the content of the discussion the Committee had in open session about the report from Sudbury East Building & By-Law Services or the motion that was proposed prior to the vote.
- 37** Section 239(7) of the Act requires a municipality to record without note or comment all resolutions, decisions, *and other proceedings* at a council meeting.
- 38** In order to reflect all proceedings at a meeting in accordance with the Act, my Office has previously suggested that minutes include:
- where the meeting took place;
  - when the meeting started and adjourned;
  - who chaired the meeting;
  - who was in attendance, with specific reference to the Clerk or other designated official responsible for recording the meeting;
  - whether any participants left or arrived while the meeting was in progress and if so, at what time this occurred;
  - a detailed description of the substantive and procedural matters discussed, including reference to any specific documents considered;
  - any motions, including who introduced the motion and seconders; and
  - all votes taken, and all directions given.<sup>8</sup>
- 39** While minutes are not intended to be a verbatim transcript, they should record the substance of the discussion and include all resolutions as they were voted on at the meeting.<sup>9</sup> Minutes that do not reflect the entirety of issues and matters discussed and decisions made during a meeting do not provide the accurate record required to protect the municipality, should the meeting be subject to an

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<sup>8</sup> *Bonfield (Township of) (Re)*, 2021 ONOMBUD 14 at para 51, online: <<https://canlii.ca/t/jh0vt>>.

<sup>9</sup> *Ibid* at para 52; see also *Halton Hills (Town of) (Re)*, 2024 ONOMBUD 10 at para 46, online: <<https://canlii.ca/t/k6cfd>>.

investigation or litigation.<sup>10</sup> Incomplete minutes also leave officials without a record to consult in future in order to understand how an issue was considered or a decision was reached.

- 40 Going forward, the Municipality should ensure that it keeps complete and comprehensive minutes that accurately reflect the proceedings of the meeting, including the substantive and procedural items discussed and all resolutions as they are voted on at the meeting.<sup>11</sup>

## Audio or video recording

- 41 At the time of the meeting on June 24, 2025, the Municipality did not make audio or video recordings of committee meetings, special council meetings, or closed meetings.
- 42 My Office has consistently recommended that all municipalities, local boards and committees of either make audio or video recordings of all meetings, both open and closed.<sup>12</sup> Audio or video recordings of closed sessions provide the clearest and most accessible record for closed meeting investigators to review, and assist in ensuring that officials do not stray from the legal requirements of the open meeting rules during the closed session.
- 43 Had the Municipality had an audio or video recording of the Committee of the Whole meeting on June 24, 2025, it would have greatly assisted our review.
- 44 In response to a preliminary version of this report, the CAO/Clerk informed my Office that the Municipality has passed a new procedure by-law that requires livestreaming and audio recording of all council, special council, and Committee of the Whole meetings that take place in the Markstay council chambers, as well as audio recording of all closed and advisory committee meetings.
- 45 I commend the Municipality for having adopted the best practice of making recordings of its meetings, both open and closed.

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<sup>10</sup> *Niagara Central Dorothy Rungeling Airport Commission (Re)*, 2023 ONOMBUD 8 at para 87, online: <<https://canlii.ca/t/jx8pb>>.

<sup>11</sup> See *Casselman*, *supra* note 9 at para 23.

<sup>12</sup> *London (City of) (Re)*, 2025 ONOMBUD 9 at para 46, online: <<https://canlii.ca/t/kgdq5>>.

## Opinion

- 46 The Committee of the Whole for the Municipality of Markstay-Warren contravened section 239(4)(a) of the *Municipal Act, 2001* on June 24, 2025 by failing to include a description of the general nature of the matter to be considered in closed session. The Municipality also contravened the Act by failing to record minutes that reflected all the discussions that took place during the meeting on June 24, 2025.
- 47 The Committee of the Whole for the Municipality of Markstay-Warren did not contravene section 239(5) of the Act on June 24, 2025, as it did not hold a vote in closed session on making changes to the noise by-law.

## Recommendations

- 48 I make the following recommendations to assist the Municipality of Markstay-Warren in fulfilling its obligations under the Act and enhancing the transparency of its meetings:

### Recommendation 1

**All members of council for the Municipality of Markstay-Warren 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 Municipality of Markstay-Warren should ensure that all resolutions to proceed into a closed session provide, in addition to reference to the exceptions under the *Municipal Act*, a general description of all issues to be discussed in a way that maximizes the information available to the public while not undermining the reason for excluding the public.**

### Recommendation 3

**The Municipality of Markstay-Warren should ensure that the minutes for all council and committee meetings accurately reflect the proceedings of the meeting, including the substantive and procedural items discussed and the resolutions as they are voted on at the meeting.**

## Report

- 49 Council for the Municipality of Markstay-Warren was given the opportunity to review a preliminary version of this report and provide comments to my Office. All comments received were taken into consideration in the preparation of this final report.
- 50 This report will be published on my Office's website and should also be made public by the Municipality of Markstay-Warren. 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.



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Barbara Finlay  
Acting Ombudsman of Ontario

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