



## **Ombudsman Report**

**Investigation into a meeting held by council  
for the City of Niagara Falls on October 22, 2024**

**Barbara Finlay  
Acting Ombudsman of Ontario**

**June 2026**

## Complaint

- 1 My Office received a complaint about a meeting of council for the City of Niagara Falls (the “City”) held on October 22, 2024. The complaint alleged that the City did not provide public notice that council would vote to appoint members to the City’s Downtown Advisory Committee (the “Committee”) and that council held a vote during the meeting’s closed session that did not adhere to the open meeting rules in the *Municipal Act, 2001* (the “Act”).<sup>1</sup>
- 2 My investigation determined that the City provided public notice of the meeting in accordance with its procedural by-law. I also determined that council voted by ballot while in closed session to select members of the Downtown Advisory Committee. This vote contravened the Act’s rules for voting in closed session and voting in open session in sections 239(6) and 244, respectively.

## Ombudsman jurisdiction

- 3 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.
- 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. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own.
- 5 The Ombudsman is the closed meeting investigator for the City of Niagara Falls.
- 6 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.
- 7 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/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).

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

- 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 On September 10, 2025, my Office advised the City of our intent to investigate whether the meeting on October 22, 2024 complied with the open meeting rules. On January 7, 2026, my Office advised the City that the investigation would also consider whether the ballot vote was contrary to the Act.
- 10 My Office reviewed materials from the October 22, 2024 meeting, including an audio recording of the closed session, and the minutes from the open and closed portions of the meeting. We reviewed the City's procedural by-law<sup>2</sup> and the Committee's terms of reference.<sup>3</sup> We spoke with the City's Deputy Clerk.
- 11 My Office received full co-operation during this investigation.
- 12 Audio and video recordings provide the most accurate and complete record of a meeting and I commend the City for adopting the practice of audio recording its council meetings, including closed sessions.

## Council procedures

- 13 The procedural by-law states that regular meetings of council shall be held in accordance with a schedule approved by council annually and that the Clerk shall provide the public with notice of meetings by posting notice on the City's website, including the place, date and time of the meeting.<sup>4</sup>

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<sup>2</sup> City of Niagara Falls, By-Law No. 2019-04 [*Procedural By-law*], online:  
<<https://niagarafalls.ca/media/anefwk3o/procedural-bylaw-2019-04.pdf>>.

<sup>3</sup> City of Niagara Falls, Downtown Committee Terms of Reference [*Terms of Reference*], online:  
<<https://niagarafalls.civicweb.net/document/79339/>>.

<sup>4</sup> *Procedural By-law*, sections 5 and 10.1.

## Background

### Downtown Advisory Committee

- 14 The City established the Downtown Advisory Committee in June 2024 to oversee business expenditures, programming and beautification of the City's downtown area.<sup>5</sup>
- 15 The Committee is composed of the Mayor, one council member, and nine members of the public who are commercial property owners or business owners in the downtown area. Council selects the Committee's membership.<sup>6</sup>

### Council meeting on October 22, 2024

- 16 On October 8, 2024, the City posted the agenda for the October 22, 2024 meeting on its website. The agenda set out the date, time, and location of the meeting. It included an open session item to "complete ballots" to select members for the Downtown Advisory Committee (item 12.2).
- 17 During the meeting, and prior to considering item 12.2, council passed a resolution to close the meeting to review applications for the Committee's membership pursuant to the open meeting exception for personal matters.
- 18 The audio recording of the closed session captures council's discussion about applicants for the Committee. Staff provided council with background information about the Committee. Council then discussed the information and the applicants, including their opinions on the suitability of individual applicants for membership. Council members also asked staff questions about applicants. Staff gave each council member a ballot to select nine applicants to appoint to the Committee. The audio recording captures council completing the ballots while discussing the applicants. The Deputy Clerk told us that she collected the ballots and recorded the results of the ballot vote on a tally sheet.
- 19 After returning to open session, the Clerk announced that the vote took place and identified the successful applicants. Council then passed a resolution appointing those applicants to the Committee and a motion directing staff to destroy the ballots. Staff informed council that the tally sheet would be kept by the Clerk's office and be available for public inspection.

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<sup>5</sup> City of Niagara Falls, Downtown Advisory Committee, online: <<https://niagarafalls.ca/city-government/committees-boards-and-bias/downtown-advisory-committee/>>.

<sup>6</sup> *Terms of Reference*, section 3.

## Analysis

### The City provided notice of the meeting

- 20 The complaint alleged that the City failed to provide public notice that council would appoint members to the Committee at the October 22, 2024 meeting.
- 21 The City complied with its notice requirements under its procedural by-law. The 2024 council meeting schedule posted on the City's website includes the October 22 meeting. The meeting agenda, also containing the date, time, and location of the meeting, was posted online on October 8, 2024.
- 22 Although providing notice of specific discussion items is not required by the open meeting rules, it is a best practice that my Office has encouraged. The October 22, 2024 meeting agenda lists membership selection for the Committee as a business item.<sup>7</sup>

### Council's *in camera* vote was not permitted under section 239(6)

- 23 Under subsection 239(6) of the Act, council may only vote in closed session if the meeting is properly closed under one of the Act's open meeting exceptions, and the vote is for a procedural matter or for giving directions to staff.

### *A vote occurred in closed session*

- 24 During my investigation, the Deputy Clerk told my Office that the ballots completed by council in closed session did not qualify as a vote because council passed the resolution to appoint the Committee's members in open session.
- 25 My Office has consistently found that informal methods of voting such as straw polls or show of hands may constitute a vote for the purposes of the open meeting rules.<sup>8</sup> The use of ballots is also a method of voting. A vote does not fall outside of the open meeting rules simply because it is later ratified or formalized in open session. Accordingly, council conducted a closed session vote when it completed ballots to select applicants for the Committee.

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<sup>7</sup> *Hamilton (City of) (Re)*, 2023 ONOMBUD 14 (CanLII), at para 39, online: <<https://canlii.ca/t/k1856>>.

<sup>8</sup> *Fort Erie (Town of) (Re)*, 2017 ONOMBUD 8 (CanLII) at para 44, online: <<https://canlii.ca/t/h4rx3>>.

*The meeting was properly closed under the open meeting exception for personal matters*

- 26 The exception for personal matters about an identifiable individual at paragraph 239(2)(b) of the Act applies to discussions of information about a person in their personal capacity, rather than their professional capacity. In some cases, however, professional information may fit within the exception when it reveals something personal or relates to scrutiny of an individual's conduct.<sup>9</sup> My Office has previously found that discussions about applicants for municipal committees such as their suitability for membership qualified as personal information.<sup>10</sup>
- 27 In the present case, council members discussed the qualifications of identifiable applicants to the Downtown Advisory Committee and offered their subjective assessment of applicants' suitability to serve on the Committee. This type of discussion qualifies as personal information about identifiable individuals.
- 28 Accordingly, the discussion fit within the exception for personal matters.

*The vote was neither procedural nor a direction to staff*

- 29 Council's vote to select applicants to appoint to the Committee was not procedural and did not involve giving directions to staff. Instead, the vote selected Council's choice of applicants to appoint as members of the Committee.
- 30 Accordingly, although the subject matter fit within the exception for personal matters, the closed session vote on October 22, 2024 did not meet the requirements of section 239(6) and was contrary to the Act.

**Council's ballot vote was not permitted under section 244 of the Act**

- 31 In addition to considering whether council's vote was contrary to the open meeting rules in my role as the City's closed meeting investigator, I also relied on my general authority under section 14 of the *Ombudsman Act*<sup>11</sup> to investigate whether council complied with the open voting requirements set out in section 244 of the Act.

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<sup>9</sup> *Amherstburg (Town of) (Re)*, 2022 ONOMBUD 11, at para 19, online: <<https://canlii.ca/t/jr5rc>>.

<sup>10</sup> See for example: *Bracebridge (Town of) (Re)*, 2015 ONOMBUD 10, online: <<https://canlii.ca/t/gtp5r>>; *Johnson (Township of) (Re)*, 2021 ONOMBUD 1, online: <<https://canlii.ca/t/jckg4>>; and Letter from the Ontario Ombudsman to City of Hamilton (October 30, 2024), online: <<https://www.ombudsman.on.ca/en/our-work/municipal-meetings/city-hamilton-november-22-2024>>.

<sup>11</sup> *Ombudsman Act*, R.S.O. 1990, c. O.6.

- 32 Section 244 of the Act provides that, subject to limited exceptions, voting by ballot or any other method of secret voting is prohibited, and any such vote is of no effect.
- 33 On October 22, 2024, council used ballots to select applicants for appointment to the Committee. The ballots were completed in secret (that is, in a closed session) and subsequently destroyed. City staff suggested to my Office that section 244 did not apply because the City retained a tally sheet recording how each council member voted, which may be inspected by the public. The Deputy Clerk also explained that ballots were used to avoid potential awkwardness associated with council members publicly selecting their preferred applicants.
- 34 However, section 244 clearly prohibits voting by ballot as a method of secret voting, regardless of whether the results are later recorded or the intent is to avoid discomfort among council members. Accordingly, council voted using a prohibited secret method and, in doing so, contravened section 244 of the Act.
- 35 With respect to whether the ballot vote is of no effect, I note that council subsequently passed a resolution in open session appointing members to the Committee. In the circumstances, I am not making a finding regarding the legal effect of the ballot vote.

## Opinion

- 36 Council for the City of Niagara Falls contravened section 239(6) and section 244 of the *Municipal Act, 2001* when it voted by ballot during a closed session to select applicants to appoint to the Downtown Advisory Committee on October 22, 2024.
- 37 The City provided public notice of the October 22, 2024 meeting in accordance with its procedural by-law.

## Recommendations

- 38 I make the following recommendations to assist the City of Niagara Falls in fulfilling its obligations under the *Municipal Act, 2001* and enhancing the transparency of its meetings:

### Recommendation 1

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

## Recommendation 2

**Council for the City of Niagara Falls should ensure that its closed session votes comply with section 239(6) of the *Municipal Act, 2001*.**

## Recommendation 3

**In accordance with section 244 the *Municipal Act, 2001*, council for the City of Niagara Falls should not vote by ballot or any other secret method of voting, except as provided by the Act.**

## Report

- 39 Council for the City of Niagara Falls was given the opportunity to review a preliminary version of this report and provide comments to my Office. No comments were received.
- 40 This report will be published on my Office's website and should also be made public by the City of Niagara Falls. 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**

*Ce rapport est aussi disponible en français*