



Ombudsman Report

**Investigation into a complaint
about a closed meeting held
by the Town of Cochrane
on February 13, 2024**

**Paul Dubé
Ombudsman of Ontario**

November 2024

Complaint

- 1 My Office received a complaint about a meeting held by council for the Town of Cochrane (the “Town”) on February 13, 2024. The complaint alleged that a closed session discussion about the Town’s integrity commissioner did not fit within the closed meeting exceptions in the *Municipal Act, 2001*¹ (the “Act”).
- 2 My investigation determined that council’s closed session discussion about the integrity commissioner, including his resignation from the position, fit within the exception to the open meeting rules for personal matters about an identifiable individual. However, council contravened the open meeting rules when it discussed in closed session the process it would follow to replace the integrity commissioner.

Ombudsman jurisdiction

- 3 Under the *Municipal Act, 2001*, all meetings of a council, local board, and committee 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 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 that have not appointed their own.
- 5 The Ombudsman is the closed meeting investigator for the Town of Cochrane.
- 6 In investigating closed meeting complaints, we consider whether the open meeting requirements of the Act and the municipality’s governing procedures 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/digest.

¹ 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/have-a-complaint/who-we-oversee.

Investigative process

- 9 On July 21, 2024, we advised the Town of our intent to investigate this complaint.
- 10 We reviewed relevant portions of the Town’s by-laws, as well as the Act. We obtained and reviewed records from the February 13, 2024 meeting, including the minutes from the open session and the draft minutes from the closed session. The Town also provided us with an audio/visual recording of the open and closed portions of the meeting.
- 11 My Office received full co-operation in this matter.

February 13, 2024 meeting

- 12 Council held a meeting on February 13, 2024. The minutes record that council passed a resolution to close the meeting to the public to discuss four items, including one item that was described as “By-Law Number 1531-2023 – By-Law to Appoint an Integrity Commissioner for the Corporation of the Town of Cochrane.” The complaint received by my Office raised concerns about this item.
- 13 According to the audio/video recording of the closed session, council discussed the integrity commissioner, his resignation, and the hiring process to replace him. The closed session minutes also confirm that these matters were discussed.
- 14 The recording captures council members reviewing the services provided to the Town by the integrity commissioner. Individual council members offered their opinions on the integrity commissioner’s fitness for the role and their satisfaction with his performance. Parts of council’s discussion included information that was publicly available. During the discussion, the Clerk advised council that she received a resignation letter from the integrity commissioner.

- 15 The discussion then turned to the process the Town would follow to replace the integrity commissioner. Council noted that according to By-law 1531-2023² and resolution 435-2022,³ the integrity commissioner was appointed on an interim basis and that the by-law did not provide for the hiring process of a permanent integrity commissioner. Council members discussed procuring a new integrity commissioner in the open market. Council members briefly shared names of potential candidates for the position but did not discuss any particular individual in depth.
- 16 After returning to open session, council passed a resolution acknowledging the integrity commissioner's resignation and that the Town would seek a new one:

THAT Council will follow through with Resolution 435-2022 to go to market for an Integrity Commissioner, and having received resignation from the current Integrity Commissioner will seek a replacement Interim Integrity Commissioner.

Analysis

Applicability of the exception for personal matters about an identifiable individual

- 17 Council cited section 239(2) (b), the exception for personal matters about an identifiable individual, on February 13, 2024 to discuss the integrity commissioner in closed session.
- 18 Generally, discussion about information that pertains to an individual in their professional capacity will not fit within the exception for personal matters.⁴ However, in some cases information about a person in their professional capacity may still fit within the exception if it reveals something personal,⁵ or relates to scrutiny of an individual's conduct.⁶

² Town of Cochrane, by-law 1531-2023, *Being a by-law to appoint an integrity commissioner for the corporation of the Town of Cochrane*, online: <https://cochrane.civicweb.net/filepro/document/217839/1531-2023_Agr_IC_Harold%20G%20Elston.pdf>.

³ Town of Cochrane, *Regular Council Meeting, Tuesday, Jan 10 2023*, at 25, online: <<https://cochrane.civicweb.net/filepro/document/217233/Regular%20Council%20-%2010%20Jan%202023%20-%20Agenda%20-%20Pdf.pdf>>.

⁴ *Aylmer (Town) (Re)*, 2007 CanLII 30462 (ON IPC), online: <<https://canlii.ca/t/1scqh>>.

⁵ Letter from the Ontario Ombudsman to City of Elliot Lake (8 September 2014), online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/municipal-meetings/2014/city-of-elliott-lake-1>>.

⁶ *South Huron (Municipality of) (Re)*, 2015 ONOMBUD 6 (CanLII), online: <<https://canlii.ca/t/gtp80>>.

- 19 My Office has also found that information relating to an individual’s qualifications and scrutiny of those qualifications fits within the exception for personal matters because the discussion may reveal something of a personal nature about the individual. Information that would normally be considered personal in nature may not come within the exception for personal matters if the information has already been publicly discussed or is generally known to the public.⁷
- 20 In a letter to the Town of Grimsby, I found that a closed session discussion regarding council’s satisfaction with that municipality’s integrity commissioner and his fitness for the role fit within the exception for personal matters.⁸
- 21 In this case, the closed session discussion about the integrity commissioner occurred in the context of his professional relationship with the Town. Council members offered their opinions on the integrity commissioner in a way that went beyond information related to his professional role. Council scrutinized his performance and suitability for the position. While some of the information discussed by council was publicly available, the discussion about that information revealed information of a personal nature about the integrity commissioner.
- 22 The integrity commissioner’s resignation letter was also personal information that council was permitted to discuss in closed session.
- 23 Accordingly, this part of council’s discussion fit within the exception for personal matters.
- 24 However, council’s discussion regarding the hiring process to replace the integrity commissioner does not qualify as personal information. My Office has found that discussion about the procedural steps of hiring does not fit within the exception because it does not pertain to identifiable individuals.⁹ This part of the discussion focused on how the Town would find a new integrity commissioner – for example, whether it would “go to market” for one or request the services of a particular individual. Even though potential candidates for the role were identified by council members, those individuals were mentioned in passing and none of their personal information was discussed.

⁷ Letter from the Ontario Ombudsman to Town of Midland (4 February 2014), online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/municipal-meetings/2014/town-of-midland>>.

⁸ Letter from the Ontario Ombudsman to Town of Grimsby (14 April 2021), online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/municipal-meetings/2021/town-of-grimsby>>.

⁹ *Nipissing (Township of) (Re)*, 2023 ONOMBUD 2 (CanLII), online: <<https://canlii.ca/t/jv6ch>>.

Parsing the discussion

- 25 Having determined that only part of council's *in camera* discussion fit within the exception for personal matters, I must assess whether council could have parsed its discussion between open and closed session.
- 26 In certain circumstances, it may be unreasonable to expect council to parse its discussion between open and closed session. The Ontario Divisional Court has found this to be the case where it would “detract from free, open and uninterrupted discussion.”¹⁰ My Office has also found it unrealistic to parse a discussion between open and closed session where the topics of the discussion are significantly entwined. However, my Office has applied this exception narrowly. If the *in camera* discussion could have been parsed between an open and closed session, the principle does not apply.¹¹
- 27 My Office has found that discussions about hiring plans should be parsed from discussions regarding personal information. For example, in a report to the City of Timmins, a closed session discussion about hiring a replacement for a retiring city official could have been held in open session because the retirement was made public immediately after the closed session.¹²
- 28 In this case, I am satisfied that council should have parsed its discussion about hiring a new integrity commissioner from the rest of the closed session. After rising from the closed session, council publicly announced the integrity commissioner’s resignation. The public announcement of the resignation eliminates the need to discuss the hiring process *in camera*. Further, council’s discussion about the hiring process was not entwined with its discussion about the integrity commissioner’s resignation but was separate and distinct. Council should have risen from closed session to announce the resignation and then discussed the hiring process in open session.

Opinion

- 29 Council for the Town of Cochrane did not contravene the open meeting rules in the *Municipal Act, 2001* on February 13, 2024 when it went *in camera* to discuss the integrity commissioner and his resignation. However, council contravened the open meeting rules when it discussed in closed session the hiring process for a new integrity commissioner. This topic fit within neither the exception for personal matters nor any other exception to the open meeting rules, and therefore that portion of the discussion should have been held in open session.

¹⁰ *St. Catharines (City) v. IPCO*, 2011 ONSC 2346, online: <<https://canlii.ca/t/fkqfr>>.

¹¹ *St.-Charles (Municipality of) (Re)*, 2016 ONOMBUD 2 (CanLII), online: <<https://canlii.ca/t/qt8dc>>.

¹² *Timmins (City of) (Re)*, 2017 ONOMBUD 3 (CanLII), at para 30, online: <<https://canlii.ca/t/h4rwr>>.

Recommendations

- 30 I make the following recommendation to assist the Town of Cochrane in fulfilling its obligations under the *Municipal Act, 2001* and enhancing the transparency of its meetings:

Recommendation 1

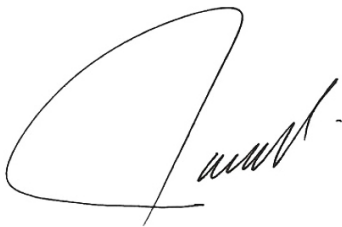
All members of council for the Town of Cochrane should be vigilant in adhering to their individual and collective obligation to ensure that the Town complies with its responsibilities under the *Municipal Act, 2001*.

Recommendation 2

The Town of Cochrane should ensure that no subject is discussed in closed session unless it clearly comes within one of the statutory exceptions to the open meeting requirements.

Report

- 31 Council for the Town of Cochrane was given the opportunity to review a preliminary version of this report and provide comments to my Office. No comments were received.
- 32 This report will be published by my Office's website and should also be made public by the Town of Cochrane. 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.



Paul Dubé
Ombudsman of Ontario