



## **Ombudsman Report**

**Investigation into meetings held by council  
for the Town of Cochrane  
on October 10 and October 16, 2023**

**Paul Dubé  
Ombudsman of Ontario**

**November 2024**

## Complaint

- 1 My Office received two complaints that council for the Town of Cochrane (the “Town”) held a closed meeting on October 10, 2023 that did not fit within the cited closed meeting exceptions in the *Municipal Act, 2001*<sup>1</sup> (the “Act”). One of these complaints also raised the same concern with council’s closed meeting on October 16, 2023.
- 2 My review determined that although the closed session discussions on each of these dates did not fit within the cited exception for acquisition or disposition of land, they did fit within the exception for plans and instructions for negotiations.

## 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 Town of Cochrane.
- 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/digest](http://www.ombudsman.on.ca/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/have-a-complaint/who-we-oversee](http://www.ombudsman.on.ca/have-a-complaint/who-we-oversee).

## Investigative process

- 9 My Office spoke with the Mayor and the Clerk. We reviewed the Town’s procedure by-law, meeting agendas, open and closed meeting minutes, closed meeting recordings, and related material for both meetings.
- 10 My Office received full co-operation in this matter.

## Background – property development program

- 11 At both the October 10 and October 16, 2023 *in camera* meetings, council discussed a proposal for an incentive program that would offer municipally owned land at a nominal fee with a property tax rebate to encourage home building and development in the Town.
- 12 The Mayor told my Office that at the time, there was a three-way negotiation between the Town and two third-party companies. One of these companies was looking to relocate a portion of its workforce and was considering several municipalities, including the Town of Cochrane.
- 13 At the time of these meetings, the company had not yet determined where it would relocate its workforce. The Mayor told my Office that in October 2023, the Town was determining what incentives it could offer in a competitive bid to be selected as the municipality for this relocation effort.
- 14 Since that time, Cochrane was selected for the company’s workforce relocation, and the Town publicly unveiled details of its property development program at council’s May 14, 2024 meeting. The program was introduced as an application process, whereby applicants can receive rebates on the price of the property and

on property taxes depending on whether a dwelling is built and occupied within a particular time frame.

## **October 10, 2023 council meeting**

- 15** On October 10, 2023, at 6:00 p.m., council met in council chambers for a regular council meeting. Several unrelated topics were discussed in open session before council resolved to move into closed session at 7:14 p.m. The open meeting minutes indicate council relied on the exception for an acquisition or disposition of land to move to closed session.
- 16** The closed session discussion can be characterized as having four parts: a background and explanation of the property development program and proposed incentives, a discussion about the program, a debate about the potential incentives, and a discussion about which lots to eventually offer for sale as part of this program.
- 17** The closed session discussion began with an update by the Mayor about a recent meeting with one of the third-party companies regarding the property development program. This company sought feedback from council as to what the Town might be able to offer to attract potential purchasers. The Mayor proposed that the Town move forward on this program and offer lots for sale at an extremely low cost, charging 0% of the property tax in the first year, then increasing the property tax charged by 20% each year thereafter until reaching 100% of the tax rate.
- 18** Council discussed the property development program in detail and raised several questions about its logistics. Council then proceeded to debate the incentives proposed. Alternatives to those incentives and potential contributions by the third-party companies were suggested and discussed.
- 19** Council also reviewed a PowerPoint presentation of various areas in Cochrane and discussed potential areas where the Town owned land that could be offered for sale as part of this property development program. No specific lots were ultimately identified for sale.
- 20** Although council was generally supportive of this initiative, it sought to schedule a subsequent special council meeting to discuss the topic again with the inclusion of two absent councillors, and proposed a resolution be passed in the interim to begin design of the property development program.

**21** Following this discussion, council returned to open session and passed a resolution that “Council direct the Town [to] identify and offer new residential lots for development at \$10 per lot to housing developers” and that “Council direct the Town to develop a property tax rebate program or subsidy that will stratify taxes for new home development owner” at rates of 0% at year 1, 20% at year 2, 40% at year 3, 60% at year 4, 80% at year 5, and 100% at year 6 and beyond. The meeting was subsequently adjourned.

## Analysis

### *Exception for acquisition or disposition of land, s. 239(2)(c)*

**22** Council relied on the exception for acquisition or disposition of land to move to closed session on October 10, 2023. My Office has determined that the purpose of the exception is to protect council’s bargaining position during negotiations for a land transaction,<sup>2</sup> and for the exception to apply, a municipality must be either the seller or purchaser of the land.<sup>3</sup>

**23** My Office has also found that the discussion must involve an actual land transaction that is either pending or has been proposed.<sup>4</sup> In previous reports, my Office noted that the exception typically does not apply to discussions about a land transaction that is speculative, or that may not occur in the future.<sup>5</sup>

**24** In assessing whether a transaction is too speculative, my Office considers whether practical steps were taken to begin negotiations for that transaction.<sup>6</sup> In particular, my Office has previously found that practical steps include identifying a specific property for sale or purchase, and the failure to do so can render a transaction too speculative to rely on this exception.<sup>7</sup>

**25** This case raises unique circumstances. Rather than seeking to maximize profit or minimize spending in a land transaction, the Town was seeking to be selected by a third-party company for relocation of the company’s workforce, and to subsequently maximize future growth in the Town.

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<sup>2</sup> Burk’s Falls / Armour (Village of / Township), 2015 ONOMBUD 26, online: <<http://canlii.ca/t/gtp6w>>.

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

<sup>4</sup> Norfolk (County of) (Re), 2021 ONOMBUD 6, online: <<https://canlii.ca/t/jdr8d>>.

<sup>5</sup> *Ibid.*

<sup>6</sup> Bruce (County of) (Re), 2022 ONOMBUD 7, online: <<https://canlii.ca/t/jpbf9>>; Fort Erie (Town of) (Re), 2018 ONOMBUD 2, online: <<https://canlii.ca/t/hvmtm>>.

<sup>7</sup> *Ibid.*

- 26** Council's discussion amounts to a preliminary conversation about hopeful but hypothetical dispositions of land, where no specific transactions or properties were identified. This consequently falls outside the scope of my Office's interpretation of this exception.
- 27** I recognize that in this scenario council was essentially competing against other municipalities and attempting to protect its bargaining position. In future, there may be room to consider whether the exception for acquisition or disposition of land might apply to similar proposals. However, I do not believe it is necessary to consider expanding the application of the exception in this case, as the subject matter of the discussion instead comes within the exception for plans and instructions for negotiations, discussed below.

*Exception for plans and instructions for negotiations, s. 239(2)(k)*

- 28** Although not cited by council, my Office also assessed whether the exception for plans and instructions for negotiations could apply to council's closed session discussion on October 10, 2023.
- 29** Previously, my Office has determined that the purpose of the exception for plans and instructions for negotiations is to protect information that could undermine council's bargaining position or give another party an unfair advantage during an ongoing negotiation.<sup>8</sup> In order for the exception to apply, council must show:
1. The *in camera* discussion was about positions, plans, procedures, criteria or instructions;
  2. The positions, plans, procedures, criteria, or instructions are intended to be applied to negotiations;
  3. The negotiations are being carried on currently, or will be carried on in future; and
  4. The negotiations are being conducted by or behalf of the council.<sup>9</sup>
- 30** My Office has previously found this exception to apply in similar circumstances where a committee or council was assessing possible courses of action in ongoing negotiations with a third party regarding a potential land transaction.<sup>10</sup>

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<sup>8</sup> Grey Highlands (Municipality of) (Re), 2021 ONOMBUD 11, online: <<https://canlii.ca/t/jfzr8>>.

<sup>9</sup> *Ibid.*

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

- 31 In this case, council discussed the background of its engagement with the other parties, and the various incentives it could offer in order to be chosen as the destination for a workforce relocation. Council also discussed logistics of the incentive and considered strategies for getting other parties to contribute financially to the endeavour. Throughout the discussion, council expressed a range of opinions on various negotiating positions. If council's discussion were public, the opposing parties to the negotiation could have gained an unfair advantage. Other municipalities could have also gained a competitive advantage over the Town in vying to be selected for the workforce relocation.
- 32 Each portion of council's discussion related to possible terms and next steps in an ongoing negotiation with third parties. Consequently, council's *in camera* discussion on October 10, 2023, fit within the exception for plans and instructions for negotiations.

## **October 16, 2023 council meeting**

- 33 Council met again on October 16 at 4:30 p.m. for a special council meeting and moved into closed session at 4:35 p.m. to discuss the property development program under the exception for an acquisition or disposition of land.
- 34 All members of council were present at this closed meeting. The substantive discussion in closed session can be characterized as a rehash of council's October 10, 2023 meeting, as two councillors who were absent at that meeting could now join the discussion on the topic. Council again discussed the incentives being offered as part of the property development program and related logistics.
- 35 Council then discussed the language of the resolution passed at the previous meeting, and ultimately returned to open session and explained that the previously passed resolution was only intended to help prompt the initial design of the property development program.

## **Analysis**

*Exception for acquisition or disposition of land, s. 239(2)(c)*

- 36 Council cited the exception for acquisition or disposition of land to move to closed session on October 16, 2023. As previously stated, my Office has found that this

exception protects a municipality's bargaining position by permitting *in camera* discussions about a proposed or pending acquisition or disposition of land.<sup>11</sup>

- 37** Council's closed session discussion was largely a reiteration of the October 10, 2023 meeting for the benefit of two councillors who had missed it. As with the prior meeting, the potential land transactions were too speculative for council to have a specific bargaining position to protect.
- 38** Consequently, the *in camera* discussion does not fit within the exception for acquisition or disposition of land.

*Exception for plans and instructions for negotiations, s. 239(2)(k)*

- 39** My Office also considered whether the exception for plans and instructions for negotiations could apply to council's closed session discussion on October 16, 2023. As previously stated, the exception allows closed session discussions to protect information that could undermine council's bargaining position or give another party an unfair advantage during an ongoing negotiation.<sup>12</sup>
- 40** As with the prior meeting, council debated and discussed potential incentives and logistics related to the property development program. Council also discussed the specific language of the resolution passed at the previous meeting. This was part of council's larger discussion of whether and how the municipality intended to move forward in negotiations with the other parties.
- 41** Again, council expressed a wide range of opinions about the property development program and potential negotiating positions. If made public, council would be disadvantaged in its ongoing negotiations and in the selection process for the relocation of the third-party company's workforce.
- 42** All portions of the *in camera* discussion related to potential terms and next steps in ongoing negotiations with multiple third parties on behalf of the Town. Consequently, the *in camera* discussion on October 16, 2023 fit within the exception for plans and instructions for negotiations.

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<sup>11</sup> *Supra* note 2.

<sup>12</sup> *Supra* note 8.




## Opinion

43 Council for the Town of Cochrane did not contravene the *Municipal Act, 2001* on October 10 or October 16, 2023 as council was permitted to discuss development incentives under the exception for plans and instructions for negotiations.

## Report

- 44 Council for the Town of Cochrane was given the opportunity to review a preliminary version of this report and provide comments to my Office. All comments we received were considered in the preparation of this final report.
- 45 The Clerk indicated that my report would be shared with council and made available to the public at an upcoming council meeting. This report will also be published on our website at [www.ombudsman.on.ca](http://www.ombudsman.on.ca).



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**Paul Dubé**  
Ombudsman of Ontario