



ONTARIO'S WATCHDOG
CHIEN DE GARDE DE L'ONTARIO

August 18, 2014

Reeve Norm Lentz
Ms. Michelle Mantifel, Clerk-Treasurer
The Township of Brudenell, Lyndoch & Raglan
42 Burnt Bridge Rd.
Palmer Rapids, ON
K0J 2E0

Dear Reeve Lentz and Ms. Mantifel,

RE: Ombudsman review of March 19, 2014 meeting

I am writing further to our discussion on August 6, regarding the outcome of our review of a complaint that our Office received on April 28, 2014. The complaint alleged that council held a closed session on March 19, 2014, for the purpose of “educating or training” and discussed matters in camera that did not fit within that exception.

As you are aware, the *Municipal Act, 2001* (the Act) requires all meetings of council, local boards, and their committees to be open to the public, unless the subject matter falls within one of the permitted exceptions under the Act, and certain procedural requirements are followed.

In reviewing this complaint, our Office reviewed the meeting documents, including the agenda and publicly available minutes, and considered the relevant sections of the Township’s Procedure By-law (By-law 99-01), and the Act. We also spoke with the Township’s staff as well as staff from the Office of the Fire Marshal, and listened to the audio recordings of the closed sessions.

Procedure by-law (99-01)

The by-law states that council meetings are held the first Wednesday of each month at 7:00 p.m., unless council decides otherwise, in which case notice shall be posted in the municipal office, advising of the time and place of the meeting.

The by-law provides for 24 hours’ notice of special meetings to council members, but does not outline how notice of special meetings is provided to the public. The clerk-treasurer advised us that it is the Township’s practice to post notice of meetings,

Bell Trinity Square
483 Bay Street, 10th Floor, South Tower, Toronto, ON M5G 2C9
483, rue Bay, 10^e étage, Tour sud, Toronto (Ontario) M5G 2C9
Tel./Tél. : 416-586-3300
Facsimile/Télécopieur : 416-586-3485 TTY/ATS : 1-866-411-4211
www.ombudsman.on.ca

including special meetings, on the municipality's Facebook page and in the municipal office.

The March 19 meeting

The agenda stated that there would be a special meeting starting at 7:00 p.m. on March 19. The first item on the agenda was a closed "education and training" session. No further information regarding the closed session was provided on the agenda.

The open session minutes state that council would be receiving a presentation by a Program Specialist from the Office of the Fire Marshal in closed session that evening. Council resolved to proceed in camera "for the purpose of educating or training the members." Present in camera were all of council, the clerk-treasurer, the acting fire chief, and 11 members of the fire department.

The closed session minutes and closed session audio recording confirm that the substance of the in camera discussion was an education session regarding the *Fire Protection and Prevention Act*, and the delivery of fire protection services.

Later in the meeting, council proceeded in camera again "to discuss personal matters about an identifiable individual, including municipal employees." No further information was provided in the resolution to proceed in camera. All of council, the clerk-treasurer and the acting fire chief were present in camera for the second closed session.

The closed session minutes and the audio recording for the second closed session show that council and staff discussed an incident that occurred a few days prior, involving a former member of the fire department's staff. Council discussed concerns about the conduct of this individual and possible ways to resolve the situation. The need for improved human resources policies was also discussed.

Analysis

The education and training session

Section 239(3.1) of the Act states that council may close a meeting to the public if the meeting is held for the purpose of "educating or training" members, and if no member discusses or otherwise deals with a matter in a way that materially advances the business or decision making of council.

During the first closed session, a Program Specialist from the Office of the Fire Marshal provided a presentation to council on the role of the Fire Marshal's office, the scope of the *Fire Protection and Prevention Act*, and the role of municipalities in delivering fire services.

Municipal staff advised us that they did not feel there was anything confidential about the presentation and that it was held in closed session because they felt that it was educational in nature and therefore came within the exception.

The purpose of the presentation was to improve the council's understanding of the *Fire Prevention and Protection Act*, and how the Act impacts the municipal business of fire service delivery. During the presentation, council did not make any decisions and no municipal business was advanced. The focus of the presentation was on educating council members regarding fire services delivery. Due to its educational nature, council was permitted under the exception to exercise its discretion to go into closed session for this presentation.

Council should note, however, that the "educating or training" exception is discretionary. In this case, 11 members of the fire department attended the closed session, and it is likely that other members of the community would have been interested in the subject matter of the presentation. In the future, in the interests of openness and transparency, council may wish to turn its mind to whether there is a pressing reason to hold such a session behind closed doors, before proceeding in camera under this exception.

The personal matters exception

The *Municipal Act* does not define "personal matters." In considering whether a matter falls within the "personal matters" exception, our Office often refers to the definition of "personal information" found in s. 2(1) of the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA). Although this definition is not binding, it can offer guidance. According to MFIPPA, "personal information" includes "the views or opinions of another individual about the individual" (s. 2(1)(g)).

The "personal matters" exception applies to personal information about any identifiable individual, including (but not limited to) employees. In this case, council discussed the conduct of a former employee of the fire department. Councillors and staff expressed personal opinions about this individual's behaviour and about actions that the municipality should take to address the situation. The need for clearer human resources policies within the fire department was briefly mentioned, however, this was not the focus of the discussion. Accordingly, this discussion fit within the "personal matters" exception.

Procedural Matters

On August 6, we also discussed some procedural issues that came to our attention during this review.

Procedure by-law

We discussed that the Township's current procedure by-law does not provide for notice to the public of special meetings. According to s. 238(2) of the Act, the by-law must provide for notice to the public of all meetings, including special meetings. We suggested that council update its by-law to outline the procedure for providing notice to the public of special meetings.

Resolution to proceed in camera

The resolution to proceed in camera on March 19 only contained the wording of the exception that council was relying on to go into closed session. As noted by the Court of Appeal in *Farber v. Kingston City*¹, "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." We discussed that council should provide a brief description of the subject matter to be considered in closed session, in addition to providing the exception it is relying on to close its doors.

We also noted that the resolution to proceed in camera for the first closed session did not refer to the relevant section of the Act authorizing closed education or training sessions. For most exceptions to the open meeting requirements, it is not necessary to cite the relevant section of the Act, however s. 239(4)(b) states that for closed sessions for the purpose of educating or training, the resolution to proceed in camera must state "the fact of holding the closed meeting, the general nature of its subject-matter and that it is to be closed under that subsection." In the future, council should ensure its resolutions to proceed in camera for education or training purposes comply with s. 239(4)(b) of the Act.

When we spoke, I discussed our findings with you and gave you the opportunity to provide feedback. You had nothing to add.

You agreed to include this letter on the agenda for council's next public meeting on September 3, and to make a copy available to the public.

I would like to thank you for your cooperation, and for providing our Office with the audio recording of the closed meeting, which assisted us in completing our review in a thorough and timely fashion.

Sincerely,
Michelle Bird
Legal Advisor
Open Meeting Law Enforcement Team

¹ [2007] O.J. No. 919, at page 151