



TOWNSHIP OF NIPISSING

RESOLUTION

DATE: February 7, 2023

NUMBER: R2023- 031

Moved by *Kirkey*

Seconded by *Butler*

THAT the Council of The Corporation of the Township of Nipissing receives the Final Report from the Ombudsman of Ontario regarding an investigation into Closed Meetings held February 17; March 9; April 6; May 18; June 8; July 13; and August 3, 2021.

AND THAT Council confirms its intentions to remain transparent and consistent when performing it's duties including undertaking Council training on procedure with the Township appointed Integrity Commissioner and a review and revision of municipal By-Laws providing direction on procedures and policies.

For      Against

PIPER  
BUTLER  
FOOTE  
KIRKEY  
YEMM

Carried ✓

Mayor: Tom Piper



J. Paul Dubé, Ombudsman

**BY E-MAIL**

January 30, 2023

Council for the Township of Nipissing  
45 Beatty Street  
Nipissing, ON  
P0H 1W0

Dear Members of Council for the Township of Nipissing:

**Re: Final Report**

I have completed my investigation into whether the Township of Nipissing held improper closed meetings on February 17, March 9, April 6, May 18, June 8, July 13, and August 3, 2021. Please find my final report enclosed.

In accordance with section 14.1(8) of the *Ombudsman Act*, the municipality should make my report available to the public, and we ask that this be done no later than the next council meeting. In accordance with s. 239.2(12) of the *Municipal Act, 2001*, the municipality should pass a resolution stating how it intends to address this report.

Pursuant to section 14.1(9) of the *Ombudsman Act*, I will also post a copy of the report on my website at [www.ombudsman.on.ca](http://www.ombudsman.on.ca).

Yours truly,

A handwritten signature in black ink, appearing to read 'Paul Dubé', written over a large, stylized blue oval graphic.

Paul Dubé  
Ombudsman of Ontario

Cc: Kris Croskery-Hodgins, Municipal Administrator-Clerk-Treasurer

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## **Ombudsman Report**

**Investigation into meetings held by council  
for the Township of Nipissing on February 17,  
March 9, April 6, May 18, June 8, July 13,  
and August 3, 2021**

**Paul Dubé  
Ombudsman of Ontario  
January 2023**

## Complaint

- 1 My Office received a complaint regarding numerous closed meetings held by the Township of Nipissing (the “Township”). The complaint alleged that council’s *in camera* discussions during these meetings did not fit within any of the closed meeting exceptions under the *Municipal Act, 2001* (the “Act”) and should have occurred in open session.
- 2 My investigation has determined that council for the Township of Nipissing did not contravene the *Municipal Act, 2001* during *in camera* meetings on February 17, March 9, April 6, May 18, June 8, and August 3, 2021. These *in camera* discussions were permissible under the Act’s closed meeting exceptions.
- 3 However, my investigation found that the Township contravened the *Municipal Act, 2001* on July 13, 2021, when it discussed the Township’s hiring plan *in camera*. This discussion did not fall within any of the Act’s closed meeting exceptions, and could have been parsed from the rest of council’s *in camera* discussion.

## Ombudsman jurisdiction

- 4 Under the *Municipal Act, 2001*<sup>1</sup> (the “Act”), all meetings of a council, local board, and committee of either must be open to the public unless they fall within prescribed exceptions.
- 5 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 or use the services of the Ombudsman. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own.
- 6 The Ombudsman is the closed meeting investigator for the Township of Nipissing.
- 7 In investigating closed meeting complaints, we consider whether the open meeting requirements in the Act and the municipality’s governing procedures have been observed.
- 8 Since 2008, my Office has investigated hundreds of closed meetings in municipalities throughout Ontario. 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. Summaries of the

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

Ombudsman's previous decisions can be found in the digest:  
[www.ombudsman.on.ca/digest](http://www.ombudsman.on.ca/digest).

## Investigative process

- 9 On July 20, 2022, my Office advised the Township of Nipissing of our intent to investigate meetings held by the Township on February 17, March 9, April 6, May 4, May 18, June 8, July 13, August 3, September 7, and September 21, 2021.
- 10 We reviewed relevant portions of the Township's procedure by-law, as well as the Act. We reviewed the relevant open meeting agendas, the open and closed meeting minutes for each meeting, and the closed meeting materials.
- 11 We spoke to the complainant and interviewed the Municipal Administrator-Clerk-Treasurer (the "Municipal Administrator"<sup>2</sup>), the Acting Clerk for the July 13 and August 3, 2021 meetings, the Fire Chief, the principal of a third-party consulting company, the Mayor, and the councillors who attended these meetings.
- 12 My Office received full co-operation in this matter.

## Background

- 13 On February 16, 2021, the Township's CAO-Clerk resigned. The Township began a months-long process to prepare for the hiring of a new CAO-Clerk, with the assistance of a third-party consulting company.
- 14 In September 2021, the Township hired an existing staff member, who was at the time the Acting Interim CAO-Clerk-Treasurer, to fill the newly created role of Municipal Administrator-Clerk-Treasurer, which replaced the previous role of CAO-Clerk.

## February 17, 2021 meeting

- 15 A special meeting of council was held at 9 a.m. on February 17, 2021, in the Township of Nipissing's Community Centre. Council immediately passed a resolution to proceed *in camera* under section 239(2)(b) of the Act, for consideration of "personal matters about an identifiable individual, including municipal or local board employees."

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<sup>2</sup> The term Municipal Administrator is used in this report to refer to the municipal employee who occupied the positions of Treasurer-Deputy Clerk (prior to February 2021), Acting Interim CAO-Clerk-Treasurer (February 2021-September 2021) and Municipal Administrator-Clerk-Treasurer (September 2021 onwards).

- 16 Once *in camera*, council discussed the Township's CAO-Clerk's resignation from the previous day.
- 17 Council then discussed the duties and responsibilities of the Township's remaining administrative employees and made various directions to staff related to the employment of specific employees. In addition, council directed that an advertisement for the position of Temporary Administrative Assistant be posted immediately.
- 18 Council was also advised that an employee was performing duties and responsibilities outside of the scope of their position. Council then passed a resolution to promote the employee and to increase their pay grade.
- 19 Council also reviewed a revised draft organizational chart and notes provided by the Township's former CAO-Clerk and discussed the modification of five position descriptions for identifiable employees.
- 20 Council directed the Municipal Administrator to make the suggested position description changes and have the Mayor review them before discussing them with the affected staff members.
- 21 At 1:28 p.m., council passed a resolution to return to open session. Once in open session, council voted to
  - a) accept the CAO-Clerk's resignation effective February 16, 2021;
  - b) pass a by-law to appoint two individuals to specified positions; and
  - c) direct the Treasurer-Deputy Clerk [Municipal Administrator] to advertise for a Temporary Administrative Assistant position, for a six-month placement.

## Analysis

- 22 Section 239(2)(b) of the Act allows a meeting to be closed to the public when discussions pertain to a personal matter about an identifiable individual, including about a municipal employee. Personal information is information that can be reasonably expected to identify an individual.<sup>3</sup>

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<sup>3</sup> *Ontario (Attorney General) v. Pascoe*, 2002 CanLII 30891 (ONCA) at para 1, online: <<https://canlii.ca/t/1chz2>>, cited in *Amherstburg (Town of) (Re)*, 2022 ONOMBUD 11 [*Amherstburg*] at para 19, online: <<https://canlii.ca/t/jr5rc>>.

- 23 My Office has found that to qualify as “personal information”, information must be about an individual in their personal capacity, rather than their professional, official or business capacity.<sup>4</sup> However, information about an individual in their professional capacity may qualify as personal information if it reveals something of a personal nature about the individual.<sup>5</sup> For example, my Office has found that discussions of employee conduct, performance, and salary fit within the exception.<sup>6</sup>
- 24 My Office has also found that discussion of a specific staff member’s resignation or retirement is inherently personal in nature and fits within the exception.<sup>7</sup> Furthermore, my Office has found that discussions regarding a particular candidate or candidates for a position fit within the exception.<sup>8</sup>
- 25 In addition, discussion of staff retention and reorganization as it affects individuals and their roles is permitted in closed session under both the exception for personal matters and the exception for labour relations and employee negotiations.<sup>9</sup>
- 26 In the context of the February 17, 2021 meeting, council discussed the former CAO-Clerk’s resignation. Since my Office has found that information about an individual’s resignation qualifies as personal information, this discussion fit within the exception for personal matters.
- 27 Council also discussed appointing two employees to new positions. Given that my Office has previously found that discussion of an employee’s candidacy for another role falls within the exception, this discussion fit within the exception for personal matters.
- 28 In addition, council discussed promoting and increasing the pay grade of an employee. My Office has previously found that discussions regarding employee conduct, performance, and their candidacy for a particular position fit within this exception. Accordingly, this discussion fit within the exception for personal matters.

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<sup>4</sup> *Lanark Highlands (Township of) (Re)*, 2018 ONOMBUD 1 at para 46 [*Lanark Highlands*], online: <<https://canlii.ca/t/hvmtf>>.

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

<sup>6</sup> *Greater Sudbury (City of) (Re)*, 2017 ONOMBUD 2 [*Greater Sudbury*], online: <<https://canlii.ca/t/h4rwp>>; and *Russell (Township of) (Re)*, 2015 ONOMBUD 29 [*Russell*], online: <<https://canlii.ca/t/gtp73>>.

<sup>7</sup> *Lanark Highlands*, *supra* note 3 at para 47.

<sup>8</sup> *Russell*, *supra* note 5.

<sup>9</sup> Letter from Ombudsman of Ontario to Town of Amherstburg (9 December 2013) [Town of Amherstburg], online: <<https://www.ombudsman.on.ca/resources/reports-and-case-summaries/municipal-meetings/2013/town-of-amherstburg-en>>.

- 29 Council further discussed a revised draft organizational chart, notes provided by the Township's former CAO-Clerk, and the modification of five position descriptions. Given that council discussed reorganization as it would impact particular employees, this discussion fit within the exception for personal matters.
- 30 Accordingly, council's discussions on February 17, 2021 fit within the exception for personal matters about an identifiable individual.

## March 9, 2021 meeting

- 31 A special meeting of council was held on March 9, 2021 in the Township of Nipissing's Community Centre. The meeting began at 5:30 p.m. Council passed a resolution shortly thereafter to proceed *in camera* under section 239(2)(b) of the Act for consideration of "personal matters about an identifiable individual, including municipal or local board employees."
- 32 Once *in camera*, council once again reviewed the five position descriptions for identifiable employees and made suggestions for corrections.
- 33 Council directed the Municipal Administrator to make the suggested changes to the position descriptions and have the Mayor review those changes before speaking to the affected staff members about them.
- 34 Council then passed two resolutions to enter into Memoranda of Understanding (MOU) with two employees. My Office was told that the discussion of the MOUs included discussion of the employees' salaries.
- 35 Council then passed a resolution authorizing the Municipal Administrator to offer an identified individual an employment contract with the Township.
- 36 Finally, council directed that the draft position descriptions and the organizational chart be sent to a human resources consultant.
- 37 Council passed a resolution at 6:33 p.m. to return to open session. Once in open session, council voted to accept a quote to review the Township's five position descriptions and organizational chart, and passed a by-law to amend the Township's Human Resources Policy and Procedures Manual.

## Analysis

- 38 Council cited the exception for personal matters under section 239(2)(b) of the Act to proceed into closed session on March 9, 2021. As noted above, a meeting or part of a meeting may be closed to the public if the discussion would reveal personal information about an identifiable individual.



- 39 In this case, council discussed five position descriptions and the organizational chart. Given that council discussed reorganization as it would impact identifiable employees, this discussion fit within the exception for personal matters.
- 40 Council's discussion of entering into MOUs with two employees also fit within the exception for personal matters, as it included discussion of the individuals' new roles and salaries.
- 41 Council also authorized the Municipal Administrator to offer an identified individual an employment contract with the Township. As this discussion pertained to an identifiable candidate, it fit within the exception for personal matters.
- 42 Accordingly, council's discussions on March 9, 2021 fit within the exception for personal matters about an identifiable individual.

## April 6, 2021 meeting

- 43 The April 6, 2021 meeting of council began at 6:30 p.m. in the Township of Nipissing's Community Centre.
- 44 Council passed a resolution at 7:03 p.m. to proceed *in camera* under section 239(2)(b) of the Act for consideration of "personal matters about an identifiable individual, including municipal or local board employees."
- 45 Once *in camera*, council heard from the Township's Operations Superintendent about unproven allegations concerning an identified company and an identified individual.
- 46 Once the Operations Superintendent left the meeting, the Township's Fire Chief joined the meeting to review job applications of identified candidates with council.
- 47 During the meeting, council discussed a complaint that the Township had received from an identified individual about another identified individual which involved health and safety concerns.
- 48 Council passed a resolution at 7:57 p.m. to return to open session.

## Analysis

- 49 Council cited the exception for personal matters under section 239(2)(b) of the Act to proceed into closed session on April 6, 2021. As noted above, a meeting or part of a meeting may be closed to the public if the discussion would reveal personal information about an identifiable individual.

- 50 In this case, council discussed job applications from identified candidates. My Office has previously found that council's review of an application for a staff position comes within the exception for personal matters.<sup>10</sup> Accordingly, this discussion fit under the exception for personal matters.
- 51 Council also discussed unproven allegations relating to an identified company and an identified individual. My Office has previously found that a discussion about unproven allegations fit within the exception for personal matters, as the allegations had not been investigated, proven, or made public at the time.<sup>11</sup> Similarly, this discussion fit under the exception for personal matters.
- 52 Council then discussed another complaint involving unproven allegations and resulting health and safety concerns. Given that the individuals were identified by name and the allegations were unproven, this portion of the meeting also fit within the exception for personal matters.
- 53 Accordingly, council's discussions on April 6, 2021 fit within the exception for personal matters about an identifiable individual.

## May 18, 2021 meeting

- 54 The May 18, 2021 meeting of council began at 6:30 p.m. in the Township of Nipissing's Community Centre.
- 55 Council passed a resolution at 7:06 p.m. to proceed *in camera* under section 239(2)(b) of the Act for consideration of "personal matters about an identifiable individual, including municipal or local board employees."
- 56 Once *in camera*, council reviewed its new position descriptions and organizational chart. We were told that employees were identified by name and that council discussed their job performance.
- 57 Council also received a quote for the advertising and selection process of a CAO-Clerk-Deputy Treasurer position and, in the context of reviewing the quote, discussed the performance of an identifiable individual at length.
- 58 Council passed a resolution at 7:26 p.m. to return to open session. Council subsequently voted to pass a by-law to adopt the new position descriptions and a revised organizational chart.

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<sup>10</sup> *Magnetawan (Municipality of) (Re)*, 2015 ONOMBUD 20 at para 41, online: <<https://canlii.ca/t/gtp6h>>.

<sup>11</sup> Letter from the Ombudsman's of Ontario to the City of Elliot Lake (8 September 2014) online: <<https://www.ombudsman.on.ca/resources/reports-and-case-summaries/municipal-meetings/2014/city-of-elliott-lake-1>>.

## Analysis

- 59 Council cited the exception for personal matters under section 239(2)(b) of the Act to proceed into closed session on May 18, 2021. As noted above, a meeting or part of a meeting may be closed to the public if the discussion would reveal personal information about an identifiable individual.
- 60 Council discussed where employees would fit within the municipality's new organizational chart. The information contained in the new organizational chart was not public at the time. Further, council identified employees by name and discussed their job performance. Accordingly, this discussion fit within the exception for personal matters.
- 61 Council's discussion of the quote primarily focused on the performance of an identifiable individual. As such, this discussion also fit within the exception for personal matters.
- 62 Accordingly, council's discussions on May 18, 2021 fit within the exception for personal matters about an identifiable individual.

## June 8, 2021 meeting

- 63 The June 8, 2021 meeting of council began at 6:30 p.m. in the Township of Nipissing's Community Centre.
- 64 Council passed a resolution at 7:08 p.m. to proceed *in camera* under section 239(2)(b) of the Act for consideration of "personal matters about an identifiable individual, including municipal or local board employees."
- 65 Once *in camera*, council passed a resolution to change the pay grade of three employees. We were told that council discussed the employees' qualifications and job performance, as well as what their pay would be upon being moved to a higher pay grade.
- 66 Council passed a resolution at 7:20 p.m. to return to open session.

## Analysis

- 67 Council cited the exception for personal matters under section 239(2)(b) of the Act to proceed into closed session on June 8, 2021.

- 68 In closed session, council discussed increasing the pay grade for three employees who were identified by name. We were told that council discussed the qualifications and performance of these employees, as well as the salaries that they would earn if they were moved up to a new pay grade.
- 69 My Office has found that discussions of salary ranges for a position are not considered personal information for the purposes of the exception.<sup>12</sup> However, my Office has found that discussions of employee conduct, performance, and specific salary fit within the exception.<sup>13</sup> Accordingly, council's discussions on June 8, 2021 fit within the exception for personal matters about an identifiable individual.

## July 13, 2021 meeting

- 70 The July 13, 2021 meeting of council began at 6:30 p.m. in the Township of Nipissing's Community Centre.
- 71 Council passed a resolution at 7:06 p.m. to proceed *in camera* under section 239(2)(b) of the Act for consideration of "matters pertaining to Subsection (2)(b) personal matters about an identifiable individual, including municipal or local board employees, with respect to filling the vacancy in the CAO/Clerk position."
- 72 Staff members were not present for council's *in camera* discussion.
- 73 Once *in camera*, a third-party consultant led council in a discussion about the need to fill the vacant CAO-Clerk position. As part of this discussion, council and the consultant discussed identifiable Township employees and assessed their job performance in the context of determining their suitability for the vacant position.
- 74 During this discussion, the consultant reviewed the mandatory and optional positions under the Act and discussed cross-training staff for various positions. Council also discussed the new job description for the position, which included discussion of the roles of other staff in the office.
- 75 The consultant also proposed a hiring plan, which included a high-level overview of proposed steps in the hiring process. My Office was told that the discussion of the hiring plan took place in closed session because the consulting company did not want its proposed hiring process to be made public.

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<sup>12</sup> *The Nation (Municipality of) (Re)*, 2019 ONOMBUD 4 at para 56 [*The Nation*], online: <<https://canlii.ca/t/j2b4c>>; *South Huron (Municipality of) (Re)*, 2015 ONOMBUD 6 at para 18, online: <<https://canlii.ca/t/gtp80>>.

<sup>13</sup> *Greater Sudbury*, *supra* note 5 and *Russell*, *supra* note 5.

76 Council passed a resolution at 8:18 p.m. to return to open session.

## Analysis

### Applicability of the exception for personal matters about an identifiable individual

- 77 Council cited the exception for personal matters under section 239(2)(b) of the Act to proceed into closed session on July 13, 2021.
- 78 In this case, council discussed the job performance of identifiable employees and assessed their suitability for the vacant position. Accordingly, these portions of the discussion fit within the exception for personal matters.
- 79 However, the discussions regarding the mandatory and optional positions under the Act, the new job description for the position, the roles of other staff in the office, and the hiring plan did not fit in the exception for personal matters, as they did not pertain to identified individuals.

### Applicability of the exception for information supplied in confidence by a third party

- 80 Although not cited by the Township, we have considered whether the exception for information supplied in confidence by a third party under section 239(2)(i) of the Act may have allowed the discussion of the hiring plan to take place *in camera*. We considered this exception because we were told that the consulting company engaged by the Township did not want the details of its hiring process to be made public.
- 81 In considering this exception, my Office has previously found that a third party's assertion that it would like a discussion to remain private does not mean that the Act permits this.<sup>14</sup> In order for the exception to apply, the discussion must be about information that
- (1) Falls into one of the listed types: trade secret, scientific, technical, commercial, financial, or labour relations information;
  - (2) Was supplied confidentially, whether explicitly or implicitly, to the municipality by a third party; and

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<sup>14</sup> *St.-Charles (Municipality of) (Re)*, 2019 ONOMBUD 6 at para 29, online: <<https://canlii.ca/t/j2p1h>>.

- (3) If disclosed, could reasonably be expected to cause harm, either by prejudicing significantly the competitive position or by interfering significantly with the contractual or other negotiations of a person, group of persons or organization.<sup>15</sup>
- 82 Our review indicated that the discussion of the hiring plan focused on a high-level overview of the procedural steps that the Township could take to hire for the vacant position. Accordingly, the information discussed does not fall into one of the categories covered under section 239(2)(i) of the Act.
- 83 Moreover, we were not presented with any evidence that the discussion about the hiring plan could create a reasonable expectation of harm to the consulting company if it were discussed in open session. As my Office noted in a report to the Town of Pelham,<sup>16</sup> the Ontario Superior Court has found that the onus is on the party seeking to withhold information to supply “detailed and convincing” evidence to establish a reasonable expectation of harm.<sup>17</sup> My Office further noted in the Pelham report that “[...] speculation does not establish a reasonable expectation of harm.”<sup>18</sup>
- 84 Accordingly, my Office’s review has determined that the discussion of the hiring plan did not fit within the exception for information supplied in confidence by a third party.

## Parsing the discussion

- 85 The discussions regarding the mandatory and optional positions under the Act, new job description for the position, the roles of other staff in the office, and the hiring plan do not appear to come within any of the Act’s closed meeting exceptions. Accordingly, it is necessary to assess whether these topics could have been parsed from the other portions of council’s *in camera* discussion.
- 86 In *St. Catharines v. IPCO, 2011*, the Ontario Divisional Court found that it is unrealistic to expect municipal councils to split up discussions between open and closed sessions where it would “detract from free, open and uninterrupted discussion.”<sup>19</sup> In other words, where it would be unrealistic to expect council to

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<sup>15</sup> Letter from the Ontario Ombudsman to Town of South Bruce Peninsula (14 October 2021), online: <<https://www.ombudsman.on.ca/resources/reports-and-case-summaries/municipal-meetings/2021/town-of-south-bruce-peninsula>>.

<sup>16</sup> *Pelham (Town of) (Re)*, 2022 ONOMBUD 9 at para 40 [*Pelham*], online: <<https://canlii.ca/t/vjps5>>.

<sup>17</sup> *Corporation of the Town of Arnprior v. Information and Privacy Commissioner of Ontario*, 2016 ONSC 2904 (CanLII) at paras 22-24, online: <<http://canlii.ca/t/gpqlx>>.

<sup>18</sup> *Pelham*, *supra* note 15 at para 41.

<sup>19</sup> *St. Catharines (City) v. IPCO*, 2011 ONSC 2346 at para 42 [*St. Catharines*], online: <<https://canlii.ca/t/fkqfr>>.

parse intertwined subjects, topics that do not otherwise fit within a closed meeting exception may still be discussed *in camera*.<sup>20</sup> However, if the topics can be separated, council is expected to return to open session for those portions of the discussion that do not fit within an open meeting exception.

- 87 We were told that the discussions about the positions under the Act, the roles of staff, and the job descriptions were intermingled with the discussion about employee performance. Accordingly, these discussions could not have been easily separated. As such, it would not be realistic to expect council to have parsed their discussions by extracting these topics for discussion in open session.
- 88 However, the discussion of the hiring plan took place as a separate and distinct discussion following the discussions about the positions under the Act and employees' performance. My Office has previously found that general discussion of hiring and recruitment does not fall within the Act's closed meeting exceptions.<sup>21</sup> Discussion of the hiring plan was not interrelated with the discussion of employees' job performance. Accordingly, council could have parsed the discussion between open and closed session without creating an unreasonable interruption to the conversation.

## August 3, 2021 meeting

- 89 Council held a special meeting on August 3, 2021. The meeting began at 6:30 p.m. in the Township of Nipissing's Community Centre.
- 90 Council passed a resolution at 7:06 p.m. to proceed *in camera* under section 239(2)(d) of the Act for consideration of "matters pertaining to Subsection (2)(d) labour relations or employee negotiations, with respect to filling the vacancy in the CAO/Clerk position."
- 91 Staff members were not present for council's *in camera* discussion.
- 92 Once *in camera*, the third-party consultant reviewed the results of a survey that she had asked council members to complete regarding the CAO-Clerk position. The consultant and council discussed council's priorities for hiring a new CAO-Clerk.

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<sup>20</sup> *Plympton-Wyoming (Town of) (Re)*, 2021 ONOMBUD 4, online: <<https://canlii.ca/t/jd49k>>.

<sup>21</sup> *Timmins (City of) (Re)*, 2017 ONOMBUD 3 at paras 29-31 online: <<https://canlii.ca/t/h4rwr>>; Letter from Ombudsman of Ontario to Township of Leeds and the Thousand Islands (8 September 2016), online: <<https://www.ombudsman.on.ca/resources/reports-and-case-summaries/municipal-meetings/2016/township-of-leeds-and-the-thousand-islands-en>>.

- 93 In addition, the consultant once again led council in a discussion about the need to fill the vacant CAO-Clerk position. As part of this discussion, council and the consultant discussed identifiable Township employees and assessed their job performance in the context of determining their suitability for the vacant position.
- 94 Council passed a resolution at 8:29 p.m. to return to open session.

## Analysis

### Applicability of the exception for labour relations or employee negotiations

- 95 Council cited the exception for labour relations or employee negotiations under section 239(2)(d) of the Act to proceed into closed session on August 3, 2021.
- 96 The purpose of this exception is to protect discussions relating to the relationship between a municipality and its employees.<sup>22</sup>
- 97 My Office has previously found that discussions pertaining to specific employees' work conditions and more generally, work environment, fit within the exception for labour relations or employee negotiations.<sup>23</sup> In addition, my Office has found that this exception applies to discussions of employees' conduct and job performance.<sup>24</sup> As noted above, my Office has found that discussion of reorganization as it affects individuals and their roles is permitted in closed session under the exception for labour relations and employee negotiations.<sup>25</sup> However, discussions focused on the nature and role of a proposed staff position do not fit within the exception for labour relations.<sup>26</sup>
- 98 Council's discussion regarding identifiable employees' job performance fit within the exception for labour relations. This discussion would also fit within the exception for personal matters about an identifiable individual.
- 99 However, the portion of council's discussion that focused on the results of the survey and council's priorities for hiring a new CAO-Clerk did not fit within the exception for labour relations as it did not pertain to the relationship between the Township and its employees. These topics also do not appear to come within any of the Act's other closed meeting exceptions.

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<sup>22</sup> *The Nation*, *supra* note 11 at para 53.

<sup>23</sup> *Amherstburg (Town of)*, 2015 ONOMBUD 33, online: <<https://canlii.ca/t/gtp7d>>.

<sup>24</sup> *Amherstburg*, *supra* note 2

<sup>25</sup> *Town of Amherstburg*, *supra* note 8.

<sup>26</sup> *St. Catharines (City of) (Re)*, 2019 ONOMBUD 1, online: <<https://canlii.ca/t/hxrk5>>.



## Parsing the discussion

- 100 The discussions regarding the survey and council's priorities for hiring a new CAO-Clerk do not appear to come within any of the Act's closed meeting exceptions. Accordingly, it is necessary to assess whether these topics could have been parsed from the other portions of council's *in camera* discussion.
- 101 As noted above, municipal councils are not expected to split up discussions between open and closed sessions where it would "detract from free, open and uninterrupted discussion."<sup>27</sup> However, if the topics can be separated, council is expected to return to open session for those portions of the discussion that do not fit within an open meeting exception.
- 102 The discussion of the survey results and council's priorities for hiring a new CAO-Clerk was used as a background to analyze identifiable employees' performance. Council sought to understand whether a current staff member could meet the responsibilities of the new position.
- 103 Discussions of the survey results, council's priorities for hiring a new CAO-Clerk, and employees' job performance were interwoven and informed one another. An attempt to parse these discussions would have stifled free, open and uninterrupted discussion. In the circumstances, it would not have been realistic to expect council to parse their discussions by extracting these topics for discussion in open session.

## Opinion

- 104 My investigation found that council for the Township of Nipissing did not contravene the *Municipal Act, 2001* during *in camera* meetings on February 17, March 9, April 6, May 18, June 8, and August 3, 2021. These *in camera* discussions were permissible under the Act's closed meeting exceptions.
- 105 However, the Township contravened the *Municipal Act, 2001* on July 13, 2021, when it discussed the Township's hiring plan *in camera*. Discussion of the hiring plan did not fit within the exception for personal matters, nor did it come within any of the Act's other closed meeting exceptions. The hiring plan discussion was separate and distinct from council's other discussions in closed session. Accordingly, council could have parsed this discussion between open and closed session.

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<sup>27</sup> *St. Catharines*, *supra* note 18.

## Recommendations

**106** I make the following recommendations to assist the Township of Nipissing in fulfilling its obligations under the Act:

### Recommendation 1

**Members of council for the Township of Nipissing should be vigilant in adhering to their individual and collective obligation to ensure compliance with their responsibilities under the *Municipal Act, 2001*.**

### Recommendation 2

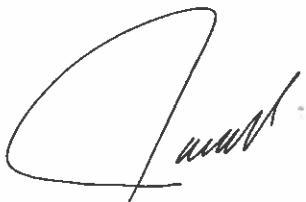
**Members of council for the Township of Nipissing should ensure that no subject is discussed in closed session unless it clearly comes within one of the statutory exceptions to the open meeting requirements.**

## Report

**107** Council for the Township of Nipissing 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.

**108** In its response, council accepted the report's two recommendations and affirmed its commitment to ensuring compliance with its responsibilities under the *Municipal Act, 2001*. I applaud the municipality's commitment to improving the accountability and transparency of its meeting practices.

**109** This report will be published on my Office's website, and should be made public by the Township of Nipissing. In accordance with s. 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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**Paul Dubé**  
Ombudsman of Ontario