



## **Ombudsman Report**

**Investigation into multiple closed  
meetings by  
Council for the City of Welland  
from June 2012 to May 2014**

**“Property and Propriety”**

**André Marin  
Ombudsman of Ontario  
November 2014**

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## Complaint

- 1** On May 15, 2014, my Office received a complaint about Welland City Council's frequent practice of holding closed meetings. When asked to provide further detail, the complainant cited 11 examples from closed meetings between June 2012 and May 2014 where in-camera discussions did not fit within the permitted exceptions to the open meeting requirements in the *Municipal Act, 2001*.
- 2** After further discussion with the complainant, my Office launched an investigation into four recent meetings that reflected the complainant's concerns about how closed meetings are dealt with in Welland.
- 3** There were also other items considered in camera at each of the meetings identified that were not raised in the complaint and that clearly fell within the exceptions to the open meeting requirements of the *Municipal Act*. These items are not discussed in this report.

## Ombudsman jurisdiction

- 4** Under the *Municipal Act, 2001*, municipalities are required to pass by-laws setting out the rules of procedure for meetings. The law requires public notice of meetings, and that all meetings be open to the public unless they fall within prescribed exceptions.
- 5** As of January 1, 2008, changes to the *Municipal Act, 2001* give citizens the right to request an investigation into whether a municipality has properly closed a meeting to the public. Municipalities may appoint their own investigator or use the services of the Ontario Ombudsman. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own.
- 6** My Office is the closed meeting investigator for the City of Welland.
- 7** In investigating closed meeting complaints, we consider whether the open meeting requirements of the Act and the relevant municipal procedure by-law have been observed.

## Council meeting procedures

- 8** The city's procedure by-law (by-law 2013-126) states that all boards, committees and commissions established by council shall have meetings open to the public

unless otherwise permitted by legislation or the by-law to be closed. Section 11.1 of the by-law outlines the exceptions found in s. 239 of the *Municipal Act*. The onus is on council members to ensure that only matters legitimately permitted to be raised in Committee-of-the-Whole in-camera meetings are discussed.

- 9** Notice is given for meetings of council and committees by posting information on the city's website and on a public bulletin board at least 24 hours prior to the date of the meeting. Notice of special council meetings is posted as soon as practical.
- 10** Section 11.3 of the procedure by-law states that the onus is on the Mayor and council members to ensure that only matters legitimately permitted to be in camera are discussed during a closed session. Section 13.11 of the by-law outlines the process for a member of council to challenge a decision of the Chair, including the decision to discuss a matter in camera.
- 11** Although it is laudable that the procedure by-law includes provisions to facilitate councillors objecting to closed meetings as they happen, these provisions do not prevent anyone – including members of council – from bringing concerns to my Office after the fact.

## **Investigative process**

- 12** After conducting a preliminary review of the complaint, my Office notified the city on June 23, 2014 that we would be conducting an investigation.
- 13** During the course of our investigation, we obtained and reviewed relevant municipal documents, including minutes and agendas. We also considered the city's procedure by-law and applicable legislation and case law.
- 14** Staff members from my Office's Open Meeting Law Enforcement Team (OMLET) conducted telephone interviews with the Mayor and all 12 members of council, as well as with four members of city staff.
- 15** Members of council and staff co-operated fully with our investigation.

## **Preliminary report**

- 16** In accordance with our procedures, all of the city's council members and the staff that we interviewed for this investigation were given an opportunity to review a

draft of this report containing preliminary investigative findings and analysis, and to offer responses before the report was finalized. They were given the option of receiving a copy of the preliminary report for review on the condition that they signed an undertaking to keep it confidential, in accordance with the requirements of the *Ombudsman Act*.

- 17** We received 14 undertakings from the city and provided copies of the preliminary report accordingly. We received only one response on the preliminary report. I have considered that response in finalizing my report.

## The in-camera discussions

### Development Commission Strategic Plan: March 18

- 18** The complaint to my Office alleged that at the council meeting on March 18, 2014, the Development Commission shared its strategic plan with council in closed session under the “acquisition or disposition of land” exception. According to the complainant, no particular properties were being discussed, and accordingly the exception did not apply.
- 19** The open meeting agenda stated that council would proceed in camera at 5:25 p.m. to discuss matters under four exceptions: A proposed or pending acquisition or disposition of land; security of the property of the municipality or local board; labour relations or employee negotiations; and personal matters about an identifiable individual.
- 20** Council moved in camera at 5:32 p.m., citing the exceptions outlined in the agenda, as well as the solicitor-client privilege exception.
- 21** Council discussed this item under the “acquisition or disposition of land” and “security of the property of the municipality or local board” exceptions.
- 22** The minutes of the closed session state that council discussed the “Manufacturing Attraction Strategy Priority Action Plan,” which was prepared by an economic development consultant and formed part of the overall strategic plan. The report provided strategies to attract new business to Welland. The remainder of the strategic plan was discussed in open session.
- 23** Six members of council and two members of staff advised us during interviews that this item was discussed in camera under the “security of the property”

exception because the marketing plan was the municipality's "property" and had to be protected. The purpose of having the economic development consultants put the plan together was to give Welland a competitive advantage over neighbouring municipalities, and this advantage would be compromised if the plan were made public. Although the in-camera discussions did not involve steps being taken to protect the Manufacturing Attraction Strategic Priority Action Plan, the purpose of going in camera was to protect the plan.

- 24** With respect to the "acquisition or disposition of land" exception, one member of council recalled discussion of specific lands the city was considering selling. Another believed that council might have had a general discussion about lands the commission was considering selling.
- 25** Two members of council felt this item should not have been discussed in closed session, and two had no recollection of the item. Two other members of council were absent from the meeting, while another arrived late to the meeting and missed this portion of the discussion.
- 26** Council arose from the closed session at 7:00 p.m.
- 27** In open session, council voted to receive the presentation by the Manager of Economic Development and endorse the Development Commission's Economic Development Strategic Plan and Manufacturing Attraction Strategy.

### Analysis

- 28** The majority of councillors present for this session advised my Office that the marketing plan was the "property" of the municipality and was prepared in the hopes of giving Welland a competitive advantage over neighbouring municipalities in attracting new business. It was felt that this advantage would be compromised if the plan were made public, and accordingly the plan was discussed in camera under the "security of the property" exception.
- 29** When reviewing the parameters of this exception, my Office has often considered the case law of the Office of the Information and Privacy Commissioner (the IPC). Although not binding on my Office, these cases can be informative.
- 30** IPC Order MO-2468-F<sup>1</sup> found that "security of the property" referred to protection of property from physical loss or damage and the protection of

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<sup>1</sup> City of Toronto, October 27, 2009.

public safety in relation to that property. The order found that the term does not include security or protection of financial or economic interests relating to property. The more recent order MO-2683-I<sup>2</sup>, noted that the adjudicator in Order MO-2468-F was dealing with a specific set of circumstances, and that the decision was meant to stand for the proposition that “security of the property” does not apply to financial interests *vis a vis* a city’s negotiation strategy; however, this does not mean that discussion of protection of financial interests can never fall within the “security of the property” exception. The adjudicator in order MO-2683-I agreed that the word “property” in “security of the property” could include both corporeal and incorporeal property<sup>3</sup>.

- 31** I accept that the city could have a property interest in a document such as Welland’s Manufacturing Attraction Strategy Priority Action Plan, and that in certain circumstances, discussions relating to such a document could occur in camera under the “security of the property” exception. However, this is not the end of the analysis. As noted by the adjudicator in IPC Order MO-2683-I, in order to establish that the “security of the property” exception applies, the municipality must establish that the municipality owns the identified property, and that the subject matter being considered at the meeting is “security” in the sense of taking measures to prevent loss or damage to that property.<sup>4</sup>
- 32** Although interviewees told us the purpose of having the discussion in camera was to protect the marketing plan, the subject matter of the discussion was not protection of the marketing plan from loss or damage. Rather, the discussion involved sharing the marketing plan itself with council. This discussion therefore did not fall within section 239(2)(a) of the Act.
- 33** The “acquisition or disposition of land” exception was also cited in reference to this discussion. Only one member of council said that he recalled a particular property sale being discussed under this item. The information captured in the minutes does not support that this exception applied to the discussion of the marketing plan, as no specific land purchases or sales are referred to.
- 34** I conclude that this item did not fit within either of the cited exceptions, or any exception to the open meeting requirements, and accordingly was discussed in camera in violation of the Act.

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<sup>2</sup> City of Toronto, December 30, 2011.

<sup>3</sup> At paragraph 40. It should be noted that the adjudicator was considering “security of the property” as found in section 190(2) of the City of Toronto Act, 2006, which in all material ways mirrors s. 239(2) of the Municipal Act, 2001.

<sup>4</sup> At paragraph 41.

## Welland Public Library shared services proposal: March 18 and April 1

- 35** The complaint to our Office alleged that council had in-camera discussions about a shared services proposal with the public library, in violation of the open meeting requirements.
- 36** The minutes for both meetings note that this item was discussed under the “labour relations or employee negotiations” and “personal matters about an identifiable individual” exceptions.
- 37** During interviews, six members of council advised our Office that the in-camera discussions pertained to labour relations issues, and that personal information about one or more staff members was also discussed. One felt the discussions did not fall within the cited exceptions, while six were either not present for the discussion or could not recall it.
- 38** The member of staff who led the discussion told us the discussions on March 18 involved staffing changes, workload, and roles of particular employees. The qualifications of a particular member of staff were also discussed, in reference to the potential of that staff member taking on a new position. The April 1 discussion included the potential retirement of certain employees, and possible staffing changes that could affect unionized positions. Contemporaneous notes taken at the meeting support the staff member’s recollection.

### Analysis

- 39** This item was discussed in closed session at two meetings under the “labour relations or employee negotiations” and “personal matters about an identifiable individual” exceptions. The information provided to our Office supports that the discussions involved potential staffing changes to both unionized and non-unionized positions. As noted by the IPC, the “labour relations” exception refers to the collective relationship between an employer and its employees<sup>5</sup>.
- 40** In this case, the discussion fit squarely within the “labour relations” exception. Furthermore, information relating to specific identified employees – including opinions relating to the work performance of one employee, and the possible retirement of another – were discussed at both meetings. As noted in IPC Order

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<sup>5</sup> See Order PO-2057 (October 29, 2002), considering the term “labour relations” in s. 65(6) of the *Freedom of Information and Protection of Privacy Act*

MO-2204<sup>6</sup>, information regarding an employee's performance is personal information. These portions of the discussion would fit within the "personal matters" exception.

- 41** Accordingly, the discussions of the shared services proposal at the March 18 and April 1 meetings fit within the cited exceptions to the open meeting requirements and did not violate the Act.

## Logistics/distribution node: April 15

- 42** The complaint to our Office alleged that this item involved a discussion of whether council should prioritize logistics, distribution, and supply chain industries in Welland's economic development initiatives, and that the discussion did not fit within any of the exceptions to the open meeting requirements. The complainant believed the item should have been discussed in open session because the issue was raised in open session as a notice of motion at an earlier meeting.
- 43** The open meeting agenda stated that council would go in camera at 6:10 p.m. to discuss a proposed or pending acquisition or disposition of land, and for the purpose of education or training.
- 44** The open meeting minutes indicate that council moved in camera at 6:17 p.m., as Committee of the Whole, for the reasons outlined in the agenda.
- 45** The closed session minutes state that two staff members outlined the likelihood of Welland becoming a logistics/distribution node.
- 46** Seven members of council advised our Office that this was an "education and training" session, led by staff, in response to a question raised by a member of council in open session regarding whether this was a feasible direction for Welland. They believed the item was appropriate for in-camera discussion because council was not debating or deciding on an item of council business. They noted that the Development Corporation's strategic plan had already been approved at a recent meeting, and accordingly the discussion would not influence the direction of Welland's economic development initiatives at that point.
- 47** One member of staff who led the session told us they wanted to explain what is needed for a successful logistics/distribution node, and why Welland might not fit this model. Another said there was confusion about the difference between

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<sup>6</sup> Order MO-2204, Town of Aylmer (June 22, 2007)

logistics nodes and distribution centres, and it was necessary to explain this to council. Both staff members, as well as some council members, stated that the matter had to be discussed in closed session because there were concerns about exposing “weaknesses” of the city to potential investors.

- 48** One member of council who was present for the in-camera session felt the item was not appropriate for closed session discussion, and another left before the discussion began because he believed it should be in open session. The remaining four members of council were either absent or had no recollection of the discussion.
- 49** Of those who recalled it, most told us it consisted partially of staff members imparting information, and partially of discussion amongst council members, including how this information could apply to specific properties in the city.
- 50** Council arose from the closed session at 6:55 p.m.
- 51** Later in the meeting, council considered a motion to receive a staff report, which outlined the potential strengths of the city in establishing itself as a logistics/distribution node. Two councillors moved to amend this motion to add a direction to the Economic Development office to include and prioritize logistics/distribution and supply chain industries in Welland’s economic development initiatives, strategies and priority action plans. The motion to amend failed, and the main motion to receive the staff report passed.

## Analysis

- 52** 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 at the meeting in a way that materially advances the business or decision making of council.
- 53** My 2008 report *The ABCs of Education and Training* dealt with this matter in a case involving the City of Oshawa, as follows:<sup>7</sup>

While there are an infinite number of topics that could potentially form the subject of an education session, it must be clear that the purpose of such a meeting relates to education only. Any attempt to rely on this exception must be carefully scrutinized. A municipality

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<sup>7</sup> Report regarding a May 22, 2008 meeting of the City of Oshawa Development Services Committee.

cannot simply circumvent the open meeting law by characterizing a subject normally considered in open session as ‘educational.’<sup>8</sup>

**54** Similarly, I stated in a 2012 report regarding a meeting in the Town of Midland:

In my view, none of the items discussed at this meeting were appropriate for consideration under the “education or training exception,” as the information discussed or exchanged was directly on the subject of council business and was clearly intended to advance the business of council and/or form the basis of future decision-making<sup>9</sup>.

**55** As well, another closed meeting investigator noted, in a report regarding a meeting held by the County of Essex:

(The education or training) exception covers meetings where the sole purpose is to provide education or training, but where no transactional business making occurs during the session... An exchange of information, whether it advances the business of the municipality or not, cannot be said to be “educating” or “training” as those words are commonly defined.<sup>10</sup>

**56** The discussion during the April 15, 2014 Welland council closed session went beyond merely educating council members about what is generally needed for a successful logistics/distribution node. Rather, council members specifically discussed the information that was provided as it pertained to the city and its potential suitability to fulfill this role. Council subsequently considered a motion regarding the prioritization of logistics/distribution and supply chain industries in Welland’s economic development initiatives at the same meeting.

**57** The “education or training” exception did not apply in this instance. The discussion did not relate solely to educating council members; it was intended to inform their decision making and advance the formulation of Welland’s economic strategy. This topic should have been discussed in open session.

**58** Council should also be cognizant of the fact that some of the reasons we were provided for this matter being in camera – such as not wanting to discuss the city’s weaknesses publicly – do not justify the use of this (or in fact any) exception to the

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<sup>8</sup> Paragraph 29.

<sup>9</sup> September 2012 report regarding meetings held between December 2011 and March 2012, paragraph 42

<sup>10</sup> Report of Amberley Gavel Ltd., September 18, 2009 at p. 13

open meeting requirements. While there may be many topics that council would prefer to keep private, an item cannot be discussed in camera unless it falls within the parameters of the open meeting requirements.

- 59** Finally, council and staff should be aware that when closing a discussion under the “education or training” exception, the resolution to proceed in camera must cite the relevant section of the Act authorizing the discussion. For most exceptions to the open meeting requirements, it is not necessary to cite the relevant section of the Act, although it is a good practice. However, s. 239(4)(b) of the Act states that for meetings closed for the purpose of education 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 closed under that subsection.”

## WRCC bid for May 2016 Olympic canoe sprint trials: May 6

- 60** The complaint to our Office stated that on May 6, council discussed whether the city should support a bid by the Welland Recreational Canal Corporation (WRCC) to host the May 2016 Pan American canoe sprint championships (a qualifying event for the 2016 Olympics). The complainant believed the matter was not appropriate for in-camera discussion.
- 61** The open meeting agenda for the May 6 meeting stated that council would proceed in camera at 5:35 p.m. to discuss matters pertaining to a proposed or pending acquisition or disposition of land, litigation or potential litigation, and the receiving of advice subject to solicitor-client privilege.
- 62** The open session minutes indicate that council passed a resolution to move in camera at 5:38 p.m. to discuss the items listed on the agenda, as well as security of the property.
- 63** The minutes of the closed session state that council discussed the fact that the WRCC wanted to submit a bid to host the trials and that a financial contribution was required from the city. This discussion was closed under the “security of the property” exception. The closed session minutes record a direction being provided, although the minutes do not specify to whom, to proceed with submitting a bid.
- 64** Nine members of council advised our Office that they believed the item was appropriately discussed in camera. Most stated that the “property” in the “security of the property” exception was the bid. It was noted that the bidding process can be expensive and time consuming, and some members of council felt that having a

discussion of the bid in open session could harm the city's chances of being successful, or could encourage neighbouring municipalities to put in a similar bid.

- 65** We were provided with a copy of an email from the WRCC to city staff. The email requested that any discussion of investment and budget related to the bid remain confidential, so as not to provide other bidders with an advantage over Welland.
- 66** Two members of council felt there was no reason for the discussion to be kept confidential, and stated it should have taken place in open session. Of the remaining members, one had no recollection of the discussion, while the other was not present at the meeting.
- 67** We received contradictory information regarding the details of the direction provided to proceed with the bid. Some members of council felt it was a direction to the WRCC to proceed, while others believed it was a direction to the Mayor to convey this information to the WRCC. One interviewee believed it was a direction to the City Manager to engage with the WRCC on the bidding process.
- 68** Staff told us such directions are not given via a formal vote, but rather through a general understanding that all council members are on the same page, if no objections are voiced.
- 69** The minutes state that council arose from closed session at 7:06 p.m.

### Analysis

- 70** Most of those we interviewed believed this matter was discussed under the “security of the property” exception because the bid itself would be compromised if other municipalities were aware of it.
- 71** As noted in my analysis of the March 18 meeting, the “security of the property” exception can apply in circumstances where the subject matter being considered at the meeting is taking measures to prevent loss of or damage to a particular piece of property. There is no evidence that this was the case for this particular discussion. Rather, council was discussing a potential bid to host a sporting event in 2016. This subject matter does not fall within the cited exception to the open meeting requirements (or any exception), and accordingly this discussion violated the Act.
- 72** Although there may have been a desire to maintain confidentiality in order to protect various interests of the city, I must emphasize again that council cannot bring a matter in camera simply because it is considered sensitive or confidential

or potentially against the city's interests to discuss it publicly. Matters can only be discussed in camera if they fit squarely within the exceptions to the open meeting requirements.

- 73** With respect to the direction to proceed with the bid, we were advised that this direction was reached through a general understanding that all of council was in agreement, as is the city's usual practice. Although a direction was recorded in the minutes there was a lack of clarity regarding the details of this direction. It should be noted that there is a general prohibition in the Act against voting during closed sessions. However, one of the exceptions to this prohibition is if a meeting is otherwise properly closed, and if the vote is for a procedural matter or for giving directions to staff (s. 239(6)). For the sake of clarity, directions to staff in camera should be given by way of formal resolution, and detailed in the minutes.

## Update on Welland International Flatwater Centre: May 6

- 74** The complaint to my Office alleged that a discussion took place in camera regarding the fact that a staff member had written a cheque on behalf of the WRCC, without council approval. Some councillors raised concerns in camera that council was not consulted on this matter. Although the jurisdiction of my Office does not extend to commenting on municipal decision-making, or on council/staff relations, we reviewed the May 6 discussion to determine if the matter properly belonged in camera.
- 75** The information provided to my Office indicated the city's solicitors were present for this portion of the closed session, at which the City Manager and the solicitors reviewed potential litigation matters pertaining to the Flatwater Centre. In the course of the discussion, a member of council brought up his concerns about the cheque staff wrote on behalf of the WRCC, which operates the Flatwater Centre, and sought advice from legal counsel regarding how he should respond to public concerns about this matter. The city solicitors reviewed the roles of council members and staff, and provided advice.

### Analysis

- 76** During the discussion of the Flatwater Centre, council discussed potential litigation against more than one party. Although litigation had not been commenced at that point, this is not necessary in order for the exception to apply. As noted by the court in *R.(C.) v. CAS of Hamilton*<sup>11</sup>:

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<sup>11</sup> (2004), 50 RFL (5th) 394 (Ont. S.C.J.) at para. 21

It is not necessary that litigation have been commenced, nor is it 'necessary that it be created at a time when there is a certainty of litigation but merely that litigation is a reasonable prospect. On the other hand, there must be more than a mere suspicion that there will be litigation.'

- 77** The information provided to my Office indicates that council was genuinely contemplating litigation during the May 6 closed session, and that legal counsel was present to advise on the matter. Accordingly, this discussion fit within both the exceptions for litigation or potential litigation, and solicitor-client privilege.
- 78** With respect to discussion of the cheque issued by a city staff member, this item would not normally be eligible for discussion in closed session under the exceptions in the *Municipal Act*. In this case, however, a council member was seeking legal advice from the city's solicitors. Accordingly, this discussion fit within the solicitor-client privilege exception.

## Other matters discussed

- 79** In reviewing the discussions that were the subject of the complaint, my Office also noticed other items that warrant comment.

### Ministry of Labour Order: March 18

- 80** The personal notes we received in response to our request for documents recorded an in-camera discussion of a Ministry of Labour order on March 18. During interviews, we were advised that this was an update from the City Manager at the end of the in-camera meeting, during which he conveyed information from the city's legal counsel. There is no mention of this discussion in the closed session minutes, and the item was not on the closed session agenda.
- 81** The clerk told us she was not present during this discussion and another member of staff was filling in as deputy clerk. Accordingly, she was not aware this discussion had taken place.
- 82** This discussion could fit within the solicitor-client privilege exception, as a particular piece of advice from the city's solicitor was being shared with council. However, the discussion should have been recorded in the minutes of the closed session, and there should have been reference in the meeting record as to how and why the item was added to the agenda.

- 83** Council should be careful to ensure that the record for both open and closed sessions accurately reflects all items discussed.

#### Insurance claim: April 15

- 84** According to the minutes of the April 15 closed session, council discussed this item at the end of the closed session, described as “Mayor/City Manager’s in camera report to council.” The City Manager provided an update on an insurance claim for a city-owned bus.
- 85** No specific exception is noted in the minutes as applying to this discussion. Acquisition or disposition of land and education or training were the only exceptions cited in the resolution to proceed in camera that day.
- 86** One staff member speculated that the item could have been closed under the “litigation or potential litigation” exception. However, no specific information was provided to us about pending or ongoing litigation pertaining to the insurance claim, nor was this exception was cited in the resolution to proceed in camera.
- 87** Another staff member speculated that the item could fit within the “education or training” exception, as the City Manager was conveying information to council. As previously noted, this exception is meant to apply to instances where council is receiving general information for strictly educational purposes, rather than information specific to council business. The exception must be narrowly construed, and does not automatically come into play any time a staff member is conveying information to council.
- 88** Accordingly, this item was discussed in closed session in violation of the open meeting requirements.

#### Procedural matters

- 89** Our investigation also revealed some procedural issues with council’s closed meeting practices.

#### Resolution

- 90** The resolution to proceed in camera at council meetings only contains the wording of the exception that council is relying on to close its doors. As noted by the Court

of Appeal in *Farber v. Kingston City*<sup>12</sup>, “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.” Council should provide a brief description of the subject matter to be considered in closed session, in addition to the wording of the exception.

- 91** Also, at the April 15 meeting, council discussed a matter under the education or training exception without citing the relevant section of the Act authorizing that discussion, as required by s. 239(4)(b). Council should make sure to always include the relevant section of the Act for education or training sessions.

### Meeting record

- 92** The documents provided to my Office indicate that council only records motions/resolutions in its open meeting minutes, and also includes very little information in its closed session minutes. Also, at the March 18 meeting, council added an item to the closed session agenda (the Ministry of Labour Order) and there is no record of this discussion in the minutes.
- 93** In accordance with s. 239(7) of the Act, a municipality is required to record, without note or comment, all resolutions, decisions, and other proceedings at its meetings. While the Act prohibits notes or comments from being included in the official record, this does not mean that the subjects discussed at a meeting should not be referred to. Generally, the various substantive and procedural items that were discussed at a closed meeting should be recorded.
- 94** As noted in my 2011-2012 Annual Report on open meetings, I also encourage municipalities to make audio or video recordings of council proceedings. This provides the most clear, accessible record for closed meeting investigators to review, and assists in ensuring that officials do not stray from the legal requirements during closed meetings.
- 95** We were advised that at its meeting on May 20, 2014, council voted to direct staff to implement the use of electronic recording devices to record all in-camera proceedings. I am pleased that Welland has joined several other municipalities in implementing this practice, including the Townships of Tiny, Madawaska Valley and McMurrich/Monteith, the Town of Midland, The Municipality of Lambton Shores, and the City of Oshawa.

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<sup>12</sup> [2007] O.J. No. 919, at page 151

## Opinion

- 96** Our investigation confirmed that the Council for the City of Welland contravened the *Municipal Act, 2001* and its own procedure by-law during discussions held at the March 18, April 15, and May 6 meetings. At these meetings, council discussed matters in closed session that were not permissible under the exceptions to the open meeting requirements.
- 97** There appears to be some confusion amongst councillors regarding the parameters of the open meeting exceptions, particularly the “security of the property” exception. Furthermore, councillors must be cognizant of the fact that the open meeting exceptions were not meant to shield from public view any discussion that council considers “private” or “confidential.” While it is understandable that council prefers, for example, to protect the city’s competitive advantage in bidding procedures and to avoid public discussion of the city’s economic disadvantages, this is not in itself reason to bring a matter in camera. Closed session discussion can only occur if the subject matter fits squarely within one of the listed exceptions to the open meeting requirements.

## Recommendations

- 98** I am making the following recommendations, which I hope will assist the council to meet its legal obligations with respect to closed meetings as well as generally improve its closed meeting practices:

### **Recommendation 1**

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

### **Recommendation 2**

The City of Welland should ensure that its resolutions to proceed in camera 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. When proceeding in camera under the education or training exception, the resolution must include the relevant section of the Act authorizing that discussion.

### **Recommendation 3**

The City of Welland should ensure that its meeting record is complete and accurately reflects the various substantive and procedural items that were discussed.

#### **Recommendation 4**

All members of Council for the City of Welland should be vigilant in adhering to their individual and collective obligation to ensure that council complies with its responsibilities under the *Municipal Act, 2001* and its own procedure by-law.

## **Report**

- 99** My report should be shared with council and made available to the public as soon as possible, and no later than the next council meeting.



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André Marin  
Ombudsman of Ontario