

August 28, 2013

Reeve Glynn Robinson and  
Clerk Cheryl Marshall  
Township of McMurrich-Monteith  
31 William Street  
P.O. Box 70  
Sprucedale, ON P0A 1Y0

Dear Reeve Robinson and Ms. Marshall,

**Re: Closed Meeting Complaint – May 7, 2013 Council Meeting**

I am writing further to our conversation on August 27, 2013 regarding the outcome of our review of complaints that Council introduced the topic of Councillor expense claims and reimbursement at the May 7, 2013 closed session. The complaint alleged that the topic was not on the agenda and was not a subject that was authorized for closed meeting consideration.

As you are aware, under the *Municipal Act, 2001* (the Act) all meetings of Council, Local Boards, and their Committees must be open to the public with limited exceptions, as itemized in the Act.

In reviewing this complaint, our Office spoke with you, obtained and reviewed the meeting documents, including the agenda and open and closed session minutes, and considered the relevant sections of the Township's Procedure By-Law and the Act.

**Procedure By-Law**

According to Procedure By-Law 15-2007, regular meetings of Council are held in Council Chambers on the first Monday of each month starting at 7:30 p.m.

Public notice of meetings is to be provided through the newsletter insert that accompanies the Tax Bill, on the Township's website, and on the municipal bulletin boards.

## **May 7 Council Meeting**

The May 7 Council meeting was a continuation of the May 6, 2013 regular Council meeting, notice of which was posted on the municipal website and bulletin boards.

The Agenda for the May 6 Council meeting stated that a closed session would be held to discuss:

- Employee Matters
- Identifiable Individuals
- Legal Advice Received

We noted that the Agenda erroneously referenced section 239 (6) (d) of the *Municipal Act* in authorizing the closed session, rather than s. 239 (2) (b) personal matters about identifiable individuals, including municipal or local board employees and s. 239 (2) (f) advice that is subject to solicitor-client privilege.

At the end of the meeting on May 6, 2013, Council passed a resolution to continue the meeting on May 7 at 7:30 p.m.

At the May 7, 2013 meeting, Council resolved to move in camera at 9:37 p.m. “to discuss employee matters, identifiable individuals, legal advice received and Freedom of information Requests as per Section 239, *Municipal Act, 2001*.”

The closed meeting record shows that Council discussed a number of matters in the closed session, including legal advice regarding a workplace issue, a request from a property owner to waive a tax penalty, an employee performance issue, and two access to information requests under the *Municipal Freedom of Information and Protection of Privacy Act*.

In addition, the record shows that the issue of council remuneration and reimbursement of costs associated with participating in an interview regarding a workplace issue was briefly discussed. The meeting record and information received suggests that Council considered whether a certain claim for reimbursement was permitted, following which Council provided direction to staff to contact the Ministry of Municipal Affairs and Housing to confirm its position on the issue.

You both expressed the view that the Councilor reimbursement claim was brought up in the closed session as it also pertained to a sensitive workplace issue that was on the

closed meeting agenda and believed to fall under the “personal matters” exception [s.239 (2) (b) of the Act]. However, you acknowledged that the subject was introduced without prior consideration about whether it clearly fell under one of the exceptions to the open meeting requirements.

You estimated that this portion of the one and a half hour meeting lasted approximately fifteen minutes.

### **Analysis**

The *Municipal Act* permits Council to consider legal advice and personal matters about identifiable individuals within a closed meeting. Section 239 (3) of the Act mandates that Council consider freedom of information requests behind closed doors. Council’s discussion of legal advice pertaining to a workplace issue, an identified property owner’s request to waive a tax penalty, an employee performance issue, and two freedom of information requests, appear to fall within these exceptions.

However, discussion of Council remuneration and expense claims policy does not fall within any of the open meeting exceptions itemized under s. 239 (2) of the Act, and therefore, was not permitted in the closed session.

As discussed, Council must be careful to ensure that closed meeting discussions are limited to topics that qualify under the Act for closed meeting consideration.

### **Other Matters – Resolution**

The Act requires that Council confirm in the resolution to proceed in camera, “the fact of the holding of the closed meeting and the general nature of the matter to be considered at the closed meeting...”

We noted that Council’s resolution to proceed in camera only referred to broad subject areas to be discussed in the closed session and did not reference the specific exceptions under which each item was being considered in closed session. Indicating that Council intends to discuss “identifiable individuals” does not provide any meaningful information to the public about what is being discussed in the closed meeting or why the matter is being referred to closed session.

As we discussed, Council should provide more detail to confirm the general nature of the matters being considered in the closed session. In the interest of clarity, it may also be of assistance to state for each closed meeting agenda item, the specific exception of the Act under which it is being considered in closed session.

**For example:** Council resolved to proceed in camera under s. 239 (2) (b) of the *Municipal Act* to discuss a personal matter about an identifiable individual – property owner request for reconsideration of tax penalty.

### **Meeting Record**

The closed meeting record was limited and did not capture the substance of the discussions held. We needed to speak with you to clarify this information.

As a best practice and in order to ensure a complete and accurate meeting record, the Ombudsman recommends that municipalities consider audio or video taping meetings, including closed meetings.

On August 27, 2013 we reviewed the above information with you and provided you with an opportunity to provide your feedback and any additional relevant information. You stated that, as the remuneration issue related to a sensitive workplace matter, it was difficult to address it in a public session, but stated that it was a topic that needed to be considered by Council. That said, you acknowledged that the topic of Council remuneration/cost reimbursement does not qualify for closed meeting consideration under the Act and said you would take steps to ensure that topics that fall outside the permitted exceptions are discussed in a public session.

During our call you confirmed that this closing letter would be included on the September 3, 2013 public Council meeting agenda and a copy made available to the public on your website.

We would like to take this opportunity to thank you for your cooperation with our review.

Sincerely,

Yvonne Heggie  
Early Resolution Officer  
Open Meeting Law Enforcement Team