



J. Paul Dubé, Ombudsman

BY EMAIL

October 2, 2025

Council for the City of Sarnia
255 Christina Street North
Sarnia, ON N7T 7N2

Dear Members of council for the City of Sarnia:

Re: Closed meeting complaints

My Office received a complaint about closed meetings held by council of the City of Sarnia on March 31 and May 26, 2025. The complaint alleged that council improperly discussed in closed meetings a zoning compliance matter, in violation of the open meeting rules under the *Municipal Act, 2001* (the “Act”).¹

I am writing to advise that following my Office’s review, I have determined that both the March 31 and May 26, 2025 meetings did not contravene the open meeting rules under the Act.

Ombudsman’s role and authority

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. My Office is the closed meeting investigator for the City of Sarnia.

My Office has investigated hundreds of closed meetings. To assist municipal councils, staff, and the public, we have developed an online digest of open meeting cases. This searchable repository was created to provide easy access to the Ombudsman’s decisions on, and interpretations of, the open meeting rules. Council members and staff can consult the digest to inform their discussions and decisions on whether certain matters can or should be discussed in closed session, as well as issues related to open meeting

¹ SO 2001, c 25 [*Municipal Act, 2001*].

483 Bay Street, 10th Floor, South Tower / 483, rue Bay, 10^e étage, Tour sud
Toronto, ON M5G 2C9

Tel./Tél. : 416-586-3300 Facsimile/Télécopieur : 416-586-3485 TTY/ATS : 1-866-411-4211

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procedures. Summaries of the Ombudsman's previous decisions can be found in the digest: www.ombudsman.on.ca/en/info-public-bodies-and-officials/municipal-government/municipal-meeting-digest.

The Ontario Ombudsman also has the authority to conduct impartial reviews and investigations of hundreds of public sector bodies. This includes municipalities, local boards, and municipally-controlled corporations, as well as provincial government organizations, publicly funded universities, and school boards. In addition, the Ombudsman's mandate includes reviewing complaints about the services provided by children's aid societies and residential licensees, and the provision of French language services under the *French Language Services Act*. Read more about the bodies within our jurisdiction here: www.ombudsman.on.ca/en/make-complaint/what-we-can-help-you/organizations-you-can-complain-about.

Review

My Office reviewed the materials for the March 31 and May 26, 2025 meetings, including the agenda, minutes, and recording of the closed session that occurred at the meeting on May 26, 2025. We also spoke with the City Clerk and City Solicitor. My Office was advised that there was no recording of the March 31, 2025 meeting.

March 31, 2025 meeting

On March 31, 2025 at 12:00 p.m., council met for a virtual meeting that was livestreamed to the public. Shortly after calling the meeting to order, council resolved to close the meeting to discuss four items. One of the discussion items was for council to receive information subject to solicitor-client privilege with respect to a zoning compliance matter, pursuant to section 239(2)(f) of the Act.

During the closed session, the City Solicitor presented a report to council and provided council with privileged legal advice regarding the zoning compliance matter. The City Solicitor was present for the entirety of the closed session and confirmed that no other aspect of the zoning compliance matter was discussed under any of the other discussion items. My Office was told that the discussion about the zoning compliance matter lasted fewer than 10 minutes.

Council resolved to adjourn the closed session at 12:27 p.m. Following a break, council resumed the open meeting at 1:00 p.m. and passed a resolution to report that council received information with respect to a zoning compliance matter and provided directions to staff regarding the remaining three discussion items.

Analysis

Council cited the exception for advice subject to solicitor-client privilege when it proceeded *in camera* to discuss the zoning compliance matter. The exception for solicitor-client privilege under section 239(2)(f) of the Act applies to discussions between a municipality and its lawyer in seeking or receiving legal advice intended to be confidential.² The purpose of the exception is to ensure that municipal officials can speak freely about legal advice without fear of disclosure. The Supreme Court of Canada has stated that solicitor-client privilege applies when the following conditions are met:

1. There is a communication between a lawyer and a client;
2. Which entails the seeking or giving of legal advice; and
3. Which is considered to be confidential by the parties.³

The City Solicitor was present for the entirety of the closed session on March 31, 2025, and presented council with her report regarding the zoning compliance matter. The report contained legal advice and an update on the next steps to be taken by staff. The City Solicitor also answered councillors' questions on the advice as they arose. The discussion consisted of communications between the City Solicitor and her client (i.e., council) and involved the seeking or giving of legal advice in a manner considered confidential by the parties. Accordingly, council's discussion of this item fits within the exception for advice subject to solicitor-client privilege.

May 26, 2025 meeting

On May 26, 2025 at 12:00 p.m., council met in council chambers. Shortly after calling the meeting to order, council resolved to close the meeting to discuss five items, including information subject to solicitor-client privilege with respect to a zoning compliance matter, pursuant to section 239(2)(f) of the Act. This was the same zoning compliance matter discussed at the March 31, 2025 meeting.

During the closed session, the City Solicitor presented additional reports on the zoning compliance matter. The City Solicitor was present for the entirety of the discussion of the zoning compliance matter – which lasted less than three minutes -- and only stepped out of the meeting when council held its discussion of one of the other agenda items.

Council resolved to adjourn the closed session at 12:56 p.m. and returned to open session. Council passed a resolution to report that council received information with respect to a zoning compliance matter and also received information and provided directions to staff with respect to the other matters.

² *Timmins (City of) (Re)*, 2017 ONOMBUD 4 at para 28, online: <<https://canlii.ca/t/h4rwt>> [*"Timmins"*].

³ *Solosky v The Queen*, [1980] 1 SCR 821 at p 837, online: <<https://canlii.ca/t/1mjtq>>.

Analysis

As I have explained above, the exception for solicitor-client privilege under section 239(2)(f) of the Act applies to discussions between a municipality and its lawyer in seeking or receiving legal advice intended to be confidential.⁴

During council's closed session, council received the City Solicitor's reports on the zoning compliance matter and the City Solicitor provided council with a brief update on the steps taken by staff. The information provided to council contained the City Solicitor's confidential legal advice. Accordingly, council's discussion of this item fits within the exception for advice subject to solicitor-client privilege.

Conclusion

I find that the meetings on March 31 and May 26, 2025 did not contravene the open meeting rules under the *Municipal Act, 2001*. I would like to thank the City for its co-operation during my Office's review.

The City Clerk indicated that this letter will be shared with council and placed on the agenda for the next council meeting, and that a copy will be made available to the public prior to that meeting. At that time, I will also post a copy of this letter on my website at www.ombudsman.on.ca.

Sincerely,



Paul Dubé
Ombudsman of Ontario

CC: Amy Burkhart, City Clerk, City of Sarnia

Cette lettre est aussi disponible en français

⁴ *Timmins*, supra note 2 at para 28.