



THE CORPORATION OF THE MUNICIPALITY OF  
MARKSTAY-WARREN  
SPECIAL COUNCIL MEETING  
AGENDA

January 16, 2025

7:00 pm

Markstay-Warren Council Chambers

21 Main St. S. Markstay, ON

Pages

1. Opening remarks and call to Order
2. Roll Call
3. Disclosure of Pecuniary Interest and General Nature Thereof
4. Approval of Agenda
5. New Business
  - 5.1 Integrity Commissioner Final Report - Casses 33233-7 and 33233-8 1
  - 5.2 Ombudsman Ontario Report - December 2024 8
  - 5.3 Outdoor Rink 22
  - 5.4 2025 Pharmacy Rental Agreement 25
  - 5.5 Library Board Appointments
6. By-Laws
  - 6.1 By-Law 2025-01 To enter into a lease agreement 30
  - 6.2 By-Law 2025-02 To appoint a new Treasurer 31
7. Adjournment

LA CORPORATION DE LA MUNICIPALITÉ DE  
 MARKSTAY-WARREN  
 RÉUNION EXTRAORDINAIRE DU CONSEIL  
 ORDRE DU JOUR

le 16 janvier 2025

19 h 00

Markstay-Warren Council Chambers

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7.	Adjournment	



**Cunningham Swan**

LAWYERS

• EST 1894 •

**Tony E. Fleming**  
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**CONFIDENTIAL**

November 25, 2024

**Delivered by email: [kmorris@markstay-warren.ca](mailto:kmorris@markstay-warren.ca)**

Municipality of Markstay-Warren  
c/o Kim Morris, CAO/Clerk  
P.O. Box 79  
21 Main Street South  
Markstay, Ontario  
P0M 2G0

Dear: Mayor and Council:

**RE: Complaint against Francine Berube**  
**Our File No 33233-7 and 33233-8**

Please be advised that our investigation under the Code of Conduct is now complete. We attach the final report herewith and the report should now be circulated to members of the Council. We have provided a copy of the report to the Member and Complainant separately.

This investigation is hereby closed.

Sincerely,

**Cunningham, Swan, Carty, Little & Bonham LLP**

Tony E. Fleming, C.S.  
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P.O. Box 79  
21 Main Street South  
Markstay, Ontario  
P0M 2G0

Dear Mayor and Council:

**RE: Complaint against Francine Berube  
Our File No 33233-7 and 33233-8**

This public report of our investigation is being provided to Council in accordance with Section 223.6(1) of the *Municipal Act*. We note that Section 223.6(3) of the *Municipal Act* requires that Council make the report public. The Clerk should identify on the agenda for the next open session Council meeting that this report will be discussed. Staff should consider whether it is appropriate to place the full report on the agenda in advance of Council deciding how the report should otherwise be made public.

Should Council desire, the Integrity Commissioner is prepared to attend virtually at the open session meeting to present the report and answer any questions from Council.

At the meeting, Council must first receive the report for information. The only decision Council is afforded under the *Municipal Act* is to decide how the report will be made public, and whether to adopt any recommendations made by the Integrity Commissioner. Council does not have the authority to alter the findings of the report, only consider the recommendations.

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The Integrity Commissioner has included only the information in this report that is necessary to understand the findings. In making decisions about what information to include, the Integrity Commissioner is guided by the duties set out in the *Municipal Act*. Members of Council are also reminded that Council has assigned to the Integrity Commissioner the duty to conduct investigations in response to complaints under the Code of Conduct, and that the Integrity Commissioner is bound by the statutory framework to undertake a thorough process in an independent manner. The findings of this report represent the Integrity Commissioner's final decision in this matter.

### **Complaint**

We received two complaints alleging breaches of the Code of Conduct by Councillor Francine Berube (the "Member"). As the complaints dealt with the same incidents and the same member of Council, we combined the results of the investigation into one report.

The complaint alleged that the Member:

- At a Special Council Meeting of March 11, 2024:
  - o Was aggressive in questioning staff about budget items;
  - o Accused the Fire Chief of trying to close a fire station;
  - o Accused the Fire Chief of lying in relation to his annual report;
  - o Stated the Fire Chief should not be making his salary;
  - o Yelled at the Mayor and pointed her finger in the Mayor's face accusing him of not listening and bullying; and
  - o Accused staff of fraudulent practices related to maintenance of municipal equipment and lying to Council.
- At a Regular Council Meeting of March 18, 2024:
  - o Was aggressive in questioning staff;
  - o Suggested that equipment may have been sabotaged by staff; and
  - o Demanded the termination of the Fire Chief, CAO and Mayor.
- Participated at a gathering of residents on April 4, 2024 where residents were making allegations of inappropriate behaviour by staff.

### **Timeline**

- April 15, 2024 complaints received
- April, 2024 preliminary review conducted
- May 9, 2024 complaints sent to Member
- July, 2024 interviews with witnesses
- August, 2024 interviews with witnesses
- September, 2024 interviews with witnesses

We did not receive a written response from the Member after sending a copy of the complaint and requesting a written submission. We followed up a number of times to

request a response as well as to schedule an interview with the Member. The Member did not respond and we had no choice but to proceed without her input after considerable delay in the investigation process.

### **Code of Conduct**

The Code of Conduct sections engaged by these complaints include:

6.1 Members shall:

- (a) treat members of the public, one another, and Staff with respect;
- (b) ensure that their work environment is free from discrimination, Harassment, bullying and intimidation;

...

6.3 Every Member shall conduct themselves with decorum and professionalism at all Council, Committee, Board and other meetings in accordance with the provisions of the applicable Procedure By-law, this code and other applicable law.

...

6.7.1 Members shall not:

- (a) publicly criticize or threaten staff in any way that questions their professional reputation, competence or credibility;

...

- (d) use their authority or influence for the purpose of intimidating, threatening, coercing, commanding, or influencing any Staff member with the intent of interfering with Staff duties.

### **Factual Findings**

We interviewed persons in attendance at the March 11 and 18, 2024 Council meetings. We were not able to interview anyone in attendance at the April 4, 2024 meeting of residents after the official Council sanctioned meeting concluded. The results of the investigation are set out below.

#### **March 11, 2024**

We find that the Member directly questioned the Fire Chief at this meeting without presenting her questions through the Chair. The demeanor of the member was aggressive and the nature of the questions was characterized as hostile by those present. The Member accused the Fire Chief of lying in his annual report. We understand that there was an error in the report that was acknowledged – there was no evidence of lying or any attempt to

mislead Council by the Fire Chief. The Member also accused the Fire Chief of fraud in relation to maintaining certain equipment – there was no evidence that any staff had acted this way.

The Member also accused the Fire Chief of making too much money.

After the resignation of Councillor Turcotte was announced at this meeting, witnesses reported seeing the Member yelling at the Mayor and making accusations about the Mayor not doing something to prevent the resignation and accusing him of bullying.

### **March 18, 2024**

We find that at the open session of Council the Member was again aggressive in how she questioned staff and suggested that equipment may have been sabotaged by staff.

We find that at the closed session of Council on the same day, the Member demanded the termination of the Fire Chief, CAO and Mayor. The Member had drafted termination letters and attempted to present them to Council. This was ruled out of order and the letters were not accepted. The Member accused those she wanted terminated of breaching the *Municipal Act* – with no evidence.

### **April 4, 2024**

We were unable to interview anyone in attendance at this meeting. In the absence of any evidence other than hearsay, we cannot make any findings of fact.

### **Code of Conduct Findings**

Based on the factual findings above, we find that the Member breached the Code of Conduct as follows:

#### **March 11, 2024**

The Member did not treat staff with respect as required by Section 6.1. Accusing staff of lying, stating that they did not deserve their salary and being overtly hostile is a breach of this section. The Member's actions towards the Mayor also breach this section.

In addition, the hostile and aggressive approach of questioning staff at a public meeting is a form of intimidation and appeared to be an attempt to threaten the Fire Chief in relation to their professional duties, in breach of sections 6.1(b) and 6.7.1 (d).

The Member's overall actions at this meeting were not in keeping with the decorum expected of a Council meeting. Her behaviour was characterized as extreme, focusing on blaming others, being aggressive and unprofessional.

Oxford defines "decorum" as "Behaviour in keeping with good taste and propriety." Merriam-Webster defines it as, "Propriety and good taste in conduct or appearance."

In *McConnell v. Ford* an Integrity Commissioner found that even actions done without intent to harm or actions with a commendable motive, can still lack decorum. In this case, a councillor ran through council Chambers to assist his brother in a possible physical altercation. This was considered a breach of the requirement to act with decorum.

In *Councillor Danko Tweet (Re)*, a statement containing the words “ungrateful, self-righteous toddlers” was found to be an ad hominem attack and therefore a breach of decorum (even though the councillor was making the statement to defend local police).

Based on the above examples of decorum, or lack thereof, the actions of the Member clearly fall below this threshold. The Member’s attacks on staff fall below the threshold of decorum expected of a Council meeting. This was a breach of S. 6.3.

### **March 18, 2024**

At the open session the Member breached section 6.1 and 6.7.1 when she accused staff of sabotage.

At the closed session of Council on the same day the Member breached sections 6.1 and 6.7.1 when she attempted to present termination letters to Council for the Fire Chief, CAO and Mayor. This is an extreme attempt to bully and intimidate staff and the Mayor. Bullying is characterized by attempts to dominate others and take advantage of real or perceived power imbalances to impose their will on a situation.

The Member had no evidence of any wrong-doing by staff or the Mayor and had no authority to draft termination letters unilaterally. In fact, the Mayor (or any member of Council) cannot be terminated. Based on the above examples of decorum, the actions of the Member clearly fall below this threshold. The Member’s behaviour was a breach of decorum pursuant to section 6.3.

### **April 4, 2024**

As stated above, we have no evidence about the incidents on this date and as such we cannot make a finding that the Member acted in breach of the Code of Conduct.

### **Recommendations**

We attempted on a number of occasions to engage with the member to obtain her response to the complaints and to interview her as part of the investigation. We received no response to our efforts. Rather than continue to have this process delayed further we proceeded without input from the Member. As a final attempt to obtain input from the member we sent a draft of our report to the Member and asked for comments. No comments were provided and we finalized the report in its current form.



We recommend that Council suspend the remuneration of the Member for 15 days to ensure that staff and the public understand that Council does not condone this type of behaviour.

Sincerely,

**Cunningham, Swan, Carty, Little & Bonham LLP**



Tony E. Fleming, C.S.  
LSO Certified Specialist in Municipal Law  
(Local Government / Land Use Planning)  
Anthony Fleming Professional Corporation

**BY EMAIL**

December 10, 2024

Council for the Town of Markstay-Warren  
P.O. Box 79  
21 Main Street South  
Markstay, ON P0M 2G0

Dear Members of Council for the Town of Markstay-Warren:

**Re: Report – Office of the Ontario Ombudsman**

I have completed my investigation into complaints about meetings held by the Town of Markstay-Warren on November 20, and December 11, 2023. 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. The Town Clerk also indicated that the report would be shared with council and made available at an upcoming meeting in December. As well, in accordance with section 239.2(12) of the *Municipal Act, 2001*, council should pass a resolution stating how it intends to address this report.

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

Yours truly,



Paul Dubé  
Ombudsman of Ontario

CC: Kim Morris, Clerk



## **Ombudsman Report**

**Investigation into meetings held by council  
for the Municipality of Markstay-Warren  
on November 20 and December 11, 2023**

**Paul Dubé  
Ombudsman of Ontario**

**December 2024**

## Complaint

- 1 My Office received two complaints that council for the Municipality of Markstay-Warren (the “Municipality”) held closed meetings on November 20 and December 11, 2023 that did not fit within the cited open meeting exceptions in the *Municipal Act, 2001*<sup>1</sup> (the “Act”). The complaints also alleged that council did not provide sufficient information about the topics to be discussed in its resolutions to proceed into each closed session.
- 2 My investigation determined that the closed session discussions at both meetings fit within the exception for personal matters about an identifiable individual.
- 3 However, my investigation also determined that the Municipality contravened the Act in failing to state by resolution the general nature of the subject matter to be discussed in its closed sessions on November 20 and December 11, 2023.

## Ombudsman jurisdiction

- 4 Under the Act, all meetings of council, local boards, and committees 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 or local board has complied with the Act in closing a meeting to the public. 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 Municipality of Markstay-Warren.
- 7 When investigating closed meeting complaints, we consider whether the open meeting requirements in the Act and the municipality’s procedure by-law have been observed.
- 8 Our Office has investigated hundreds of closed meetings since 2008. 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

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

discussed in closed session, as well as issues related to open meeting procedures. Summaries of the Ombudsman's previous decisions can be found in the digest: [www.ombudsman.on.ca/digest](http://www.ombudsman.on.ca/digest).

- 9 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/have-a-complaint/who-we-oversee](http://www.ombudsman.on.ca/have-a-complaint/who-we-oversee).

## Investigative process

- 10 My Office notified the Municipality of our intent to investigate these complaints on March 19, 2024. We spoke with the Mayor, the Clerk, and the councillors who attended the meetings, except for one who was no longer a councillor at the time of our investigation. We reviewed the Municipality's meeting agendas, open and closed meeting minutes, and related material for both meetings.
- 11 My Office received full co-operation in this matter.

## November 20, 2023 council meeting

- 12 Council met on November 20, 2023 at 7:00 p.m. for a regular meeting. During the public enquiries portion of the meeting, an individual raised concerns related to their time as a volunteer firefighter and a recent banquet for volunteer firefighters.
- 13 Several other unrelated topics were also discussed in open session before council resolved to move into closed session at 8:35 p.m. Council did not provide any information about the topic to be discussed before moving to closed session, and the minutes do not indicate which open meeting exception council relied on.
- 14 The Clerk told our Office that the closed session was impromptu, and council relied on the exception for personal matters about an identifiable individual to discuss the issue raised in open session regarding the banquet for volunteer firefighters.

- 15 In closed session, council discussed how it could assist with this issue. Council discussed in detail the circumstances of the individual who raised the issue, including personal information that was not raised in open session. In its discussion, council also talked about the conduct of a relevant municipal employee.
- 16 Following the discussion, it was determined that the Clerk would draft an email to the individual to try to further assist. Council returned to open session and adjourned the meeting.

## Analysis

### Exception for personal matters about an identifiable individual, s. 239(2)(b)

- 17 Council relied on the exception for personal matters about an identifiable individual to discuss concerns related to a banquet for volunteer firefighters in closed session.
- 18 This exception applies to discussions that reveal personal information about an identifiable individual. To qualify as personal information, my Office has determined that it must be reasonable to expect that an individual could be identified if the information were disclosed publicly.<sup>2</sup> The information must also qualify as personal; that is, not as professional information or information in a business capacity.<sup>3</sup> However, information may qualify as personal if it involves scrutiny or opinions of an individual's conduct.<sup>4</sup> My Office has found that information that has already been publicly discussed or is generally known to the public does not come within the exception for personal matters.<sup>5</sup>
- 19 In this case, council discussed two individuals by name in response to issues raised about the banquet during the open portion of the meeting. Because these individuals were identified by name, they would be identifiable to the public had the discussion taken place in open session.

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<sup>2</sup> *Ontario (Ministry of Correctional Services) v Goodis* [2008], OJ No 289 at para 69.

<sup>3</sup> *Amherstburg (Town of) (Re)*, 2022 ONOMBUD 11, online: <<https://canlii.ca/t/jr5rc>>.

<sup>4</sup> *South Huron (Municipality of) (Re)*, 2015 ONOMBUD 6, online: <<https://canlii.ca/t/gtp80>>.

<sup>5</sup> Letter from the Ontario Ombudsman to Town of Midland (4 February 2014), online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/municipal-meetings/2014/town-of-midland>>.

- 20 Council's closed session discussion included personal information about both individuals. Council considered the personal circumstances of the individual who raised their concerns, including detailed personal information that was not disclosed in open session. Council also scrutinized a municipal employee's conduct.
- 21 Consequently, council's discussion fit within the exception for personal matters about an identifiable individual.

## Resolution to go into closed session

- 22 Before moving into a closed session, section 239(4)(a) of the Act requires a council, local board, or committee to state by resolution in open session that a closed meeting will be held and the general nature of the matter to be considered at the closed meeting.
- 23 The Court of Appeal for Ontario stated in *Farber v. Kingston (City)* that a resolution to go into a closed meeting 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 proceeding into closed session.<sup>6</sup> My Office has determined that this means that municipalities are required to add a "level of informative detail" to the resolution to close a session to the public.<sup>7</sup>
- 24 In this case, council did not provide any information about the matter to be discussed in closed session or the closed meeting exception it relied on. Council could have provided additional information without undermining its reason for going into closed session.
- 25 Consequently, council contravened section 239(4)(a) of the Act at its November 20, 2023 meeting.

## December 11, 2023 council meeting

- 26 Council met again on December 11, 2023 at 7:00 p.m. for a regular council meeting. Several unrelated items were discussed before council moved into closed session at 8:05 p.m. In resolving to move into closed session, council did not provide any information about its intended discussion.

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<sup>6</sup> *Farber v. Kingston (City)*, 2007 ONCA 173 at para 21, online: <<https://canlii.ca/t/1qtz/>>.

<sup>7</sup> *Brockville (City of)*, 2016 ONOMBUD 12, at para 45, online: <<https://canlii.ca/t/h2ssr/>>.

- 27** In closed session, council discussed three topics: the potential sale and purchase of fire trucks, a fire department modernization plan, and a report from the municipality's integrity commissioner regarding conduct by the Mayor. The Clerk advised our Office that council relied on the exceptions for personal matters about an identifiable individual, information belonging to the municipality that has monetary or potential monetary value, and an ongoing investigation by an appointed investigator to discuss these respective topics in closed session.
- 28** Our investigation indicates the Municipality's Fire Chief and a public works manager were present for the first two of these discussions.

### Sale of fire trucks and fire department modernization plan

- 29** Council first discussed the potential sale of two fire trucks and the purchase of a replacement truck. At the time of this discussion, two fire trucks were listed for sale online. Several councillors scrutinized this decision and expressed opinions about the conduct and job performance of an individual related to this decision. The attending Fire Chief provided a rationale for selling the two fire trucks, which included a brief discussion of the department's equipment more generally.
- 30** Council's discussion about the fire trucks led to a larger discussion about whether to move forward with the fire department modernization plan that had been approved by the previous council. The modernization plan proposed closing multiple fire stations and multiple public works facilities to build one central fire station in Markstay, which would also house a consolidated public works department. A decision to reverse course with respect to either the fire stations or public works consolidation would significantly impact planning for the other.
- 31** The fire department modernization plan affected many aspects of firefighting in the Municipality, including whether existing fire stations would have the required space to house the trucks that had been put up for sale. At the time of the meeting, the Municipality had already taken steps to implement the modernization plan, and the Clerk told my Office that the municipality had already reached agreements that could be impacted by council's decision at this meeting.
- 32** In the closed session, council discussed a report that was made public in December of 2021. This report was drafted for the Municipality by a private company retained by the previous council and assessed logistics and specific projected costs associated with the fire department modernization plan. Several



councillors raised concerns with the report and its accuracy, most notably regarding the specific cost projections detailed in the report.

- 33** Additionally, during the closed session, two individuals were identified by name and scrutinized for their role in developing the fire department modernization plan and for perceived shortcomings of the December 2021 report. These opinions were expressed throughout the discussion as council determined how it wished to proceed with the fire trucks and the modernization of the fire department more generally.
- 34** Once in open session, council voted to re-evaluate the fire department modernization plan, retrofit the existing fire stations rather than close them to build a consolidated fire station, and create a separate plan for consolidation of multiple existing public works buildings. Council also voted to proceed with the sale of one fire truck and purchase a replacement truck.

### Integrity commissioner report

- 35** Last, council discussed a report from the municipality's integrity commissioner regarding the conduct of the Mayor in his prior role as councillor. The report set out the integrity commissioner's findings on a number of alleged hostile comments made by the Mayor towards an anonymous complainant.
- 36** In the closed session, council reviewed the integrity commissioner's findings, discussed the conduct that was the subject of the investigation, and briefly considered what sanction it could impose. In considering potential sanctions, councillors expressed opinions about the conduct of both the Mayor and the complainant, who was identified by name during the discussion. In particular, council critiqued the conduct of the complainant and their contributions to the underlying circumstances detailed in the report.
- 37** Council came to a consensus that the report, along with a further discussion and decision regarding sanctions, would be addressed publicly at council's subsequent meeting. At its meeting on January 15, 2024, the report was made publicly available and council discussed and arrived at a decision regarding sanctions.

## Analysis

### Sale of fire trucks

#### *Exception for personal matters about an identifiable individual, s. 239(2)(b)*

- 38 Council relied on the exception for personal matters about an identifiable individual to discuss the sale of fire trucks in closed session.
- 39 As previously stated, the exception for personal matters about an identifiable individual allows closed session discussions that reveal personal information about an identifiable individual.
- 40 In this case, council discussed the conduct and job performance of an identified municipal employee, which impacted whether to proceed with the sale of two fire trucks, the purchase of a replacement truck, and the fire department equipment more generally.
- 41 This discussion therefore contained scrutiny or opinions about an identifiable individual. This qualifies as personal information and fits within the exception.
- 42 In addition to its discussion of an identifiable individual, council also discussed logistics of whether to keep or sell two fire trucks. This does not itself fit within the exception for personal matters. However, in certain circumstances it may be unreasonable to expect council to parse its meetings between open and closed sessions. The Ontario Divisional Court has found this to be the case where it would “detract from free, open and uninterrupted discussion.”<sup>8</sup> My Office has found it unrealistic to parse a discussion between open and closed session where the topics of the discussion are significantly entwined.<sup>9</sup>
- 43 In this case, the personal information was central to council’s discussion of how to proceed with the fire trucks and was a very significant factor in council’s decision-making. The discussion was also fluid and intertwined.
- 44 Accordingly, it was unreasonable for council to have parsed its discussion, and the totality of the discussion fits within the exception for personal matters.

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<sup>8</sup> *St. Catharines (City) v IPCO*, 2011 ONSC 2346 at para 42.

<sup>9</sup> Letter from the Ontario Ombudsman to Town of South Frontenac (29 September 2021), online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/municipal-meetings/2021/township-of-south-frontenac>>.

## Fire department modernization plan

*Exception for information belonging to the municipality, s. 239(2)(j)*

- 45** Council relied on the exception for information belonging to the municipality to discuss the fire department modernization plan at its meeting on December 11, 2023.
- 46** For this exception to apply, my Office has determined that a municipality must demonstrate the discussion was about:<sup>10</sup>
1. A trade secret, or financial, commercial, scientific or technical information;
  2. that belongs to the municipality or local board; and
  3. has monetary value or potential value.
- 47** The Clerk told my Office that the information discussed was either a trade secret or financial information, and that there would be financial repercussions if the topic were discussed in open session because the Municipality had entered into agreements related to the fire department modernization plan.
- 48** In applying these criteria, my Office has determined that financial information is information relating to the use or distribution of money and must refer to specific data.<sup>11</sup> My Office has also found that specific cost projections meet the definition of “financial information.”<sup>12</sup> Because council discussed the specific cost projections detailed in the report, this information constitutes financial information.
- 49** My Office has also determined that reports commissioned by and provided to a municipality indicate sufficient ownership of the information contained in the reports.<sup>13</sup> As council retained a private company and commissioned the creation of a report about its fire department modernization plan, the information contained in it and discussed by council belongs to the Municipality.
- 50** With respect to the final prong of the test, my Office has found that a trade secret or financial information must have an intrinsic value, which the organization would be deprived of should the record be disclosed.<sup>14</sup> At the time of council’s discussion on December 11, 2023, the information contained in the report had

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<sup>10</sup> Hamilton (City of) (Re), 2019 ONOMBUD 3, online: <<https://canlii.ca/t/j2b49>>.

<sup>11</sup> *Ibid.*

<sup>12</sup> Leeds and the Thousand Islands (Township of) (Re), 2022 ONOMBUD 5, online: <<https://canlii.ca/t/jnkk9>>.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

already been publicly available since 2021. Because the information had already been publicly disclosed, the Municipality would not have been deprived of its monetary value if the discussion occurred in open session.

- 51** Consequently, the discussion does not fit within the exception for information belonging to the municipality.

*Exception for personal matters about an identifiable individual, s. 239(2)(b)*

- 52** The Clerk and one councillor interviewed suggested that the discussion about the fire department modernization plan could also fit within the exception for personal matters about an identifiable individual. As previously stated, this exception allows for closed session discussions that reveal personal information about an identifiable individual.
- 53** My Office was told that the bulk of council's discussion of the fire department modernization plan revolved around the scrutiny of two individuals identified by name. As these discussions involved council's scrutiny of, and opinions about, two identifiable individuals' conduct and performance, they fit within the exception for personal matters about an identifiable individual.
- 54** Council also discussed whether it would move forward with the fire department modernization plan and the logistics involved in the various options available. This does not itself fit within the exception for personal matters. However, as previously discussed, it is unreasonable to expect council to parse its meetings between open and closed sessions where it would detract from free, open, uninterrupted discussion,<sup>15</sup> and where the topics of discussion are significantly entwined.<sup>16</sup>
- 55** Similar to council's discussion regarding the sale of fire trucks, the personal information in this case was the centre of council's discussion of the topic, and significantly impacted council's decision about whether or not to proceed with the fire department modernization plan. Council's discussions about the personal matters and the modernization plan lacked distinct portions, and were fluid and intertwined.

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<sup>15</sup> *Supra* note 10.

<sup>16</sup> *Supra* note 11.

- 56 Accordingly, it would be unreasonable to expect council to have parsed its discussion, and the totality of the discussion fits within the exception for personal matters.

## Integrity commissioner report

### *Exception for ongoing investigations by an ombudsman or appointed investigator, s. 239(3)(b)*

- 57 My Office was told by the Clerk that council relied on the exception for ongoing investigations by an ombudsman or appointed investigator to discuss a recently completed report by the Municipality's integrity commissioner in closed session.
- 58 This exception does not refer to investigations conducted by an integrity commissioner, but rather the Ontario Ombudsman, or an appointed municipal ombudsman or closed meeting investigator.<sup>17</sup> This exception is also intended to apply to ongoing, rather than completed, investigations.<sup>18</sup>
- 59 Consequently, the discussion does not fit within this exception.

### *Exception for personal matters about an identifiable individual, s. 239(2)(b)*

- 60 My Office also considered whether the discussion about the integrity commissioner's completed report would fit within any other open meeting exception. The Clerk and several councillors suggested the discussion would fit under the exception for personal matters about an identifiable individual.
- 61 Typically, discussions of integrity commissioner reports are conducted in open session. Section 223.6(3) of the Act requires that integrity commissioner reports be published by a municipality. The report in this instance was later publicly shared at council's January 15, 2024 meeting.
- 62 However, there are instances where discussions related to integrity commissioner reports may be appropriate for *in camera* consideration. For example, in a report to the Municipality of Temagami, my Office previously reviewed a closed session discussion regarding multiple integrity commissioner reports which detailed harassing conduct involving municipal employees and

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<sup>17</sup> Letter from the Ontario Ombudsman to Hamilton Waterfront Trust Board of Trustees (5 June 2023), online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/municipal-meetings/2023/city-of-hamilton-1>>.

<sup>18</sup> *Ibid.*

members of the public.<sup>19</sup> My Office found that council's discussion contained personal information beyond the individual's professional roles that fit within the exception.

- 63** My Office has also found that discussions of third-party investigative reports, where employee conduct is discussed and scrutinized by council, can constitute personal information that fits within the exception.<sup>20</sup>
- 64** In this case, council discussed the underlying conduct and specific situations detailed in the report. This discussion included exchanges that were personal in nature, acrimonious, and critical of the complainant's conduct. Council contemplated appropriate sanctions for the Mayor, and expressed opinions about his conduct, as well as the conduct of the complainant. Council identified the anonymous complainant in the report by name during its discussion. Lastly, council's discussion of potential sanctions to impose was centred on opinions expressed by several councillors about the conduct of identifiable individuals.
- 65** Accordingly, council's discussion fit within the exception for personal matters about an identifiable individual.

#### *Resolution to go into closed session*

- 66** As previously stated, section 239(4)(a) of the Act requires that a municipality state by resolution the fact of the holding of a closed meeting and the general nature of the matter to be discussed before proceeding into a closed meeting.
- 67** In this case, council's resolution to proceed *in camera* did not include any information about the matters to be discussed. Council could have provided additional information without undermining its reasons for going into closed session.
- 68** Consequently, council contravened section 239(4)(a) of the Act at its December 11, 2023 meeting.

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<sup>19</sup> Temagami (Municipality of) (Re), 2021 ONOMBUD 3, online: <<https://canlii.ca/t/jcxs0>>.

<sup>20</sup> Greater Sudbury (City of) (Re), 2017 ONOMBUD 2, online: <<https://canlii.ca/t/h4rwp>>; Amherstburg (Town of), 2015 ONOMBUD 33, online: <<https://canlii.ca/t/gtp7d>>.

## Recommendations

- 69 I make the following recommendations to assist the Municipality of Markstay-Warren in fulfilling its obligations under the *Municipal Act, 2001*, and enhancing the transparency of its meetings:

### Recommendation 1

All members of council for the Municipality of Markstay-Warren should be vigilant in adhering to their individual and collective obligation to ensure that the municipality complies with its responsibilities under the *Municipal Act, 2001* and its procedural by-law.

### Recommendation 2

Council for the Municipality of Markstay-Warren should ensure that all 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.

## Report

- 70 Council for the Municipality of Markstay-Warren was given the opportunity to review a preliminary version of this report and provide comments to my Office. No comments were received.
- 71 This report will be published on my Office's website and should also be made public by the Municipality of Markstay-Warren. In accordance with section 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

**TO:** Council  
**FOR:** Decision  
**DEPARTMENT:** Administration  
**DATE:** January 6<sup>th</sup>, 2024

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**SUBJECT :** Outdoor Rink study with Guette Ta Glace project (Watch Your Ice)

### **Background**

The winter of 2023-2024 was a challenge for outdoor activities and infrastructure maintenance. While the hope is for more wintry temperatures going forward, manifestations of climate change will be increasingly present and will bring their own set of challenges.

Wilfrid-Laurier University in partnership with the Conseil régional de l'environnement Chaudière-Appalaches (Québec), launched a new two-year project to mobilize and inform communities in municipalities with fewer than 5,000 inhabitants about this issue.

Five Franco-Ontarian municipalities were invited to participate in this project, which will begin in winter 2024-2025. Markstay-Warren was chosen as one of the five municipalities. The participating municipalities will join 25 municipalities in the Chaudière-Appalaches region that have already shown interest.

### **Highlights of the project**

- Collect and analyze of data on the condition of outdoor rinks and the impacts of climate change
- Identify accessible and effective actions to promote adaptation to climate change in municipalities
- Facilitate the management of skating rinks with citizens using a free app that can be connected to your existing communication media (e.g. website). This could save time managing rink status calls
- Raise awareness among all stakeholders (citizens, municipal staff and elected officials) to think about the future of winter recreation in a context of climate change
- Share best practices in ice rink maintenance through training and a community of practice

### **Resolution**

**ATTENDU QUE** le Conseil régional de l'environnement Chaudière-Appalaches (CRECA) a





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élaboré et mis en place le projet *Guette ta glace*, qui vise à :

- Accompagner les municipalités dans la prise de données sur l'état des patinoires extérieures et les conséquences sur l'accès aux loisirs reliés aux patinoires;
- Soutenir et diffuser les meilleures pratiques d'entretien de la glace;
- Faciliter la communication et la compréhension en lien avec les changements climatiques pour les citoyens et citoyennes;
- Fournir de l'expertise aux municipalités souhaitant aller plus loin dans l'adaptation aux changements climatiques.

**ATTENDU QUE** le Conseil régional de l'environnement Chaudière-Appalaches (CRECA) fournisse à la municipalité les outils suivants, sans frais (gratuitement) :

- L'accessibilité à un responsable du projet
- L'abonnement à l'application de communication pendant les hivers 2024-2025 et 2025-2026
- Un événement de lancement
- Un gala de fin d'événement
- Une bannière de participation au projet
- Un rapport (portrait) de l'état de la patinoire et celui des autres municipalités participantes

**ATTENDU QUE** la Municipalité de Markstay-Warren s'engage à participer au projet *Guette ta glace* par :

- L'utilisation de l'outil de communication entre la municipalité et les citoyens faisant état de la ou des patinoire(s) et ce, de façon quotidienne (minimum 1 fois par jour pour indiquer l'état de la patinoire) pour les hivers 2024-2025 et 2025-2026 (incluant la connexion à leurs médias actuels de communication si souhaité)
- Rendre disponible un membre du personnel pour la formation sur l'outil de communication
- La participation à la promotion du projet avec leurs outils de communication existants (ex. page Web de la municipalité, Facebook, etc.) pour favoriser la participation de sa population
- La complétion de questionnaires et suivis en cours et à la fin du projet pour faire état des retombées de celui-ci



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**ATTENDU QUE** la Municipalité de Markstay-Warren souhaite participer à la hauteur de sa capacité aux activités :

- De partage de bonnes pratiques d'entretien de patinoire (communauté de pratique)
- Réseautage avec les autres municipalités

IL EST RÉSOLU QUE le Conseil autorise La Directrice Générale, Kim Morris, à signer au nom de la Municipalité de Markstay-Warren tous les documents relatifs au projet présentés dans le cadre du projet *Guette ta glace*.

**Lease Agreement Between THE COPORATION OF THE MUNICIPALITY OF  
MARKSTAY-WARREN and 2548471 ONTARIO INC.**

THIS Agreement MADE in duplicate this 13th day of January 2025

BETWEEN:

THE COPORATION OF THE MUNICIPALITY OF MARKSTAY-WARREN  
Hereinafter called "The Lessor" of the First Part

And

**2548471 ONTARIO INC.**  
PHARMACIE MARKSTAY-WARREN PHARMACY

Hereinafter called the "Lessee" of the SECOND PART;

WITNESSETH that in consideration of the rents and covenants hereinafter contained on the part of the Lessee, the Lessor hereby leases unto the Lessee the Office space # 6 located at 39 Lafontaine St., Warren, ON also known as the Markstay-Warren Multi-Use Facility.

1. TO HOLD THE PREMISES for and during the term of ten (10) years, to be computed from the 1<sup>st</sup> day of September 2025 and from then forth next ensuring and to be fully completed and ended on the 31<sup>st</sup> day of August 2035.
2. RENT: The Lessee hereby agrees to pay to the Lessor the Monthly Rent of \$1 500 per month which includes all utilities minus Internet services. A Breakdown of monthly and yearly rent increases are documented in **Schedule B.**
3. The Lessee covenants with the Lessor:
  - (a) To pay rent;
  - (b) To provide the Lessor with such insurance as the Lessor may from time require in respect to the Lessee's operations and particularly public liability and property damage insurance;
  - (c) To keep the premises and every part thereof in a clean and tidy condition and not to permit waste paper, garbage, ashes or waste or objectionable material to accumulate thereon;
  - (d) To permit the Lessor at all reasonable times to enter the premises to inspect the condition thereof and where such inspection reveals that repairs are necessary to make such repairs in good and workmanlike manner within three calendar months from the date of delivery of notice from the Lessor requiring such repair;
  - (e) At its own cost and expense to comply with the requirements of every applicable by-law, statute, law or ordinance, and with respect to the condition, equipment, maintenance, use or occupation of the premises;
  - (f) To indemnify the Lessor from any and all liabilities, damages, costs, claims, suits, or actions growing out of:
    - i) Any breach, violation, or non-performance of any covenant or proviso hereof on the part of the Lessee;
    - ii) Any damage to property occasioned by the use and occupation of

the premises, or

- iii) Any injury to a person or persons including death resulting at any time there from, occurring in or about the premises.

Such indemnification in respect of any such breach etc., as hereinafter stated shall survive any termination of this Lease, anything in this Lease to the contrary notwithstanding.

4. The Lessee agrees that the operation of the premises occupied by it shall be used for the operation of a pharmacy and pharmacy related services.
5. Subject to the rental payments herein provided the Lessor covenants with the Lessee:
  - (a) For quiet enjoyment;
  - (b) Within reason and advanced approval by the Lessor, to permit the Lessee to make any alterations or additions to the premises which the Lessee may deem necessary for the purposes of the operations of the Lessee;
  - (c) To repair the roof, outside walls, foundations, plumbing & electrical maintenance, floors (excluding non-permanent floor coverings), and all other structural defects or weaknesses, unless the need of repair is caused by the negligence of the Lessee, its agents, employees or sub-lessees;
  - (d) To make changes as required to comply with the Fire Code.
  - (e) To insure, and keep insured during the whole of the term the premises against loss or damage by fire and other such standard supplementary perils as may be presently on the policy held by the Lessor at the time of this Agreement;
6. The Tenant shall have the option, at its sole discretion to terminate this Lease on 6 months written notice to the Landlord, after which this Lease shall terminate and be of no further effect and the Parties shall be released from all obligations there under.
7. If the Lessee shall, prior to or during the term of this Lease, affix or erect on the said premises any fixtures, then such fixtures shall belong to the Lessor to be removed by the Lessee with consent to the Lessor, provided any damage to the premises caused by the removal shall be repaired by the Lessee.
8. Provided that should the Lessee remain in possession of the premises after the termination of the term hereby created without other special agreement, it shall be as a monthly tenant and subject in other respects to the term of this Lease.
9. Provided that the Lessor shall be entitled to re-entry on the non-payment in excess of 60 days of rent or non-performance of the covenants herein contained by the Lessee.
10. Notwithstanding anything herein contained the Lessor and the Lessee must reach mutual agreement at any time during the continuance of this Lease in order to dissolve this Lease.
11. And it is hereby declared and agreed that these presents and everything herein contained shall respectively ensure to the benefit of, and be binding upon, the parties hereto, their heirs, executors, administrators, successors and assigns respectively.

- 12. Provided the Tenant is not at any time in default of any covenants within the Lease, the Tenant shall be entitled to renew this Lease for an additional term of 10 years (120 months) (each) on written notice to the Landlord given not less than 6 months prior to the expiry of the current term at a rental rate to be negotiated.
- 13. That either Party may terminate this agreement in writing with a minimum notice of 60 days.
- 14. Fixturing Period

The Tenant shall have access to the rentable area for leasehold improvements in advance of the lease period commencing on January 1st, 2026. Therefore, the Tenant will have access to the space as of September 1, 2025 at no cost.

- 15. Schedules

The Schedules attached hereto shall form an integral part of this Agreement to Lease and consist of:  
 Schedule "A" - Floorplan & Schedule "B" - Rent Schedule

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals this 13th day of January 2025.

SIGNED, SEALED AND DELIVERED

THE COPORATION OF THE MUNICIPALITY OF MARKSTAY-WARREN

PER: \_\_\_\_\_

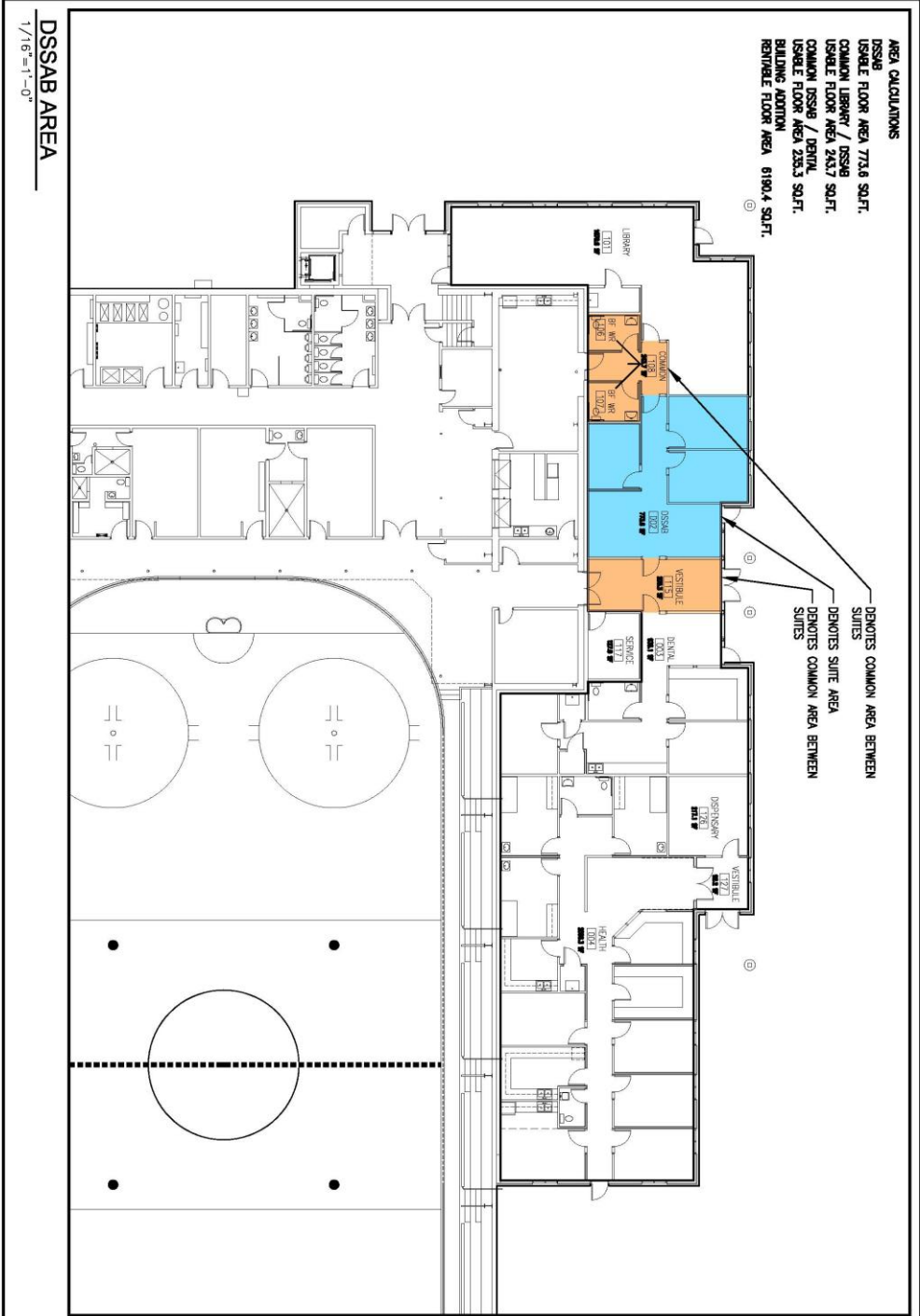
Mayor

\_\_\_\_\_  
 Clerk

2548471 ONTARIO INC.

PER: \_\_\_\_\_

Hazem Sharaf



**AREA CALCULATIONS**  
 DSSAB  
 USABLE FLOOR AREA 773.6 SQ.FT.  
 COMMON LIBRARY / DSSAB  
 USABLE FLOOR AREA 243.7 SQ.FT.  
 COMMON DSSAB / DENTAL  
 USABLE FLOOR AREA 235.3 SQ.FT.  
 BUILDING ADDITION  
 REMOVABLE FLOOR AREA 6190.4 SQ.FT.

① DENOTES COMMON AREA BETWEEN SUITES  
 ② DENOTES SUITE AREA  
 ③ DENOTES COMMON AREA BETWEEN SUITES

**DSSAB AREA**  
 1/16"=1'-0"

<b>SK-1.2</b> TMM/201004 15/08/14 14/08/11	<b>MARKSTAY-WARREN</b> MULTI-USE FACILITY WARREN, ONTARIO	<b>Perry + Perry</b> ARCHITECTS Inc. 174 Larch Street, Suite 201 Sudbury, Ontario P3E 1C6 (705) 688-5145 fax (705) 688-0438
	<b>DSSAB AREA DRAWING</b>	

**SCHEDULE B**  
**RENTAL INCREASES (3% per year)**

YEAR	YEARLY LEASE	MONTHLY LEASE
2026	\$18,000	\$1,500
2027	\$18,360	\$1,530
2028	\$18,727.20	\$1,560.60
20229	\$19,101.74	\$1,591.81
2030	\$19,438.78	\$1,619.90
2031	\$19,873.45	\$1,656.12
2032	\$20,270.92	\$1,689.24
2033	\$20,676.34	\$1,723.03
2034	\$21,089.86	\$1,757.49
2035	\$21,511.66	\$1,792.64

**THE CORPORATION OF THE MUNICIPALITY OF  
MARKSTAY-WARREN**

**BY-LAW 2025-01**

**Being a by-law to enter into a lease agreement with the  
Pharmacie Markstay-Warren Pharmacy**

**WHEREAS** Council wishes to enter into an agreement for the leasing of the office space 6, located at 39 Lafontaine St, Warren, Ontario

**NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE  
MUNICIPALITY OF MARKSTAY-WARREN HEREBY ENACTS AS FOLLOWS:**

1. That the Mayor and Clerk be authorized to execute on behalf of the Municipality the lease agreement between the Municipality of Markstay-Warren and the **Pharmacie Markstay-Warren Pharmacy**.
2. That the said agreement attached hereto as Schedule "A" shall form part of this by-law.
3. That all other by-laws or leases inconsistent with this by-law and lease are hereby repealed.
4. That this by-law shall come into force on September 1, 2025.

**READ A FIRST, SECOND AND  
THIRD TIME AND FINALLY PASSED  
THIS 16<sup>th</sup> DAY OF JANUARY 2025**

\_\_\_\_\_  
**MAYOR**

\_\_\_\_\_  
**CLERK**



**THE CORPORATION OF THE MUNICIPALITY OF  
MARKSTAY-WARREN**

**BY-LAW 2025-01**

**Being a by-law to appoint a Treasurer/Deputy Clerk**

**WHEREAS** Council approved the appointment of a Treasurer/Deputy Clerk;

**AND WHEREAS** Section 286(1) of the Municipal Act, S.O. 2001, Chapter M.25, as amended, stipulates that a municipality shall appoint a treasurer who is responsible for handling all of the financial affairs of the municipality on behalf of and in the manner directed by the council of the municipality;

**NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE MUNICIPALITY OF MARKSTAY-WARREN HEREBY ENACTS AS FOLLOWS:**

1. That \_\_\_\_\_ is hereby appointed as Treasurer/Deputy Clerk as of \_\_\_\_\_, 2025.
2. That all other by-laws inconsistent with this by-law are hereby repealed.
3. That this by-law shall come into force and take effect immediately upon the final passing thereof.

**READ A FIRST, SECOND AND THIRD**

**TIME AND FINALLY PASSED THIS**

**16<sup>th</sup> DAY OF JANUARY 2025.**

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)  
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\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CAO/CLERK