



**Cunningham Swan**

LAWYERS

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**CONFIDENTIAL**

April 29, 2025

**SENT BY EMAIL TO: TDafoe@stratford.ca**

Mayor and Members of Council  
c/o Tatiana Dafoe, City Clerk  
City of Stratford  
1 Wellington Street  
P.O. Box 818  
Stratford, ON N5A 6W1

Dear Mayor and Members of Council:

**RE: Closed Meeting Investigation  
Our File No.: 36684-9**

This public report of our investigation is being provided to Council in accordance with Section 239.2(1) of the *Municipal Act*. We note that Section 239.2(11) 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 Closed Meeting Investigator is prepared to attend 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. Council does not have the authority to alter the findings of the report, only consider the recommendations. Per section 239.2 (12), if the report contains a finding that all or part of a meeting was held in closed session contrary to the *Act*, then Council is required to pass a resolution stating how it intends to address the recommendations in the report.

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

## Overview

A closed meeting complaint was received by Stratford. The complaint seeks to confirm that all closed meetings between May 31, 2023, and September 9, 2024, were in compliance with closed meeting rules.

### *Methodology*

In Ontario, meetings of municipalities are generally required to be open to the public. However, the *Municipal Act*, recognizes that, in certain circumstances, it may not be appropriate to hold a meeting in the open. Therefore, the *Act* provides for certain exceptions which permit meetings to be held in closed session.

Our office has previously released two reports into investigations regarding closed meetings in Stratford. Each of those reports addressed broad complaints against numerous meetings over the course of several years. The reports provided an in-depth review of the closed meeting requirements, and the criteria we use in reviewing compliance with said requirements. Broadly speaking, those criteria are as follows

- The meeting must begin in open session, and a motion must be passed, in open session, moving Council into closed session;
- The motion to move into closed session must provide a brief description of the subject matter to be discussed, and cite the exceptions relied upon to hold the meeting in closed;
- The subject matter of the meeting must actually remain within the cited exception;
- Votes may only be held in closed session where they are procedural in nature or provide instructions to staff, and where they concern matters which fall within a closed meeting exception. Council cannot make final, substantive decisions in closed.

We have reviewed the minutes from each closed session in question. Many of the meetings had several distinct agenda items discussed in closed; these were evaluated separately.

### *Summary*

Our review found very few violations of any closed meeting rules. By and large, it is clear that staff and Council have effectively implemented many of our recommendations, adjusted their processes, and are alive to the issues noted in our previous reports. There were many instances in the minutes of staff reminding Council of the parameters of the closed session. It is clear that these efforts were largely successful.

May 31, 2023

The motion to move into closed session read as follows:

#### **1.0 Adjournment into In-camera Session**

Motion by Councillor Hunter and Councillor Nijjar

**THAT the meeting adjourn to an In-camera Session to discuss:**

**4.1 Corporate Leadership Team Appointment – Personal matters about an identifiable individual, including municipal or local board employees (section 239.(2)(b)).**

**4.2 Short Term Rental Accommodation Legal Advice - Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)).**

In our opinion, this motion complied with the closed meeting requirements in the *Municipal Act*, as it cited the relevant exemptions, and provided a short description of each item to be discussed.

4.1 Council considered a hiring matter. Only personal information of the candidate was discussed in closed session, and no vote was taken. This matter was properly held in closed session.

4.2 Council discussed matters concerning short term rental accommodations, and in particular received legal advice on this matter. Staff was then provided instructions based on the legal advice received. This matter was properly within closed session.

July 10, 2023

The motion to move into closed session read as follows:

#### **1.0 Adjournment into In-camera Session**

Motion by Councillor Beatty and Councillor Nijjar

**THAT the meeting adjourn to an In-camera Session to discuss:**

**3.1 New City Business Park Update and Information Regarding Potential Future Employment Land Acquisitions - Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years).**

**Carried**

In our opinion, this motion complied with the closed meeting requirements in the *Municipal Act*, as it cited the relevant exemptions, and provided a short description of each item to be discussed.

3.1 was a lengthy discussion concerning the potential for expanding the City-owned business park. This began with a discussion of several specific properties identified by City staff for potential acquisition; it then continued into a discussion of the potential uses for these lands, in the context of a future business park.

In our opinion, this discussion was properly in closed session. While the discussion did not focus solely on acquiring land and some individual comments may have drifted too far from the core closed session topic, it was clear that the purpose of discussing a potential future business park was to provide context in which to consider the purchase of properties – how they would be used, how they fit into a larger plan, etc.

However, while the discussion was appropriate in closed session, the votes passed were not. Council voted on a motion which contained four instructions. Two of these – accepting the report for information and instructions to continue negotiating – were properly in closed session. However, council also provided instructions to begin issuing tenders for the new park, and to coordinate activities to develop the new park. These do not reasonably relate to any of the closed session exemptions and should not have been voted on.

The distinction here has to do with the difference between the discussion Council had about purchasing the land, and the votes Council took on using the land.

“Are we interested in buying this land?” is a question which naturally raises others, including “why do we want it?” In that context, discussing the potential use for land is permissible as part of the discussion on whether to acquire it. Council will, after all, need to consider factors such as suitability of the land for its planned uses.

The *Municipal Act* permits a vote to be held in closed session only where the subject matter of the vote can be discussed in closed. Negotiation instructions pertain to acquiring land. Instructions to start putting into place Council’s plans for the land are no longer about the question “do we buy the land?”, but are now about the question “what do we do with the land?”.

Council can only vote on something in closed session if that same item could itself be the subject of a closed session. Had Council held a closed session solely to discuss issuing

tenders and beginning to develop the new business park, absent anything else, it would not have fallen within a closed session exception. Accordingly, it could not have been voted on in closed.

July 24, 2023

The motion to move into closed session read as follows:

**THAT the meeting adjourns to an In-camera Session to discuss:**

**4.1 Litigation Update – 7 and 9 Cobourg Street Encroachment - Litigation or potential litigation, including matters before administrative tribunals affecting the municipality or local board (section 239.(2)(e)) and Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)).**

**4.2 Ad-Hoc Grand Trunk Renewal Committee – Applications for Chair - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)). Carried**

In our opinion, this motion complied with the closed meeting requirements in the *Municipal Act*, as it cited the relevant exemptions, and provided a short description of each item to be discussed.

4.1 was a discussion of the settlement of ongoing litigation. Council received updates and voted on instructions for the negotiation of a settlement. This matter was properly in closed session.

4.2 Council discussed potential appointments to a committee. Only personal information was discussed, and the only vote held was to receive the applications for information. This matter was properly discussed in closed session.

August 14, 2023

The motion to move into closed session read as follows:

**4.1 Proposed Disposition of Municipally Owned Land for Industrial Purposes - Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years).**

**5.1 Downtown Stratford Business Improvement Area Board of Management Application - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)). Carried**

In our opinion, this motion complied with the closed meeting requirements in the *Municipal Act*, as it cited the relevant exemptions, and provided a short description of each item to be discussed.

4.1 was a discussion of the potential sale of City owned land. The only votes held were to instruct staff, accept the report for information, and confirm that any deal is contingent on a by-law being passed. This matter was properly discussed in closed session.

5.1 was a discussion of a potential appointment to a board of directors. Only personal information was discussed, and no votes were held. This matter was properly discussed in closed session.

September 11, 2023

The motion to move into closed session read as follows:

**4.1 Application for Festival Hydro Inc. Board of Directors - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)).**

**Carried**

In our opinion, this motion complied with the closed meeting requirements in the *Municipal Act*, as it cited the relevant exemptions, and provided a short description of each item to be discussed.

4.1 was a discussion of a potential appointment to a board of directors. Only personal information was discussed, and no votes were held. This matter was properly discussed in closed session.

September 25, 2023

The motion to move into closed session read as follows:

**4.1 Proposed Disposition of Land in the Wright Business Park - Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years); and Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)).**

**5.1 Corporate Leadership Team Appointment - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)).**

**Carried**

In our opinion, this motion complied with the closed meeting requirements in the *Municipal Act*, as it cited the relevant exemptions, and provided a short description of each item to be discussed.

4.1 was a discussion of the sale of municipal property. Council voted to provide negotiating instructions to staff. This matter was properly held in closed session.

5.1 was a discussion of a potential appointment to City staff. The conversation was kept to personal information, and no votes were taken. As such, this matter was properly discussed in closed session.

October 10, 2023

The motion to move into closed session read as follows:

**THAT the meeting adjourn to an In-camera Session to discuss:**

**4.1 Development Opportunity - Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years), and Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)).**

**4.2 Proposed Disposition of Land (Long-Term Care Home) - Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years), and Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), and A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k)).**

**4.3 Memorandum of Understanding with YMCA - Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)).**

**4.4 Ad-Hoc Grand Trunk Renewal Committee Applications - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)).**

**4.5 2023 Economic Adjustment for City Administration Employees - Labour relations or employee negotiations (section 239.(2)(d)).**

**5.1 Collective Bargaining Update - CUPE Local 197 (Outside Workers) and CUPE Local 1385 (Inside Workers) - Labour relations or employee negotiations (section 239.(2)(d)).**

**Carried**

In our opinion, this motion complied with the closed meeting requirements in the *Municipal Act*, as it cited the relevant exemptions, and provided a short description of each item to be discussed.

4.1 was a discussion of a potential opportunity to obtain property. Direction was given to obtain more information. This matter was properly discussed in closed session.

4.2 was a discussion of the potential purchase and sale of certain lands. Instructions were provided with respect to setting negotiating positions. These were all properly in closed session. However, Council also voted that direction be given to staff concerning what is to be done with the proceeds from the sale of a specific City property. Allocations of funding in that manner are substantive decisions which cannot be made in closed session.

4.3 concerned legal advice that was provided on a proposed non-binding memorandum of understanding, and negotiating instructions were provided to staff. This matter was properly in closed session.

4.4 was a discussion of potential appointments to a board. The discussion remained on the subject matter of personal information of candidates, and no vote was held. This discussion properly took place in closed session.

4.5 was a discussion of a proposed salary increase for certain non-union staff. A vote was held and instructions were given to the CAO to implement a retroactive increase for those employees. Further instructions were given that, should certain union negotiations yield an increase above a certain threshold, the additional portion would also be given to the non-union staff in question.

Upon reviewing a draft of this report, the City directed us to the Ombudsman's decision in *The Nation, 2019*. That report explicitly provided that an across-the-board wage increase can be discussed in closed session. It explained that the labour relations exemption pertains to the employer-employee relationship. We agree, the subject matter of this discussion was properly in closed session. However, voting to implement the increase was not, as this was a substantive decision which could not be made in closed. We would note that the City would not have been able to ratify the union increases in closed session, and similarly could not approve the non-union increase.

5.1 was a discussion of collective bargaining with two unions. Instructions were provided for negotiations. This was properly in closed session.

October 23, 2023

The motion to move into closed session read as follows:

**THAT the meeting adjourns to an In-camera Session to discuss:**

**4.1 Development Opportunity - Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years), and Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)).**

**4.2 Expropriation and Related Litigation Update - Litigation or potential litigation, including matters before administrative tribunals affecting the municipality or local board (section 239.(2)(e)), and Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)).**

**Carried**

In our opinion, this motion complied with the closed meeting requirements in the *Municipal Act*, as it cited the relevant exemptions, and provided a short description of each item to be discussed.

4.1 was a discussion of a property which was for sale, and whether to make an offer to purchase. Staff was provided with instructions on the matter. This discussion was properly in closed session.

4.2 was a discussion of ongoing litigation matters. Council received legal advice and provided instruction to the City solicitor. This matter was properly discussed in closed session.

October 24, 2023

The motion to move into closed session read as follows

**3.1 Diversity, Equity, and Inclusion Education Session - A meeting of a council or local board or of a committee of either of them may be closed to the public if the following conditions are both satisfied:**

- 1. The meeting is held for the purpose of educating or training the members.**
- 2. At the meeting, no member discusses or otherwise deals with any matter in a way that materially advances the business or decision-making of the council, local board or committee. 2006, c. 32, Sched. A, s. 103 (1). (section 239.(3.1)).**

**Carried**

In our opinion, this motion complied with the closed meeting requirements in the *Municipal Act*, as it cited the relevant exemption and provided a short description of the item to be discussed.

3.1 was a training session for Council. The business of Council was not materially advanced by any of the discussions, and no votes were held. Accordingly, this matter was properly in closed session.

November 27, 2023

The motion to move into closed session read as follows:

**THAT the meeting adjourns to an In-camera Session to discuss:**

**4.1 Collective Bargaining Update – SPFFA Local 534 - Labour relations or employee negotiations (section 239.(2)(d)).**

**5.1 Proposed Disposition of Land – Normal School - Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years), and Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)).**

**5.2 Shared Services Agreement Extension - Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)).**

**Carried**

In our opinion, this motion complied with the closed meeting requirements in the *Municipal Act*, as it cited the relevant exemptions, and provided a short description of each item to be discussed.

4.1 was an update on ongoing collective bargaining. This matter was appropriately in closed session.

5.1 Council discussed the possibility of disposing of certain property, including the relevant processes, and obtained legal advice on the matter. Instructions were given to staff. This matter was properly in closed session.

5.2 was a discussion of several shared services agreements, and in particular the question of negotiating extensions of said agreements. Instructions were provided, effectively amounting to instructions to commence the process to negotiate renewals.

The only cited exception for this matter was solicitor-client privilege. It was not altogether clear whether the conversation and instructions remained in the realm of solicitor-client privilege. On a balance of probabilities, we find that they did, and that this topic was properly discussed in closed session. However, we would recommend that the City consider also citing the exception for negotiations when having discussions such as these.

December 11, 2023

The motion to move into closed session read as follows:

**3.1 City Industrial Land Pricing Policy – 2023 Annual Review - Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years)**

**4.1 Collective Bargaining Update – SPFFA Local 534 - Labour relations or employee negotiations (section 239.(2)(d))**

**4.2 Collective Bargaining Update - CUPE Local 197 (Outside Workers) and CUPE Local 1385 (Inside Workers) - Labour relations or employee negotiations (section 239.(2)(d))**

**5.1 Board of Park Management Applications - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))**

**5.2 Stratford Public Library Board Application - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))**

**Carried**

In our opinion, this motion complied with the closed meeting requirements in the *Municipal Act*, as it cited the relevant exemptions, and provided a short description of each item to be discussed.

3.1 Council was provided information on a proposed increase to the standard prices for sale of land in the City's Wright Business Park. Land prices for the business park are established in a City policy. The only vote held was to provide instruction for updates to that policy to be placed on the open session agenda.

This was properly in closed session.

4.1 was a discussion related to updates on ongoing labour negotiations and provided instructions to list by-laws to ratify proposed terms. This discussion was properly held in closed session.

4.2 was a discussion updating Council on ongoing labour negotiations. Council voted to provide negotiating instructions to staff. This discussion was properly held in closed session.

5.1 concerned appointments to a specific board. The Minutes clearly indicate that only personal information was discussed, and no votes were held. This matter was therefore within the closed session requirements.

5.2 concerned appointments to a specific board. The Minutes clearly indicate that only personal information was discussed, and no votes were held. This matter was therefore within the closed session requirements.

January 8, 2024

The motion to move into closed session read as follows:

**4.1 Appeal to the Ontario Land Tribunal of Application A13-23, 173 William Street - Litigation or potential litigation, including matters before administrative tribunals affecting the municipality or local board (section 239.(2)(e)), and Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)).**

**Carried**

In our opinion, this motion complied with the closed meeting requirements in the *Municipal Act*, as it cited the relevant exemptions, and provided a short description of each item to be discussed.

4.1 On June 21, 2024, our office released a report on an investigation into several meetings, including this one. Our conclusions from that report stand: this topic was properly discussed in closed session.

January 22, 2024

The motion to move into closed session read as follows:

**4.1 Short Term Rental Accommodation Zoning By-law Provision Update - Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)).**

**4.2 Proposed Disposition of Land (Long-Term Care Home) - Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years), and Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), and A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k)).**

**Carried**

In our opinion, this motion complied with the closed meeting requirements in the *Municipal Act*, as it cited the relevant exemptions, and provided a short description of each item to be discussed.

4.1 concerned receiving legal advice from the City solicitor on a specific topic. Discussions predominantly stayed on topic, and the only vote was to receive the legal advice.

4.2 concerned receiving negotiation updates and legal advice concerning ongoing negotiations for the disposition of City land. The only vote taken was to receive the advice for information. As such, this matter was properly discussed in closed session.

February 1, 2024

The motion to move into closed session read as follows:

**3.1 Ontario Land Tribunal Decision OLT-22-002455: Expropriation Compensation - Litigation or potential litigation, including matters before administrative tribunals affecting the municipality or local board (section 239.(2)(e)), and Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)).**

**Carried**

In our opinion, this motion complied with the closed meeting requirements in the *Municipal Act*, as it cited the relevant exemptions, and provided a short description of each item to be discussed.

3.1 involved an update on a legal matter, including advice from the City solicitor. Instructions were given with respect to the conduct of the legal matter. This subject was properly discussed in closed session.

February 12, 2024

The motion to move into closed session read as follows:

**THAT the meeting adjourns to an In-camera Session to discuss:**

**4.1 Proposed Disposition of Land (Long-Term Care Home) - Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years), and Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), and A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k)).**

**Carried**

In our opinion, this motion complied with the closed meeting requirements in the *Municipal Act*, as it cited the relevant exemptions, and provided a short description of each item to be discussed.

4.1 was a discussion of proposed disposition of City property, including negotiating terms and legal advice. The only vote was to provide instructions with respect to negotiation, as well as to accept the report on the subject. This matter was properly discussed in closed session.

March 25, 2024

The motion to move into closed session read as follows:

**4.1 Respect in the Workplace – Legal Opinion - Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f));**

**4.2 Negotiation of Employee Matters - Labour relations or employee negotiations (section 239.(2)(d)); and Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));**

**4.3 Shared Services Agreement Extension - Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)); and A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k));**

**5.1 Collective Bargaining Update - CUPE Local 197 (Outside Workers) and CUPE Local 1385 (Inside Workers) - Labour relations or employee negotiations (section 239.(2)(d)).**

In our opinion, this motion complied with the closed meeting requirements in the *Municipal Act*, as it cited the relevant exemptions, and provided a short description of each item to be discussed.

4.1 was a discussion of matters pertaining to the Respect in the Workplace policy and included legal advice related to the policy. The discussion remained within the cited exception. The only vote held was to receive the report for information. This matter was properly in closed session.

4.2 was an update on negotiations to hire a specific candidate for a specific position. Negotiating instructions were provided. This matter was properly discussed in closed session.

4.3 was a discussion of the pending renegotiation of various agreements. Council provided negotiating instructions. This was properly in closed session.

5.1 involved the Human Resources Coordinator providing an update on several ongoing labour negotiations. Council voted to have resolutions prepared and added to open session

agendas to consider ratifying negotiated agreements. This matter was properly discussed in closed session.

April 8, 2024

The motion to move into closed session read as follows:

**4.1 Applications for Directors to the Stratford Economic Enterprise Development Corporation (SEEDCo./investStratford) – Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));**

**4.2 Proposed Disposition of Land in the Wright Business Park - Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years).**

**Carried**

In our opinion, this motion complied with the closed meeting requirements in the *Municipal Act*, as it cited the relevant exemptions, and provided a short description of each item to be discussed.

4.1 concerned appointments to a specific board. The Minutes clearly indicate that only personal information was discussed, and no votes were held. This matter was therefore within the closed session requirements.

4.2 was a discussion of an offer received on a parcel of City-owned land. The discussion remained within the cited exception, and the only instructions given were to list the proposal for a public meeting. This matter was properly in closed session.

May 6, 2024

The motion to move into closed session read as follows:

**4.1 Respectful Workplace Policy Education and Training Session - A meeting of a council or local board or of a committee of either of them may be closed to the public if the following conditions are both satisfied:**

1. The meeting is held for the purpose of educating or training the members.
2. At the meeting, no member discusses or otherwise deals with any matter in a way that materially advances the business or decision-making of the council, local board or committee. 2006, c. 32, Sched. A, s. 103 (1). (section 239.(3.1)).

**5.1 Proposed Disposition of Land (Long-Term Care Home) - Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years), and Advice that is**

subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), and A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k)).

In our opinion, this motion complied with the closed meeting requirements in the *Municipal Act*, as it cited the relevant exemptions, and provided a short description of each item to be discussed.

4.1 involved a training session for Council. The minutes reflect that discussions remained on topic, and the business of Council was not materially advanced. As such, this meeting was properly held in closed session.

5.1 was a lengthy discussion concerning a potential land sale. A number of possibilities were discussed, and extensive negotiating instructions provided. This matter was properly discussed in closed session.

May 16, 2024

The Motion to move into closed session read as follows:

**4.1 Proposed Disposition of Land (Long-Term Care Home) - Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years), and Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), and A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k))**

In our opinion, this motion complied with the closed meeting requirements in the *Municipal Act*, as it cited the relevant exemptions, and provided a short description of each item to be discussed.

4.1 discussions were held on pending sale of land, including negotiating positions, and the City solicitor provided advice subject to privilege. A number of negotiating instructions were provided. This matter was properly discussed in closed session.

June 3, 2024

The motion to move into closed session read as follows:

**4.1 Proposed Disposition of Land (Long-Term Care Home) - Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years), and Advice that is subject to solicitor-client privilege including communications necessary for that**

purpose (section 239.(2)(f)), and A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k));

**4.2 Appeal to the Ontario Land Tribunal of Application A13-23, 173 William Street - Litigation or potential litigation, including matters before administrative tribunals affecting the municipality or local board (section 239.(2)(e)), and Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f));**

**4.3 Respect in the Workplace – Legal Opinion - Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)).**

In our opinion, this motion complied with the closed meeting requirements in the *Municipal Act*, as it cited the relevant exemptions, and provided a short description of each item to be discussed.

4.1 was a discussion of the proposed sale of property by the City, including both negotiations as well as the intended use of the property. Council debated a motion, which was amended several times. At all times, the motion simply provided direction. This matter was properly in closed session.

4.2 was the subject of another report by our office, issued July 25, 2024. In that report, we found that this agenda item consisted only of an update on a matter before the Ontario Land Tribunal and a vote to receive the update for information. We repeat our finding that this matter was properly discussed in closed session.

4.3 concerned legal advice provided by the City solicitor. The only vote was to receive said advice. This topic was properly in closed session.

June 24, 2024

The motion to move into closed session read as follows:

**4.1 Proposed Acquisition of Land - Affordable Housing Project - Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years), and A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k)).**

**Carried**

In our opinion, this motion complied with the closed meeting requirements in the *Municipal Act*, as it cited the relevant exemptions, and provided a short description of each item to be discussed.

4.1 concerned potential purchase of property. All discussions related to use of the property, negotiations, etc., and were properly within the cited exceptions. The only votes held provided instructions to staff. This matter met all closed session requirements.

July 8, 2024

The motion to move into closed session read as follows:

**4.1 Downtown Stratford Business Improvement Area Board of Management Applications - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)).**

In our opinion, this motion complied with the closed meeting requirements in the *Municipal Act*, as it cited the relevant exemptions, and provided a short description of each item to be discussed.

We note that the Minutes reflect a different closed session resolution being passed. However, on review of the public closed session agenda and the public meeting agenda, this appears to be an error, and the correct subject matter appears to have been in the motion.

4.1 concerned appointments to the Downtown Stratford BIA. The Minutes clearly indicate that only personal information was discussed, and no votes were held. This matter was therefore within the closed session requirements.

July 15, 2024

The motion to move into closed session read as follows:

**4.1 Proposed Disposition of Land (Long-Term Care Home) - Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years); Advice that is subject to solicitor-client privilege including communications necessary for that purpose**

In our opinion, this motion complied with the closed meeting requirements in the *Municipal Act*, as it cited the relevant exemptions, and provided a short description of each item to be discussed.

4.1 was a discussion of a proposed disposition of municipal land, part of which included certain terms and conditions to be imposed on the sale. This was entirely within the cited exceptions. The only votes held on this matter were to provide instruction and direction to staff. As such, this matter was entirely within the closed session requirements.

July 22, 2024

The motion to move into closed session read as follows:

**4.1 Proposed Disposition of Land in the Crane West Business Park - Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years);**

**5.1 Judicial Review: Stratford (City) v. Stratford Professional Fire Fighters Association Local 534 - Labour relations or employee negotiations (section 239.(2)(d)).**

**Carried**

In our opinion, this motion complied with the closed meeting requirements in the *Municipal Act*, as it cited the relevant exemptions, and provided a short description of each item to be discussed.

4.1 was a discussion about the proposed sale of property in the City's industrial park, including price and intended use of the land. Council then voted to authorize staff to list by-laws selling two plots of City owned land for a public meeting. The subject matter of the update Council received was properly in closed session, as was the vote.

5.1 was a discussion concerning an update on an ongoing labour relations matter. No vote was held. This meeting was properly in closed session.

September 9, 2024

The motion to move into closed session read as follows:

**4.1 Proposed Repurchase of Land in the Crane West Business Park - Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years); and Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f));**

**4.2 Affordable Housing Purchase Proposal Update - Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years), and A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k));**

**5.1 Applications for Advisory Committees and Boards - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)).**

## **Carried**

In our opinion, this motion complied with the closed meeting requirements in the *Municipal Act*, as it cited the relevant exemptions, and provided a short description of each item to be discussed.

4.1 was a discussion that matched the description provided in the motion to move into closed session, and was appropriate to the cited exceptions. The only motions were to provide instruction to municipal staff on a land repurchase matter. Accordingly, this agenda item was compliant with the closed session requirements.

4.2 concerned the purchase of property by the City. A vote was held to provide instructions to staff concerning negotiations. This matter was properly held in closed session.

5.1 concerned appointments to advisory committees and boards. The Minutes clearly indicate that only personal information was discussed, and no votes were held. This matter was therefore within the closed session requirements.

## **Conclusion**

We reviewed 25 closed session meetings, many including multiple agenda items, and some including multiple motions. Of our review, we located only three individual agenda items, discussed at two different meetings, which were not properly in closed session. These items dated back only as far as October, 2023, and no subsequent breaches were found. Further, we did not find any of the closed session resolutions to be defective. It is clear that Council and staff have made considerable efforts to improve practices, and that this has paid off.

As concerns recommendations stemming from this report, we considered the nature of the three instances of non-compliance. All three concerned substantive decisions that cannot be made in closed.

Two of these instances were similar – situations where Council either voted on purchasing property and on the next steps for using that property, or voted on selling property and the use of the funds from the sale. In either situation, Council should use caution to separate out negotiating instructions from substantive next steps.

In the third instance, Council discussed substantive, retroactive pay raises, and approved same. This was not in the context of negotiations. Council should familiarize itself with the distinctions as to when such matters can be addressed in closed session. Further, the distinction between approving negotiating instructions versus approving a non-negotiated pay raise should be considered. When Council is negotiating with a union, the agreement as a whole will come back for consideration in open. This is different than approving changes to compensation for non-union members, which does not involve a negotiation and is, therefore, substantive.

This concludes the investigation and report in this matter.

Sincerely,

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



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