



Cunningham Swan

LAWYERS

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CONFIDENTIAL

Jun 21, 2024

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.: 36684-7**

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.

THE COMPLAINT

On June 3, 2024, our office received a closed meeting complaint made to the City on June 2, 2024. The complaint concerned Minutes of Settlement that the City had entered into with respect to a matter before the Ontario Land Tribunal. According to the Complaint, the only time that the matter had appeared on Council's agenda was at a closed session on January 8, 2024. The complaint alleged that Council had never made the substantive decision to settle the matter in public, and therefore sought an investigation on the basis that Council may have made the decision to settle in closed session.

The *Municipal Act* provides the Closed Meeting Investigator with powers which include the ability to interview witnesses and review documents deemed relevant to the investigation process. In conducting the preliminary review, our process included:

- Reviewing the relevant provisions of the *Municipal Act*;
- Correspondence with the complainant; and
- Reviewing agendas, closed session resolutions, and similar documentation.

ANALYSIS:

It is a requirement of the *Municipal Act* that votes are, by default, held during public meetings of Council. However, the *Municipal Act* provides limited exceptions which allow for some decision making to be done behind closed doors. These exceptions, and how they apply, were the subject of a lengthy report by our office to the City of Stratford in February, 2024. In that report, we explained that two criteria must be met for a vote to be held in closed session:

- 1) The vote must be procedural in nature, or otherwise only providing direction; and
- 2) The vote must pertain to a topic that is covered by one of the *Act's* closed meeting exceptions

Votes can only properly be held in closed session where both criteria are met.

The complaint leading to this investigation was concerned primarily with the January 8, 2024, closed meeting's discussion of the Land Tribunal matter. However, the underlying concern

was whether the Minutes of Settlement entered into by the City were authorized during a closed session. For that reason, we looked at both of these issues separately.

Was an illegal vote held at the January 8, 2024, meeting?

Council did indeed discuss the Ontario Land Tribunal matter during its January 8, 2024, closed session. The minutes reveal a thorough consideration of the issue, and of what position to take. At the end, Council voted to provide its solicitor and CAO with several instructions regarding the City's position.

Above, we noted that two criteria must be met for a vote to be held in closed session.

First, the vote must be procedural in nature, or provide instructions. Having had the opportunity to review the Minutes of Council, we can confirm that the vote simply provided instructions regarding the ongoing OLT matter. We are satisfied that this criterion is met; what Council did in this case was nothing more than providing staff and legal counsel with a position to follow in an ongoing process. This was procedural.

Second, the subject matter of the vote must be on the list of exceptions which allows a meeting to be held in closed session. This vote concerned both legal advice and ongoing tribunal matters. Both legal advice and ongoing litigation are situations where the *Municipal Act* permits a Council to hold discussions in closed session. This, of course, makes sense, as to do so in open session would necessarily undermine the Municipality's legal positions. Therefore, we are satisfied that this criterion is also met.

As a result, we are satisfied that the January 8, 2024, vote was properly held in closed session.

Was the Decision to enter into a settlement made in closed session?

In order to fully investigate this matter, we asked for further information from the City regarding the authority to enter into Minutes of Settlement. The City advised that it relied upon its Delegation of Authority By-Law. A copy of this By-Law was provided to our office; it does indeed delegate to the CAO the authority to resolve litigation, including matters before the OLT, on behalf of the City.

What this means, for the purposes of this investigation, is that Council had delegated its authority to make decisions in this matter to the CAO. The CAO therefore had the authority, in their sole discretion, to enter into a settlement without a further decision of Council being made. Our office only has the authority to investigate closed meetings, and votes taken in closed meetings. Because entering into this settlement didn't actually require a vote of Council, it falls entirely outside of our jurisdiction. The only decision of Council in this regard was the one to delegate this authority, which occurred as part of the Delegation By-Law. No suggestion has been made that this by-law was not voted on in open session.

CONCLUSION AND RECOMMENDATIONS

The processes that lead, together, to the Minutes of Settlement ultimately did not offend the rule against voting in closed session. Council correctly used its authority to provide a position to the City's lawyer in closed session, and the CAO correctly used their delegated authority to accept a settlement and resolve ongoing litigation.

In conclusion, we do not find that any illegal vote was held on the matters in question in this Complaint.

Sincerely,

Cunningham, Swan, Carty, Little & Bonham LLP

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