



**Cunningham Swan**

LAWYERS

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**CONFIDENTIAL**

June 28, 2023

**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.: 36684-5**

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.

## **PRELIMINARY REVIEW**

On June 2, 2023, our office received a closed meeting complaint relating to a closed session of the Committee of the Whole dated January 9, 2023. The complaint, filed May 31, 2023, with City Hall, alleged that "various citizen committees were chosen. This process should not have been 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 this matter, we obtained a copy of the closed session minutes, and reviewed those minutes for conformity with the *Municipal Act*. We also had the opportunity to review the agenda, minutes, and recording of the portion of the open session in which the resolution to move into closed was passed.

## **FACTS:**

On January 9, 2023, Committee of the Whole met in public session. It passed a resolution to "adjourn into in camera session for the ten items listed on the agenda". Those agenda items read as follows:

3.1 2022 Accessibility Advisory Committee Applications - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

3.2 2022 Active Transportation Advisory Committee Applications - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

3.3 2022 Board of Park Management Applications - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

3.4 2022 Committee of Adjustment Applications - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

3.5 2022 Communities in Bloom Advisory Committee Applications - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

3.6 2022 Energy and Environment Committee Applications - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

3.7 2022 Heritage Stratford Applications - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

3.8 2022 Stratfords of the World (Ontario) Committee Applications - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

3.9 2022 Stratford Police Services Board Applications - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

3.10 2022 Stratford Public Library Board Applications - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))

Per the meeting minutes, in each case Council was provided information about applicants, including addresses and other personal information. With respect to each agenda item, the minutes state that no direction was given during the in-camera session.

### **Municipal Act**

- 239 (1) Except as provided in this section, all meetings shall be open to the public.
- (2) A meeting or part of a meeting may be closed to the public if the subject matter being considered is,

[...]

- (f) advice that is subject to solicitor-client privilege, including communications necessary for that purpose;
- (4) Before holding a meeting or part of a meeting that is to be closed to the public, a municipality or local board or committee of either of them shall state by resolution,
  - (a) the fact of the holding of the closed meeting and the general nature of the matter to be considered at the closed meeting; or
  - (b) in the case of a meeting under subsection (3.1), the fact of the holding of the closed meeting, the general nature of its subject-matter and that it is to be closed under that subsection.

### **ANALYSIS:**

Under the *Municipal Act*, the default position is that meetings of Council and similar bodies are open to the public. This is an important rule, as it reinforces principles of open and accountable government. However, there will, naturally, be circumstances in which Council must address issues that should not be discussed in public; for this reason, the *Act* includes a number of exceptions.

The scheme of the *Act*, and previous decisions of closed meeting investigators, make clear that for a meeting to be properly closed to the public, the following requirements must be met:

1. The meeting must begin in open session, and a resolution must be passed to move into closed session;
2. The resolution to move into closed session must cite the section of the *Act* relied upon and must give a general description of the matters to be discussed; and
3. The content of the meeting must actually fall within the cited exception.

Even where an exception applies which permits a meeting to be held in closed session, the *Municipal Act* still imposes certain restrictions to ensure the possibility for a level of public scrutiny.

First, the motion to proceed into closed session must itself be held in open session. That is to say, a member of the public must be able to enter or log-in to the meeting as it is called to order, and as the motion to move to closed session is moved and voted on. Only once the motion passes can the public be excluded.

Second, the motion to move into closed session must provide the “general nature” of what is to be discussed. In *Farber v. Kingston (City)* 2007 ONCA 173, the Ontario Court of Appeal described the contents of this requirement as follows:

I think that the resolution to go into closed session 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 excluding the public.

A member of the public, not having been permitted to be present during the closed session, must nevertheless be able to review the motion and have a general idea as to what was discussed except in limited circumstances. This is important, not least of all because, without this step, the public has no way to otherwise hold its Council accountable with respect to the closed meeting.

Although numerous topics were discussed at the closed session, they all cited the same exception, pertaining to personal information of an identifiable individual. Our office considered that exception in a previous closed meeting investigation in Stratford, the decision on which was released October 20, 2022. In particular, that report considered whether the personal information exception could be used to hold discussions of board candidates in closed session. We found that, generally, discussion of candidates does not, in and of itself, qualify as “personal information”, unless that discussion includes details that would otherwise fall within the exception. Such details include, notably, address and other personal characteristics.

#### Did Committee of the Whole Pass an Appropriate Resolution in Open Session to Move into Closed Session

In our opinion, Committee of the Whole’s resolution to move into closed session was adequate. We understand the verbal resolution that was passed as incorporating by reference the items and exceptions outlined the agenda. Each of those agenda items provided a brief description of the matter to be discussed, and cited the exception relied on for moving into closed session. Although it is preferable that the resolution as read aloud during the meeting should contain all of the above-noted information, we do not find that the decision to incorporate by reference was problematic in this instance.

#### Did the Meeting Actually Fall within the Cited Exception

After thorough consideration of the minutes of the in camera session, it is our opinion that all of the discussions held in camera properly fit within the cited exceptions. In each case, the minutes note that the addresses of applicants were provided; in some cases, further personal information was also discussed. The minutes reflect that careful attention was paid to keep the matter properly within the closed session exception. While discussion did occur, in our opinion it was not sufficiently lengthy or unrelated so as to bring council outside the cited exceptions.

## CONCLUSION AND RECOMMENDATIONS

Having reviewed the minutes, in our opinion the meeting of January 9, 2023, was properly held in closed session.

This concludes the investigation and report in this matter.

Sincerely,

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



Tony E. Fleming, C.S.  
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(Local Government / Land Use Planning)  
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