



**Cunningham Swan**

LAWYERS

• EST 1894 •

**Tony E. Fleming**  
**Direct Line: 613.546.8096**  
**E-mail: [tfleming@cswan.com](mailto:tfleming@cswan.com)**

**CONFIDENTIAL**

October 20, 2022

**SENT BY EMAIL TO: [TDafoe@stratford.ca](mailto: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 Investigations**  
**Our File No. 36684-1**

On December 7, 2021, a total of 146 complaints were made to the City of Stratford with respect to closed meetings. In early January 2022 the City's Closed Meeting Investigator identified a potential conflict and our office was designated as the Closed Meeting Investigator for the complaints.

Each of the 146 complaints was substantively the same: it identified a particular closed session meeting of Stratford City Council and the items on the agenda for said meeting, and alleged that the item, "on the agenda did not specify the general nature and a brief description of the matter being discussed. This is in violation of Stratford By-Law 140-2007 6.4(b) and (c) and the Municipal Act s 239.4(a)." The complaints go on to request, "that the general nature and a brief description of the matter discussed be revealed".

### **History and Context**

At its June 14, 2021, meeting, Council received for information a closed meeting investigation report prepared by John Pappas of Aird & Berlis LLP (the "Pappas Report"). The Pappas report investigated a complaint dated December 8, 2020, alleging that Council had contravened the requirements of s. 239 of the *Municipal Act* by improperly closing meetings to

00807043.DOCX:

TEL: 613-544-0211  
FAX: 613-542-9814  
EMAIL: [INFO@CSWAN.COM](mailto:info@cswan.com)  
WEB: [WWW.CSWAN.COM](http://WWW.CSWAN.COM)

the public to discuss subjects not permitted to be considered in a closed meeting, and failing to comply with the *Act* and the City's Procedural By-law with respect to providing an adequate description of the matters that were discussed in closed session.

After limiting the scope of the complaint to specific meetings, and in particular the closed meeting held September 10, 2018, the Pappas Report came to several conclusions. First, it found the subject matter of that meeting did not fall within the exceptions which Council had cited to proceed into closed session. Second, it found that, generally, the City's resolution to move into closed session did not comply with the *Municipal Act* or the City's Procedural By-Law. Finally, it found that the City's rise and report resolutions also did not meet the requirements of the Procedural By-Law.

We have considered the conclusions of the Pappas report in preparing the present report.

### **Procedure**

The present complaints target nearly all closed session meetings from 2015 to June 2021. As noted above, the complaint remained substantively the same for each meeting: the complainant alleged that the agenda for the meeting did not specify the general nature and brief description of the matter being discussed and requested that the details of such matters be revealed.

Our office focused our investigation on meetings occurring from January 1, 2020, to June 14, 2021, being the last date for which a complaint was received. This was done for several reasons. First, it provides an extensive sample size, from which more general conclusions can be drawn. Second, it limits the scope to more recent meetings, to reduce evidentiary and limitation period issues which may arise with meetings which occurred over seven years ago. Finally, the Pappas Report already determined that Council's resolutions to proceed into closed session – the only publicly available content of the closed session meetings – were legally deficient. By scoping the complaints to 18 months, we are satisfied that the City's practices will be extensively reviewed and will be based on a robust sample size that will capture a significant number of meetings identified in the complaint. Equally important, we will be able to make recommendations to Council to address the complainant's concern about transparency without engaging in a much longer investigation that would have consumed more time and public resources than was necessary to achieve the aim of the *Municipal Act*.

In order to determine whether the public agendas met the requirements of the *Act*, it was also necessary to review the content of the discussions themselves. Where discussions were properly within the requirements for a closed meeting, the information that must be released to comply with the *Act* will be more limited. However, where a discussion did not fall within the cited exception, the requirements of the *Act* are not met by simply providing a description of the topic in the public agenda.

For each meeting, therefore, we have considered both whether the agenda itself provided sufficient detail of a closed meeting, and whether the topics discussed at the meeting fell within the cited exception.

The complaint not only alleged that the agendas were insufficient to meet the requirements of the *Municipal Act* and procedural by-law; it also demanded that information regarding the discussions be released so as to comply with the *Act*. Our office had the opportunity to confer with the complainant, who explained that their objective was to obtain the information that the *Act* required be provided to the public.

For any meeting where we found that there was a breach of the *Act*, a Closed Meeting Investigator does not have jurisdiction to order Council to disclose any minutes or other materials considered at that otherwise improperly held closed meeting. Council may decide to release this information, or it may be the subject of a request under the *Municipal Freedom of Information and Protection of Privacy Act* by a member of the public.

Given the extent of meetings analyzed, and the repetition in those exceptions relied on, we begin with an analysis, generally, of the requirements of the *Act*, both in terms of the contents of the resolution, as well as the tests for entering into a closed session. We then proceed to analyze the individual meetings in light of the legal tests discussed in this section.

It is important to note that our report has not considered whether any votes taken during closed sessions was done in accordance with the *Act*, as this is beyond the scope of the complaints received.

The investigator's initial draft was circulated to both the complainant, on August 22, 2022, and the City, on September 13, 2022. Both parties were given the opportunity to respond, and those responses were considered by the investigator. Owing to the incomplete nature of the report, all parties were asked to refrain from circulating the draft report.

## **Analysis**

### Closed Meeting Exceptions

The default rule for any meeting of municipal government is that it must be held in open session. Council may only hold discussions in closed session – also known as “in camera”, from the Latin for “in chambers” – where an exception established by the *Municipal Act* applies.

It is important to bear in mind that open meetings are the default, and the exceptions are just that – exceptions. They are, generally, interpreted narrowly. As the complained-of meetings span approximately 18 months, the exceptions relied on in those meetings covered nearly the full range provided under the *Act*.

Although not binding on us, we have considered the reported cases of both the Ontario Ombudsman's office, and the Information and Privacy Commissioner of Ontario. Both of these offices have a considerable number of reported decisions relating to these provisions. It is important to note that the Ombudsman and the Courts have, as a general rule, found that discussions of Council remuneration must *always* be held in open session.

Finally, it is important to understand that this is a contextual determination which relates to each individual meeting. The exceptions apply to the particular discussions at an individual meeting; once a subject has been discussed in closed session, that does not automatically mean that the same exception will apply to each subsequent discussion. The same subject matter – properties, developments, etc. – may well be the topic of in camera and open sessions. It is not because Council already discussed a matter in the past in closed session that it is automatically permitted to proceed in closed session for all subsequent discussions; the particular subject matter must meet the applicable test each time.

**(a) the security of the property of the municipality or local board;**

This exception should be used in situations where the municipality is discussing threats to its property. Both the Ontario Ombudsman's Office and the Information and Privacy Commissioner have found that "security of the property" should be given its ordinary and literal interpretation. It applies to threats of physical loss or damage to property, and to public safety related to the property - *Port Colborne (City of)*, 2015 ONOMBUD 32.

It does not apply, for example, to maintaining the financial value of property. See, for example, *Deep River (Town of) (Re)*, 2017 ONOMBUD 17 at paras 38-40.

This exception was relied on numerous times by the City in holding discussions about COVID measures in closed session. This was not an appropriate use of this exception. While emergencies may well pose threats to property that fall under this section – civil unrest or floods, for example – COVID mitigation measures, and their impact on City finances, do not represent an actual physical threat to property.

On other occasions, the City relied on this exception when discussing property that would be closed or unoccupied. As stated in *Port Colborne (City of)*, 2015 ONOMBUD 32 at para 86, "whether the exception applies depends on the actual subject matter discussed, rather than the potential ramifications of discussing a subject in public." The threat to security of the property must be from more than simply public knowledge that the property sits empty. However, as mentioned in *Port Colborne*, it does extend to protecting public safety with respect to the property.

On the other hand, the City also relied on this exception when discussing cyber security measures it had put in place, and specific cybersecurity threats that it faced. This is the proper use of this section and provides a good demonstration of security relating to property that is not tangible, but nonetheless significant.

Therefore, the City may properly rely on this exception where discussions of the subject matter would pose a threat to the security of public property if the subject matter were publicly disclosed in an open session. Specific security measures and procurement of security or other matters might qualify if publicly disclosing that information would defeat the purpose of implementing those security measures.

**(b) personal matters about an identifiable individual, including municipal or local board employees;**

This exception contains two parts. First, it applies where Council discusses “personal matters”. In *Norfolk (County of) (Re)*, 2021 ONOMBUD 6, the Ontario Ombudsman adopted the Privacy Commissioner’s conclusion that this exception applies to information, “if it pertains to an individual in their personal capacity, rather than their professional capacity. However, information about a person in their professional capacity may still qualify if it reveals something personal about the individual, such as information about job performance”. We would concur; generally, this exception applies to information of a personal nature, and not information of a professional nature.

The Second element is that the matter must relate to “an identifiable individual” or individuals. An abstract discussion where individuals cannot be identified will not meet the requirements of this exception. Deciding to solicit applications for a board position, for example, would not meet this exception as it does not relate to identifiable individuals.

Merely naming an individual or discussing their professional capacity is not sufficient to trigger this exception. The discussion must pertain to personal matters – examples from reported cases include resumes (or the information that would typically be within them), addresses, phone numbers or financial matters.

This exception was often relied on by Council when discussing appointments to boards or Council committees. Board or committee nominations on their own are not sufficient to trigger the exception; if Council is discussing the merits of a particular candidate, however, the exception *might* apply, if personal information is discussed. If a resume is circulated for review or the application contains addresses and phone numbers, then this exception will likely apply. It is also worth noting that this exception will not often apply to Council itself.

In cases where Councils have nominated their own members to boards without the need for resumes or other personal information, Investigators have found that this exception does not apply. See, for example, *Burk’s Falls / Armour (Village of / Township)*, 2015 ONOMBUD 26, at paras 70-71.

**(c) a proposed or pending acquisition or disposition of land by the municipality or local board;**

This exception allows Council to discuss sensitive details of pending land transactions without disclosing those confidential details in public and “negotiating in the public”. In *Russel (Township of) (Re)*, the Ontario Ombudsman’s Office described the exception as follows:

As I have previously held, the exception is discretionary and does not apply to speculative discussions about land transactions. Rather, its primary purpose is to protect the municipality’s bargaining position where there is potential harm to the municipality.

15. Where a land transaction is not pending, the exception for acquisition or disposition of land has nevertheless been found to apply if discussions relate to specific lands and a municipality’s bargaining position is at risk of being compromised by public discussions.

Accordingly, the exception is not triggered simply because Council is discussing land for sale. There must be actual information discussed which would impact the municipality’s bargaining position. If the discussion simply relates, for example, to the fact that municipal property is to be sold or is not to be sold, with no discussion of bargaining positions or a pending transaction, then this exception will not apply.

**(d) labour relations or employee negotiations;**

The labour relations exception is another which can be understood roughly in terms of allowing Council to avoid negotiating in public. It also enables Council to protect the privacy of employees and the sensitivity of human resources matters.

In *St. Catharines (City of) (Re)*, 2019 ONOMBUD 1 the Ontario Ombudsman found:

23. According to the Ontario Court of Appeal, the meaning of “labour relations” can extend to the relations and conditions of work beyond those related to collective bargaining.[2] The Information and Privacy Commissioner has found that the term “labour relations” refers to the collective bargaining relationship between an institution and its employees.

It is important to note that this exception relates to labour *relations* and to *employee* negotiations. In *Deep River (Town of) (Re)*, 2017 ONOMBUD 17, the Town was in the process of considering contracting its policing to the OPP. Certain elements of this process were discussed in closed session. Although not cited in the motion to move into closed session, the Ombudsman considered whether the labour relations exception would apply. It found that, “The labour relations or employee negotiations exception generally applies to matters involving hiring, firing, and disciplining specific employees. My office has found that it does not apply to general discussions about an organizational review or restructuring in a municipality.”

We concur and find that this distinction is a significant one. Where Council is discussing hiring and firing or specific performance or workplace issues of an employee, then the discussion properly falls within this exception. Broader discussions may be less likely to fall into this exception.

**(e) litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board;**

More than perhaps any of the others, this exception is quite straightforward. As the Ombudsman found in *Brudenell, Lyndoch and Raglan (Township of) (Re)*, 2021 ONOMBUD 16, “Although the [Act](#) does not define what constitutes “litigation or potential litigation,” courts have determined this exception is reserved for circumstances where the subject matter discussed is ongoing litigation or involves a reasonable prospect of litigation.”

Where a municipality is facing legal action, whether it has already been commenced or has simply been intimated, Council is permitted to discuss the details thereof in closed session. This is logical, as such discussions, even if legal advice is not involved, could jeopardize the position of the municipality if held in public. It also avoids the need to split hairs between legal advice and the municipality’s position in litigation. Moreover, we agree with the Ombudsman that this exception applies equally to other adjudicative bodies and tribunals; *Brudenell*, supra, at 5.

We would note that the City relied on this exception very few times, and that few to none of those uses were problematic. If anything, there were a number of agenda items to which this exception likely did apply, but where the exception for solicitor-client privilege was relied upon instead.

**(f) advice that is subject to solicitor-client privilege, including communications necessary for that purpose;**

This exception has already been well-addressed in the Pappas Report. As that report discussed, the fact that the City Solicitor is present, or even the fact that they speak, at a meeting is not sufficient to engage this exception. Rather, the discussion must pertain to actual legal advice. The exception can be triggered by asking for advice even if that advice is not provided at the same meeting – if, for example, the solicitor is asked a question but needs to conduct research and come back. It can also be triggered if the CAO or another staff member acts as a go between, as long as the advice is asked of, and is coming from, a lawyer. However, the exception is not triggered by discussions which do not pertain to giving or seeking legal advice. Council must also be vigilant that the closed session is held only to receive legal advice, and that other aspects of the same topic are not considered. Simply receiving legal advice does not permit Council to expand the discussion beyond the legal advice and hold a closed session where non-privileged matters are considered.

- (g) a matter in respect of which a council, board, committee or other body may hold a closed meeting under another *Act*;**

This exception was not relied on in the meetings we reviewed, and it therefore is not necessary to provide a breakdown of this exception.

- (h) information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any of them;**

There do not appear to be any reported decisions on this exception under the *Municipal Act*, either by the Ombudsman or the Information and Privacy Commissioner. Given the ordinary and grammatical meaning of the words used in the exception, three criteria would need to be met:

- 1) information must be discussed;
- 2) that information must have been supplied by Canada, a province or territory or a Crown agency; and
- 3) the information must have explicitly been supplied in confidence.

Information not explicitly supplied in confidence, or not supplied directly by Canada, a province or territory, or a Crown agency, would not meet this exception. For example, if a third party provides information about a government program or matter, this exception would not apply.

It is important to distinguish between this exception, which pertains to information provided by Canada or a province or territory, and exception (i), which pertains to trade secrets provided by third parties. The protection here appears to cover a much broader range of topics – information, writ large – and could conceivably cover information not captured in (i). However, that information *must* come from a government source, and must be supplied in confidence.

- (i) a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;**



An identical provision has been addressed by the Information and Privacy Commissioner in numerous reported decisions. The test that body relies on was laid out in the very recent decision of *Cabinet Office (Re)*, 2022 CanLII 3811 (ON IPC):

- “1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information, and
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly, and
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in paragraph (a), (b), (c) and/or (d) of section 17(1) will occur.

*Commercial information* is information that relates solely to the buying, selling or exchange of merchandise or services. This term can apply to both profit-making enterprises and non-profit organizations, and has equal application to both large and small enterprises.<sup>121</sup> The fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information.

*Financial information* refers to information relating to money and its use or distribution and must contain or refer to specific data. Examples of this type of information include cost accounting methods, pricing practices, profit and loss data, overhead and operating costs.”

The Ombudsman has made clear that this exception requires that the information actually belong to the third party; information relating to the municipality would not be dealt with under this exception.

Although not binding on us, we consider this to generally be the correct test.

- (j) **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.**

This exception was relied on extensively throughout the meetings we reviewed – at least once in almost every meeting, in fact. In order to apply, the discussion must specifically relate to matters currently under negotiation. The test used by the Ombudsman’s office was described in *Grey Highlands (Municipality of) (Re)*, 2021 ONOMBUD 11:

- i. The *in camera* discussion was about positions, plans, procedures, criteria, or instructions;

- ii. The positions, plans, procedures, criteria, or instructions are intended to be applied to negotiations;
- iii. The negotiations are being carried on currently, or will be carried on in future; and
- iv. The negotiations are being conducted by or on behalf of the municipality.

In the Pappas Report, it was further clarified that simply providing updates or overviews without discussing the City's plans or positions is not sufficient.

This exception is not meant to shelter every aspect of a negotiation or discussion. On the other hand, this exception does apply to shield disclosure of the City's *approach* in such negotiations.

#### Discussion on Multiple Topics

In *St. Catherine's (City) v. IPCO*, 2011 ONSC 2346, the Divisional Court held that it was not reasonable to expect a municipality to move back and forth between open and closed session. Indeed, it is not surprising that individual questions or comments by members may stray from subject matter otherwise properly within closed session. Relying on the *St. Catherine's* decision, we have considered whether the topic to be discussed at the meeting was properly within closed session, and not necessarily whether each individual comment was. Council must always be vigilant about allowing a more general discussion to unfold in closed session that is not protected by the exception, and moving back into open session for that discussion is appropriate and necessary. It is not, however, the case that every comment that may not be squarely within the exception renders the meeting improper. However, at some point the weight of comments or the general direction of the discussion will bring the meeting into non-compliance with the *Act* and Council must avoid that circumstance.

We would also distinguish conversations that may stray from the subject matter from situations where more than one discussion took place under the guise of the same heading. In certain cases, Council's conversations, as reflected in the minutes, were sufficiently disjointed to determine that they had, de facto, moved to discussion of another topic entirely. For example, in some meetings Council had subdivided its conversation beyond the agenda items, while in others multiple distinct topics had been included within the same agenda item. The simple fact of stating on the agenda that Council will discuss a certain topic, when in fact council actually intends to discuss other or additional matters, is not sufficient to allow Council to discuss that matter in closed session.

### Moving Into Closed Session

Even where an exception applies which permits a meeting to be held in closed session, the *Municipal Act* still imposes certain restrictions in order 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 physically enter or log into 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. Based on information publicly available and that provided by the City it appears that the resolutions to move into closed session were conducted in public (virtually, in person or a combination of the two).

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. 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.

The present complaint cites both the *Municipal Act* and Stratford’s Procedural By-Law. The Procedural By-Law effectively adopts the same requirements as the *Act*. Accordingly, we have proceeded with a single analysis.

### Findings

Each of the meetings we analyzed used approximately the same format for its public agenda. We have presumed that the public agenda accurately reflects the motion passed to move into closed session. In light of the requirements of the *Act*, we find that all of the motions to move into closed session were deficient. In so finding, we repeat the observations in the Pappas Report, and echo the recommendation that the description used by Council in the closed session agenda was in fact a better model of what the law requires of the public motion. We note parenthetically that it appears, from the publicly available agendas, that the City has adopted this measure moving forward.

Further deficiencies existed for certain meetings. In some cases, the public agenda did not match the agenda used during the closed meeting, whether as a result of different exceptions

being cited or, more problematically, items which were listed only on the closed session agenda but not on the public agenda and resolution to move into closed session. A small number of meetings posed further issues by lumping multiple discrete topics together in one agenda item.

Below, we consider each meeting from January 1, 2020, individually. For each meeting we produce the public agenda and the agenda used in closed session. Each item is then further analyzed as to whether it was properly within the cited exception, using the tests laid out above. Note that we considered only the cited exception; where that exception did not apply, we found the discussion to be improperly held in closed session, even if the City may have been able to argue the applicability of another exception.

## **Analysis**

### **January 9, 2020**

The Publicly available agenda for this meeting reads:

- 3.1 Advice that is subject to solicitor-client privilege including communications necessary for the 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)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. It reads as follows:

- 3.1 Follow up – Annexation Public Meeting

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)).

## Analysis

3.1 related to the provision of a copy of the draft Planning Justification Report and additional information requested by Council for the proposed annexation between the City, Township of Perth South and County of Perth.

No solicitor-client privileged information was discussed at this meeting and, as such, this exception does not apply.

The meeting discussed the draft Planning Justification Report and several other items (a breakdown on what industrial land is left in the City, how much is viable, what the costs will be to service these parcels and how much land is required to meet the City's goals). We accept the City's argument that these details amount to a discussion of the City's bargaining position and, as such, fall within the cited exception.

### **January 13, 2020**

The Publicly available agenda for this meeting reads:

- 4.1 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 Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), and

Information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any of them (section 239.(2)(h)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. It reads as follows:

- 4.1 Planning Justification Report for Proposed Annexation

[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 of local board (section 239.(2)(k));

- 5.1 Additional Information for the Proposed Renewable Natural Gas Project

[Advice that is subject to solicitor-client privilege including communication necessary for that purpose (section 239.(2)(f)), and

Information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any of them (section 239.(2)(h))].

### Analysis

4.1 considered additional information requested regarding the impact of the cost to service on land sale prices and additional questions from Council regarding the Planning Justification Report for the proposed annexation. This discussion did not involve instructions to or advice from a solicitor. As such, the solicitor-client privilege exception does not apply.

However, during the discussion Council not only discussed the draft planning report but also the cost to service and acquire land and the sale price per acre as well as the possible uses of the land and the on-going costs of the lands if they are not developed. It is possible this information would impact the bargaining position of the Municipality if disclosed publicly and as such is within the cited exception or the exception for land acquisition. Accordingly, this matter was properly considered in closed session.

5.1 involved providing Council with information with respect to the agreement with FortisBC for the purchase of Renewable Natural Gas (RNG) from the City of Stratford and to provide information on discussions with Walker Environmental on the provision of organics. The discussion contained legal advice received from the City's solicitor. As such, these portions of the meeting were properly conducted in closed session.

### **January 27, 2020**

The Publicly available agenda for this meeting reads:

- 4.1 Security of municipal property of the municipality or local board (section 239.(2)(a)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. It reads as follows:

- 4.1 Municipal Modernization Service Review

[Security of municipal property of the municipality or local board (section (239.(2)(a))].

### Analysis

4.1 considered the City undertaking a third-party Municipal Modernization Service Review with the goal of identifying service delivery efficiencies and lowering costs. Council did not discuss threats of physical loss or damage to property or public safety related to the property. This was not an appropriate use of this exception. Accordingly, this meeting was not properly conducted in closed session.

### **February 4, 2020**

The Publicly available agenda for this meeting reads:

- 4.1 Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. It reads as follows:

- 3.1 Proposed Municipal Boundary Adjustment

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))].

### Analysis

3.1 involved extensive discussion with and advice from the City's solicitor. This was an appropriate use of the solicitor-client privilege exception.

### **February 10, 2020**

The Publicly available agenda for this meeting reads:

- Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)) and Litigation or potential litigation, including matters before administrative tribunals affecting the municipality or local board (section 239.(2)(e));
- Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

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

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. It reads as follows:

#### 4.1 Grand Trunk Expropriation Update

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

#### 4.2 Appointment of Evaluation Team

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];

#### 5.1 Health Unit Merger – Cost Sharing Agreement with the City, St. Marys, County of Perth and adding County of Huron

[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))];

#### 6.1 Appointment to Festival Hydro Inc.

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))].

### Analysis

4.1 involved updating Council on the status of ongoing litigation regarding the expropriation of the City-owned Grand Trunk property. This involved extensive discussion and advice from the City's solicitor. As such, this was an appropriate use of the solicitor-client privilege exception, and the matter was properly within closed session.



4.2 involved considering the appointment of members to the Evaluation Team for the Municipal Modernization Service Review RFP. This did not involve a discussion of *personal* matters. As such, this was an inappropriate use of this 239.(2)(b) exception, and the matter was not properly within closed session.

5.1 involved considering a cost-sharing agreement with the County of Huron, County of Perth and the Town of St. Marys as it relates the newly formed Huron Perth Public Health Unit that came into existence on January 1, 2020. Council discussed negotiation strategy in terms of apportioning cost. As such, this was a proper use of the cited exception, and the matter was properly within closed session.

6.1 considered the recommendation from the Board of Directors of Festival Hydro Inc., to appoint an individual for a four-year term to December 2024. The individual's resume was included as an attachment to the discussion. As such, this was an appropriate use of the personal matters exception, and the matter was properly within closed session.

## **February 24, 2020**

The Publicly available agenda for this meeting reads:

- 4.1 Labour relations or employee negotiations (section 239.(2)(d));
- 4.2 Labour relations or employee negotiations (section 239.(2)(d));
- 5.1 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 of local board (section 239.(2)(k));
- 6.1 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 of local board (section 239.(2)(k)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. It reads as follows:

- 4.1 Contract Negotiations – International Brotherhood of Electrical Workers (IBEW) – Local 636 (Parallel Transit Division)

[Labour relations or employee negotiations (section 239.(2)(d))];

#### 4.2 Living Wage

[Labour relations or employee negotiations (section 239.(2)(d))];

#### 5.1 Renewable Natural Gas Project Next Steps

[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 of local board (section 239.(2)(k))];

#### 6.1 Community Transportation Pilot Project – Recommended Service Provider and Local Partnership Agreement

[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 of local board (section 239.(2)(k)).]

### Analysis

4.1 involved a status report on IBEW Local 636 (Parallel Transit Division) Collective Bargaining outcomes to date. The discussion concerned union negotiations and as such was a proper use of the cited exception, and this matter was, therefore, properly within closed session.

4.2 involved considering requirements and options for the City to become a Living Wage Employer. The discussion included impacts on wages and employee bargaining and is a proper use of the cited exception. The matter was, therefore, properly within closed session.

5.1 involved an update to Council on various agreements needed to move forward with the Renewable Natural Gas Project at the City's Water Pollution Control Plant. Council discussed specific points regarding the deal and negotiations were ongoing. As such, this is a proper use of the cited exception, and the matter was properly within closed session.

6.1 involved considering entering into a Local Partnership Agreement with North Perth and St Marys for the Intercity Community Transportation Pilot Project; and to authorize staff to negotiate a service agreement with Voyago. This matter involved a discussion of the preferred proponent for the RFP and instructions to negotiate the associated contract. As such, this was a proper use of the cited exception, and the matter was properly within closed session. As we have determined this matter was properly closed, it is not necessary to consider the second cited exception.

**March 9, 2020**

The Publicly available agenda for this meeting reads:

- 4.1 Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));
- 4.2 Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));
- 4.3 Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));
- 4.4 Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));
- 5.1 Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));
- 5.2 Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));
- 6.1 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)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. It reads as follows:

- 4.1 Appointment to Festival Hydro Inc.  
[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];
- 4.2 Appointment to Accessibility Advisory Committee  
[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];

- 4.3 Appointment to Heritage Stratford Advisory Committee
- [Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];
- 4.4 Appointment of Energy & Environment Committee Representative to the Active Transportation Advisory Committee for one year.
- [Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];
- 5.1 Ontario Senior of the Year Award
- [Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];
- 5.2 Bronze Star Recognition Program
- [Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];
- 6.1 Annexation Lands/Ministerial Zoning Order
- [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))].

### Analysis

4.1 considered the recommendation from the Board of Directors of Festival Hydro Inc. to re-appoint an individual for a four-year term to November 30, 2023. A request was made for the individual's resume to be circulated.

The request to circulate a resume amongst council indicates, in our opinion, that personal information was discussed at this meeting. Accordingly, this matter was properly within closed session.

4.2 sought direction from Council on whether staff should re-advertise for the remaining vacant citizen position available on the Accessibility Advisory Committee. The Acting Clerk provided an update on the recruitment of citizen representatives to the Accessibility Advisory

Committee. The discussion did not disclose personal information about any individual and as such was not a proper use of the cited exception. Accordingly, this matter was not properly within closed session.

4.3 considered the applications received during the second round of advertising for a citizen representative and an Alternate Stratford and Area Builders' Association representative on the Heritage Stratford Committee. The discussion disclosed personal information of applicants. As such, this portion of the discussion was appropriately exempt.

4.4 considered the nomination from the Energy & Environment Committee for one Energy & Environment representative to serve on the Active Transportation Advisory Committee. There was no disclosure of any *personal* information about the nominee. As such, this was an inappropriate use of the cited exception, and the matter was not properly within closed session.

5.1 nominated a senior in the community for the 2020 Senior of the Year Award. No *personal* information was disclosed about nominees. As such, this was an inappropriate use of this exception.

5.2 considered the 2020 recipients for the 2020 Bronze Star Recognition Program. The discussion did not disclose *personal* information about recipients. As such, this was an inappropriate use of this exception.

6.1 provided an update on the status of the annexation request and outlined next steps relating to the zoning of the lands for employment purposes including the City's request for a Minister's Zoning Order. The City Solicitor was present for the meeting, but no advice or instructions were given. As such, this was an inappropriate use of the solicitor-client privilege exception. However, we do accept that Council's discussion of the annexation, and details surrounding it, met the requirements of the negotiation exception. Further, as annexation relates to an acquisition of land, this matter could have been discussed under that exception as well. Accordingly, this matter was properly held within closed session.

### **March 30, 2020**

The Publicly available agenda for this meeting reads:

- 4.1 A matter in respect of which a council, board, committee or other body may hold a closed meeting under another Act (section 239.(2)(g));
- 5.1 Security of municipal property of the municipality or local board (section 239.(2)(a));
- 6.1 Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

- 7.1 Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. It reads as follows:

- 4.1 Annexation Lands/Ministerial Zoning Order – Update
- [Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f));
- 4.2 Acting CAO’s Update – COVID-19
- [Security of municipal property of the municipality or local board (section 239.(2)(a)), And
- Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));
- 5.1 COVID-19 Pandemic Workforce Planning Considerations
- [Labour relations or employees negotiations (section 239.(2)(d));
- 6.1 COVID-19 Financial Position of the City
- [Security of municipal property of the municipality or local board (section 239.(2)(a)), And
- Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)), 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)).

### Analysis

4.1 concerned a verbal report and update by the Acting CAO on the status of the annexation and the Minister’s Zoning Order. The discussion involved questions to and answers from the City Solicitor regarding the annexation. This portion of the meeting was appropriately within the solicitor-client privilege exception.

4.2 provided an update regarding the COVID-19 pandemic. This discussion did not consider any physical threat to property, nor was any personal information disclosed. Accordingly, neither cited exception applied, and this matter was not properly within closed session.

5.1 provided a status update on workforce planning considerations and implications as a result of the COVID-19 pandemic given the significant fiscal challenges and constraints presented to the Corporation. This discussion covered topics of restructuring, including layoffs and changes to compensation. Accordingly, this matter fell within the cited exception.

6.1 concerned the financial impact of the COVID-19 pandemic on the City. This was a lengthy discussion that spanned nearly every aspect of finances and operations, from property taxes and fees for service, to staffing and levels of service.

In our opinion, it is impossible to address this discussion as a singular item, given the breadth of topics. The cited exemptions were not applicable – the discussion did not pertain to the actual security of property, no personal information of any identifiable individuals was discussed, and there were no ongoing negotiations that factored in. However, portions of the discussion did appropriately fall under the exception for labour relations or employee negotiations, including discussions of layoffs, restructuring, and redeployment. The balance of the discussion pertained to budgeting shortfalls, service suspensions, and changes to payable fees – none of these were appropriate for discussion in closed session. This matter should have been divided into a closed and open session to properly adhere to section 239. This was not an instance where the flow of the discussion permitted some deviation from the pure categories of exception; a separate open session meeting was required given the depth of the matters discussed.

### **April 1, 2020**

The Publicly available agenda for this meeting reads:

- 3.1 Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)), And  
  
Security of municipal property of the municipality or local board (section 239.(2)(a));
- 4.1 Labour relations or employee negotiations (section 239.(2)(d)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. It reads as follows:

- 3.1 COVID-19 Temporary Council Remuneration Reduction

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)), And

Security of municipal property of the municipality or local board (section 239.(2)(a));

#### 4.1 COVID-19 Pandemic Workforce Planning Considerations

[Labour relations or employee negotiations (section 239.(2)(d))].

### Analysis

3.1 discussed the options for a reduction in Council remuneration during the declared state of emergency but did not discuss any physical threat to property. No personal information was discussed. Accordingly, neither exception applied, and this matter was not properly in closed session. We would again echo our comments, above, that discussion of Council remuneration will rarely, if ever, be appropriate for closed session.

4.1 provided a status update on workforce planning considerations and implications as a result of the COVID-19 pandemic given the significant fiscal challenges and constraints presented. The discussion included the status of planned layoffs and restructuring, and therefore was properly within closed session.

The discussion then moved onto other topics, including social distancing measures and event cancellations. Of those topics, a small portion were properly within the exception for information about an identifiable individual, in that they discussed active or suspected COVID-19 cases at the time. The remainder, however, including discussion of closing facilities and cancelling events, was not properly within closed session.

### **April 14, 2020**

The Publicly available agenda for this meeting reads:

- 4.1 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));

- 5.1 Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)), And



Security of municipal property of the municipality or local board (section 239.(2)(a));

- 6.1 Labour relations or employee negotiations (section 239.(2)(d));
- 7.1 A trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons or organization (section 239.(2)(i)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. It reads as follows:

- 4.1 Recommended approach to regulating Shore Term Rental Accommodations

[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));

- 5.1 COVID-19 Financial Position Update

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)), And

Security of municipal property of the municipality or local board (section 239.(2)(a));

- 6.1 COVID-19 Pandemic Workforce Planning Considerations

[Labour relations or employee negotiations (section 239.(2)(d));

- 7.1 Renewable Natural Gas Project Status Update

[A trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice

significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons or organization (section 239.(2)(i));

### Analysis

4.1 considered additional information to provide further direction to staff on how to regulate and license short term rental establishments in the new Comprehensive Zoning By-law. This discussion considered the legal opinion of the City Solicitor with respect to regulating short term accommodations. As such, this was an appropriate use of this exception, and the matter was properly discussed in closed session. However, we note that litigation was not discussed, and use of that particular exception was improper.

5.1 reviewed the financial position of the City and did not consider *personal* information about any individuals. As such, this was an inappropriate use of this exception. Similarly, no threats to property were discussed. Accordingly, this matter was not properly within closed session.

6.1 considered an update on workforce issues resulting from the COVID-19 pandemic. This matter fell within the cited exception.

The discussion also provided an overview of constructive dismissal and Q&A from the City's HR legal advisors. This portion of the meeting would be subject to the solicitor-client privilege exception, and therefore was properly within closed session.

7.1 provided Council with information on the Renewable Natural Gas project. This discussion did not disclose trade secrets of third parties. As such, this was an inappropriate use of this exception. However, the City's position in various negotiations was discussed. Accordingly, this matter fell within the exception for negotiations and could, therefore, have been properly held in closed session.

### **April 17, 2020**

The Publicly available agenda for this meeting reads:

- 4.1 Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));
- 4.2 Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. It reads as follows:

4.1 Appointment of Chief Administrative Officer

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];

4.2 Appointment of Acting Director of Corporate Services and Treasurer

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];

4.3 COVID-19 Update

[Labour relations or employee negotiations (section 239.(2)(d))].

Analysis

4.1 discussed the appointment of the CAO. It discussed her job performance to date. As such, this was an appropriate use of this exception.

4.2 discussed the appointment of the Acting Director of Corporate Services. Details of the applicant, including their background and the intended salary, were discussed. Accordingly, this matter fell within the cited exception.

4.3 provided a brief update on the COVID-19 layoff process. This included discussion of ongoing negotiations regarding wage reductions, as well as layoffs. Accordingly, this matter was properly within the cited exception.

**April 27, 2020**

The Publicly available agenda for this meeting reads:

4.1 Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

5.1 Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

6.1 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);

7.1 Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. It reads as follows:

4.1 Appointment of Directors to Stratford Economic Enterprise Development Corporation

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];

5.1 Stratford Transit COVID-19 Service Reduction

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];

6.1 Proposed Reimbursement for Land acquired for the Quinlan Road Sanitary Pumping Station

[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)];

7.1 Appointment of City Clerk

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];

8.1 ADDED – Appointment of Chief Administrative Officer Follow-up

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))].

### Analysis

4.1 considered the appointment of various representatives to the Board of Directors of Stratford Economic Enterprise Development Corporation. The exercise circulated the resumes of the candidates, and as such was an appropriate use of the exception.

5.1 considered a cost savings and service reduction plan during the COVID-19 pandemic. Council discussed the plan in general terms and did not disclose any personal information about specific individuals. As such, this was an inappropriate use of this exception.

6.1 considered Council's direction on the reimbursement for land acquired for the Quinlan Road Sanitary Pumping Station. Council discussed a pending transaction and the specific purchase price for the lands. As such, this was an appropriate use of this exception.

7.1 discussed recommendations for the appointment of a City Clerk. As this process did not disclose any personal information or performance information about the candidate, this was not an appropriate use of this section.

8.1 Wage issues were discussed regarding hiring for the CAO position. Wages identified with an individual are personal information that satisfies this exception.

### **May 11, 2020**

The Publicly available agenda for this meeting reads:

- 4.1 Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. It reads as follows:

- 4.1 Stratford Transit COVID-19 Service Reduction Follow-up  
[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];
- 5.1 ADDED – Appointment of The University of Waterloo/Festival Hydro seat to the Stratford Economic Enterprise Development Corporation Board of Directors  
[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))].

### Analysis

4.1 considered a cost savings transit service reduction plan during the COVID-19 pandemic. The discussion did not disclose any information of a personal nature. As such, this was an inappropriate use of this exception, and this matter was not properly within closed session. We do, however, note that portions of this meeting did discuss matters that may have been covered by the labour relations exception if they had been discussed on their own. However,

it will often be the case that council decisions have potential impacts on employment; this is not sufficient to warrant the entirety of the discussion being held in closed.

5.1 considered the recommendation of the Stratford Economic Enterprise Development Corporation (InvestStratford) to appoint a candidate for the University of Waterloo/Festival Hydro seat on the SEED Co. Board of Directors. Personal information of the candidate was discussed; accordingly, this matter was properly held in closed session.

## **May 25, 2020**

The Publicly available agenda for this meeting reads:

- 4.1 Security of municipal property of the municipality or local board (section 239.(2)(a)),  
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)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. It reads as follows:

- 4.1 COVID-19 Financial Relief Measures

[Security of municipal property of the municipality or local board (section 239.(2)(a)), 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 COVID-19 Pandemic Workforce Planning Update For Gradual Staged Recovery

[Labour relations or employee negotiations (section 239.(2)(d))].

## Analysis

4.1 provided recommendations on various relief requests related to the COVID-19 pandemic. The discussion did not pertain to physical loss or damage to property. As such, this was an inappropriate use of this exception.

5.1 provided a status update on the City of Stratford workforce planning for gradual staged recovery related to the re-opening by the Province. The discussion referred to reopening of City facilities in general terms and not to matters involving specific employees. As such, this was an inappropriate use of this exception.

## June 8, 2020

The Publicly available agenda for this meeting reads:

- 4.1 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 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));
- 6.1 Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. It reads as follows:

- 4.1 Sale of Lots 1 and 2, Plan 44M-38, City of Stratford, Wright Business Park to 2742051 Ontario Ltd. (Industrial Contracting Solutions/Tri-Mach Group of Companies)  
  
[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 Blue Box Transition to Full Producer Responsibility Contract Implications  
  
[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));

#### 6.1 Ontario Ombudsman Complaint

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))].

#### Analysis

4.1 considered the sale of industrial land by the City and as such was an appropriate use of the exception.

5.1 provided information on the implications to the City's contracts with Canadian Waste Management and Blue Water Recycling Association. The City has confirmed that the discussion was the result of privileged legal opinions and, further, that the discussion pertained to ongoing contractual negotiations. Accordingly, this matter was properly within closed session.

6.1 discussed a complaint received by the Ombudsman's Office regarding the hiring process of the CAO.

6.1 did not disclose any personal information about the CAO and pertained to a discussion of the Ombudsman's complaint and the hiring process. This is not an appropriate use of this exception. However, we find that the matter could have been properly closed per S. 239 (3)(b) of the *Municipal Act*, which permits closed meetings to discuss investigations of the Ombudsman.

#### **June 22, 2020**

The Publicly available agenda for this meeting reads:

- 4.1 Labour relations or employee negotiations (section 239.(2)(d));
- 5.1 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);
- 5.2 Security of municipal property of the municipality or local board (section 239.(2)(a)), AND

Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)), AND



Labour relations or employee negotiations (section 239.(2)(d));

- 5.3 Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f));
- 5.4 Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. However, in the Investigator's opinion, certain details of the agenda for this meeting should remain confidential in order to protect the purpose of matters being discussed in closed. Below, we reproduce the agenda, with certain changes made to this effect, which are indicated in italics. Additionally, insufficient details were provided regarding other items; we have provided supplementary details in italics. It reads as follows:

4.1 COVID-19 Pandemic Workforce Planning Update

[Labour relations or employee negotiations (section 239.(2)(d))];

5.1 Request for Consent from Huron Perth Public Health for Property Acquisition

[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];

5.2 CAO's Update – COVID-19

[Security of municipal property of the municipality or local board (section 239.(2)(a)), AND

Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)), AND

Labour relations or employee negotiations (section 239.(2)(d))];

5.3 Project Update

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))];

#### 5.4 *Investigation Report Update*

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))].

#### Analysis

4.1 provided a status update on the City of Stratford workforce planning for staged recovery as the Province prepared for the next phases of re-opening. This discussion included details central to the employment relationship, such as reporting structures and hiring priorities. Accordingly, it was properly held in closed.

5.1 discussed the pending acquisition of property by the Board of Health for the Huron Perth Health Unit and advised of the request for the consent of Council. As the property was not being acquired by the City, the cited exception cannot apply. However, the meeting did discuss the City's negotiating position vis-à-vis providing its consent to the acquisition. We find that the discussion met the requirements for the negotiation exception, and therefore that this matter could have properly been discussed within closed session.

5.2 provided an update regarding the COVID-19 pandemic. Council did not discuss threats of physical loss or damage to property or public safety related to the property. This was not an appropriate use of this exception. The discussion also did not include personal information about individual employees. As such, this was an inappropriate use of this exception.

It is true that portions of this discussion touched on employment issues. However, those discussions represent only a sampling of the many topics covered under this agenda item. As with other meetings contained in this report, it may well have been that the labour relations exception would have applied had those topics been discussed on their own in closed; however, this is not the case for much of the meeting. The portions of the discussion to which the exception would have applied, are limited and discrete, and it would not be appropriate to allow such comments to exempt the entirety of such a broad discussion from the open meeting requirements.

5.3 discussed an update regarding the industrial development Project and specific components thereof. The discussion was the result of the City Solicitor's legal opinion; accordingly, this matter was properly within the cited exception.

5.4 provided an update regarding an Investigation Report pertaining to a third party, and considered an outline prepared by the City Solicitor. This was an appropriate use of this exception.

## June 29, 2020

The Publicly available agenda for this meeting reads:

- 3.1 Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. It reads as follows:

- 3.1 Racism and Action in the City of Stratford

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))].

### Analysis

3.1 discussed racially charged comments that were made on social media by members of the public. Council was provided with a legal opinion and background from the City Solicitor. As such, this was an appropriate use of this exception.

## July 6, 2020

The publicly available agenda for this meeting reads:

- 3.1 Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));
- 3.2 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 of local board (section 239.(2)(k)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. However, in the Investigator's opinion, certain details of the agenda for this meeting should remain confidential in order to protect the purpose of matters being discussed in closed. Below, we reproduce the agenda, with certain changes made to this effect, which are indicated in italics.

### 3.1 Compensation – Environmental Services

Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

### 3.2 *Property* Sanitary Servicing

[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 of local board (section 239.(2)(k))].

## Analysis

3.1 involved a discussion of the compensation of an identifiable employee. Accordingly, it properly fell within the cited exception.

3.2 was a multi-faceted discussion about two properties in the City. The first property, was owned by a third party. The discussion related to how this property may fit into long-term plans and positions of the City and the discussion revolved around future agreements and the City's position. It was, therefore, properly within the cited exception for plans for future negotiations.

However, within item 3.2 Council also discussed an unsolicited offer from a third party to purchase city-owned land at a different address. This land was not the identified Property. It is not clear why this property was discussed in the same item as the identified Property; however, the discussion cannot be said to have been on the same issue. Accordingly, this item was *prima facie* improperly considered in closed session, as it was not properly included in the motion to move into closed session.

This matter did consider the acquisition or disposition of property and could therefore have been properly considered in closed session. It was improperly considered because there was no resolution setting out the general nature of the matter and citing the proper section of the *Act* that allows discussions of property acquisition or disposition to be considered in closed session.

## **July 13, 2020**

The publicly available agenda for this meeting reads:

### 4.1 Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)), AND

Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. It reads as follows:

4.1 Human Resources Matter

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)), AND

Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))].

Analysis

4.1 was a discussion about a human resources matter before an adjudicative body. Details about the employee were discussed, and the solicitor representing the City spoke to the matter. This matter was properly within the cited exceptions; it would have also fallen within the exception related to ongoing litigation.

**July 20, 2020**

The publicly available agenda for this meeting reads:

3.1 Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f));

4.1 Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f));

4.2 Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. However, in the Investigator's opinion, certain details of the agenda for this meeting should remain confidential in order to protect the purpose of matters being discussed in closed. Below, we reproduce the agenda, with certain changes made to this effect, which are indicated in italics.

3.1 Economic Recovery Task Force – Patio Boardwalk Program, Legal Opinion

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f));

4.1 *Discussion of an industrial development project*

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f));

4.2 Rezoning of 265 St. David Street

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)).

Analysis

3.1 related to a legal opinion provided by a lawyer acting for the City. Accordingly, it was properly within the cited closed meeting exception.

4.1 was an update on the progress of components of the Industrial Project. The City Solicitor confirmed that legal opinion and advice were provided to Council. Accordingly, this matter fell within the cited exception.

4.2 consisted of a legal opinion received for information. This was properly within the cited exception.

**July 27, 2020**

The publicly available agenda for this meeting reads:

- 4.1 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 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);
- 6.1 Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f));

- 6.2 Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)), And

Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. However, in the Investigator's opinion, certain details of the agenda for this meeting should remain confidential in order to protect the purpose of matters being discussed in closed. Below, we reproduce the agenda, with certain changes made to this effect, which are indicated in italics.

- 4.1 Industrial Land Prices Policy & Real Estate Commissions Policy Amendments

[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 39 George Street West, Stratford

[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)];

- 6.1 265 St. David Street - Zoning By-law Update

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))];

- 6.2 *Discussion of a local organization*

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)), And

Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))].

### Analysis

4.1 although listed as a single agenda item, this discussion in fact involved several distinct topics: land pricing in the two industrial parks, removal of unavailable parcels from the

Industrial Land Prices Policy, removal of the Option Fee from the Industrial Land Prices Policy, changes to the Land Prices Policy and Real Estate Commissions Policy reflecting the role of SEED Co coordinating land sales, and naming of an industrial park.

The discussion of adopting prices and other policies for existing City owned industrial lands was properly considered in closed session as this was critical to the disposition of the lands and publicly disclosing the basis for pricing decisions would prejudice the City's ability to negotiate competitive sales.

The naming of an industrial park is not properly within any of the stated exceptions and ought not to have been discussed in closed session.

5.1 was a discussion regarding a lease agreement for a specific City-owned property. Prices and other conditions were discussed. Accordingly, the item was properly within the cited exception.

6.1 included legal advice provided by the City Solicitor. Accordingly, it was properly within the cited exception.

6.2 involved a lengthy and detailed discussion of an investigation report into a local service provider. The City Solicitor confirmed legal advice was provided and as such the meeting fell within the cited exceptions and was, therefore, properly in closed session.

### **August 10, 2020**

The publicly available agenda for this meeting reads:

4.1 Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), and

Litigation or potential litigation, including matters before administrative tribunals affecting the municipality or local board (section 239.(2)(e));

4.2 Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f));

5.1 Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f));

6.1 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

Labour relations or employee negotiations (section 239.(2)(d));



- 7.1 Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. It reads as follows:

- 4.1 Grand Trunk Expropriation Update

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), and

Litigation or potential litigation, including matters before administrative tribunals affecting the municipality or local board (section 239.(2)(e));

- 4.2 Boundary Adjustment Update

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f));

- 5.1 Development Charges By-law Legal Advice

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f));

- 6.1 585 Douro Street

[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

Labour relations or employee negotiations (section 239.(2)(d));

- 7.1 Job Evaluation and Compensation Review (Administrative Employee Group)

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)).

### Analysis

4.1 related to an ongoing litigation matter. Accordingly, it fell within the cited exception.

4.2 was indicated in the agenda as an update on and adjustment to the City's boundaries. However, Council actually discussed three topics: the annexation of land by the City, as well as the Ministerial Zoning Order and ongoing negotiations with an industrial developer.

The City has confirmed that legal advice was provided. Accordingly, this matter was properly within closed session.

5.1 was a discussion around a legal opinion provided by the City solicitor. This matter was, therefore, properly within the cited exception.

6.1 was a discussion of the City's position on the price of a property it was selling. Accordingly, this matter was properly within the cited exception.

7.1 was a discussion of a pay equity and compensation review which was completed for the City, and of next steps regarding the compensation structure for municipal employees. This goes to the core of the employer-employee relationship and, as such, was properly within the cited exception.

### **August 24, 2020**

The publicly available agenda for this meeting reads:

- 4.1 Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), And  
Litigation or potential litigation, including matters before administrative tribunals affecting the municipality or local board (section 239.(2)(e));
- 5.1 Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. It reads as follows:

- 4.1 Heritage Designation for 265 St. David Street Update  
[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), And  
Litigation or potential litigation, including matters before administrative tribunals affecting the municipality or local board (section 239.(2)(e))];

### 5.1 Hiring of a Deputy Clerk – Update

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))].

#### Analysis

4.1 related to an ongoing matter before an adjudicative body. As such, it properly fell within the cited exception.

5.1 related to a hiring matter. The minutes indicate an overview of the preferred candidate was given; the details of the candidates recruitment constitute personal matters. Therefore, this item fell within the cited exception.

#### **August 31, 2020**

The publicly available agenda for this meeting reads:

- 3.1 Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)), And

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)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. It reads as follows:

- 3.1 Human Resources Matter

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)), And

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)).

### Analysis

3.1 was a discussion of an ongoing human resources matter which was before an adjudicative body. Accordingly, the item fell within the cited exceptions.

### **September 14, 2020**

The publicly available agenda for this meeting reads:

- 4.1 Security of municipal property of the municipality or local board (section 239.(2)(a));
- 4.2 Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f));
- 4.3 Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)), And  
  
Litigation or potential litigation, including matters before administrative tribunals affecting the municipality or local board (section 239.(2)(e)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. However, in the Investigator's opinion, certain details of the agenda for this meeting should remain confidential in order to protect the purpose of matters being discussed in closed. Below, we reproduce the agenda, with certain changes made to this effect, which are indicated in italics. It reads as follows:

- 4.1 Renesas Test Track Update  
  
[Security of municipal property of the municipality or local board (section 239.(2)(a))];
- 4.2 *Industrial Development Project Update*  
  
[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))];
- 4.3 Human Resources Matter Update

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)), And

Litigation or potential litigation, including matters before administrative tribunals affecting the municipality or local board (section 239.(2)(e))].

### Analysis

4.1 involved a discussion of property owned by the municipality. The property had been leased by a company, which had terminated its lease. Another potential lessee was identified, but the deal fell through. While there was a brief mention of the fact that police patrol the area, there were no discussions of any substance relating to an actual physical threat to the property. As discussed earlier, the fact that discussing an item in open session may result in risk to property is not, in and of itself, sufficient to trigger this exception. Accordingly, this matter was not properly discussed in closed session.

4.2 provided further updates on the industrial development negotiations. Legal advice was provided. Accordingly, this matter fell within the cited exception.

4.3 related to an ongoing matter before an adjudicative body. Legal advice was given. Accordingly, this matter fell within the cited exceptions.

### **September 21, 2021**

The publicly available agenda for this meeting reads:

- 3.1 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 of local board (section 239.(2)(k)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. It reads as follows:

- 3.1 Community Transportation Pilot Project – Service Agreement and Local Partnership Agreements

[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 of local board (section 239.(2)(k)).

### Analysis

3.1 required that Council review several proposed agreements between the City and third parties. Details of pricing, cost sharing, and service delivery were all discussed. The agreements were essentially complete, and staff was providing advice on the contents, and on whether to accept the agreements as drafted. The agreements constituted plans of the municipality and third parties; although the negotiation process was drawing to a close, accepting and finalizing agreements still constitutes part of negotiations. Accordingly, this matter properly fell within the cited exception.

### **September 28, 2020**

The publicly available agenda for this meeting reads:

- 4.1 Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f));
- 4.2 Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));
- 4.3 Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. However, in the Investigator's opinion, certain details of the agenda for this meeting should remain confidential in order to protect the purpose of matters being discussed in closed. Below, we reproduce the agenda, with certain changes made to this effect, which are indicated in italics. It reads as follows:

- 4.1 *Proposed By-Law*  
[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f));
- 4.2 Appointment of Youth Representative to Energy & Environment Advisory Committee

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];

4.3 Appointment of a Citizen Representative to the Committee of Adjustment

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))].

Analysis

4.1 presented a legal opinion on a proposal, which Council did not proceed with. Accordingly, this item fell within the cited exception.

4.2 was the discussion of a candidate for an advisory committee, and included personal details about a specific person. As such, this matter properly fell within the cited exception.

4.3 was the discussion of appointments to a committee, and included discussion of personal details of several specific people. As such, this matter properly fell within the cited exception

**October 13, 2020**

The publicly available agenda for this meeting reads:

- 4.1 Labour relations or employee negotiations (section 239.(2)(d));
- 5.1 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));
- 6.1 Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)), And  

Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. However, in the Investigator's opinion, certain details of the agenda for this meeting should remain confidential in order to protect the purpose of matters being discussed in closed.

Below, we reproduce the agenda, with certain changes made to this effect, which are indicated in italics. It reads as follows:

4.1 Contract Negotiations – International Brotherhood of Electrical Workers (IBEW) – Local 636 (Parallel Transit Division)

[Labour relations or employee negotiations (section 239.(2)(d))];

5.1 McCarthy Road W Extension and Birmingham Property Sanitary Servicing

[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))];

6.1 *Discussion of a local organization*

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)), And

Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))].

### Analysis

4.1 was a discussion of an ongoing labour relations matter. This item was properly within the cited exception.

5.1 involved the negotiation of the purchase of land by the City. Discussions included the price and other details relating to the City's bargaining position. Accordingly, this matter was properly within the cited exception.

6.1 was a discussion regarding a local organization and its board. The discussions followed up on previous discussions regarding negotiating positions and legal advice, and the City Solicitor has confirmed legal advice was given. The matter was, therefore, properly in closed session.

### **October 19, 2020**

The publicly available agenda for this meeting reads:

3.1 Labour relations or employee negotiations (section 239.(2)(d)), And



Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f));

- 4.1 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)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. It reads as follows:

- 3.1 Contract Negotiations – Stratford Professional Firefighters Association (SPFFA) Local 534

[Labour relations or employee negotiations (section 239.(2)(d)), And

Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f));

- 4.1 Boundary Adjustment and Additional Lands Servicing, Financing and Next Steps

[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)).

### Analysis

3.1 was a discussion of ongoing labour negotiations. Accordingly, it fell within the cited exception.

4.1 was a discussion in which legal advice was sought and received, and in which strategic considerations for the City in an ongoing negotiation process were reviewed. Accordingly, the matter was properly within the cited exceptions.

### **October 21, 2020**

The publicly available agenda for this meeting reads:

- 3.1 Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. It reads as follows:

- 3.1 Hiring of a Director of Corporate Services  
[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))].

#### Analysis

3.1 involved a discussion of a particular candidate for a position with the City. Accordingly, this matter fell within the cited exception.

### **October 29, 2020**

The publicly available agenda for this meeting reads:

- 3.1 Labour relations or employee negotiations (section 239.(2)(d)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. It reads as follows:

- 3.1 Contract Negotiations – International Brotherhood of Electrical Workers (IBEW) – Local 636 (Parallel Transit Division)  
[Labour relations or employee negotiations (section 239.(2)(d))].

#### Analysis

3.1 was a discussion of ongoing contract negotiations with a labour union. This matter properly fell within the cited exception.

**November 9, 2020**

The publicly available agenda for this meeting reads:

- 4.1 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 Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f));
- 4.3 Security of municipal property of the municipality or local board (section 239.(2)(a));
- 5.1 Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)), And  
  
Labour relations or employee negotiations (section 239.(2)(d));
- 6.1 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);
- 6.2 Appointments to the Accessibility Advisory Committee [Personal matters about an identifiable individual(s) including municipal employees or local board employees) (section 239.(2)(b))];
- 6.3 Appointments to the Active Transportation Advisory Committee [Personal matters about an identifiable individual(s) including municipal employees or local board employees) (section 239.(2)(b))];
- 6.4 Appointments to Energy and Environment Committee [Personal matters about an identifiable individual(s) including municipal employees/local board employees) (section 239.(2)(b))];
- 6.5 Appointments to Heritage Stratford Committee, Committee of the Whole In-camera 3 November 9, 2020 "Strengthening Our Community: Attracting People and Investment" [Personal matters about an identifiable individual(s) including municipal employees or local board employees) (section 239.(2)(b))];

- 6.6 Appointment to Stratfords of the World - Ontario Committee [Personal matters about an identifiable individual(s) including municipal employees or local board employees) (section 239.(2)(b))];
- 6.7 Appointments to Communities in Bloom Committee [Personal matters about an identifiable individual(s) including municipal employees or local board employees) (section 239.(2)(b))];
- 6.8 Appointments to the Town and Gown Advisory Committee [Personal matters about an identifiable individual(s) including municipal employees or local board employees) (section 239.(2)(b))].

As discussed above, this agenda is insufficient to meet the requirements of the *Act* for matters 4.1, 4.1, 4.3, 5.1, and 6.1.

The agenda used in closed session more adequately meets the requirements of the *Act*. However, in the Investigator's opinion, certain details of the agenda for this meeting should remain confidential in order to protect the purpose of matters being discussed in closed. Below, we reproduce the agenda, with certain changes made to this effect, which are indicated in italics. It reads as follows:

4.1 *Industrial* Development Agreement Update

[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 Community Hub Update

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))];

4.3 Cyber Security and Claim Update

[Security of municipal property of the municipality or local board (section 239.(2)(a)), And

Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))];

5.1 IT Division Restructuring

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)), And

Labour relations or employee negotiations (section 239.(2)(d));

#### 6.1 Lease of 39 George Street West – 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];

### Analysis

4.1 was a discussion about the Industrial Development project. It included an update on drafting a letter of understanding, and advice by the City Solicitor on certain subjects. There were a number of questions and discussion points that drifted to other aspects of the development, as often occurred in meetings discussing this project. However, as discussed above, Council is not expected to move into and out of closed session on a comment-by-comment basis. This was not a circumstance in which the nature of the conversation changed so as to be a fundamentally different discussion. Accordingly, the agenda item fell within the cited exceptions.

4.2 was a discussion of the City's community hub project, and an unsuccessful grant application. Although the agenda indicates that this item was in closed session due to solicitor-client privilege, the minutes do not indicate that any legal advice was sought or received. Indeed, the discussion appears only to pertain to the City's unsuccessful grant application, and to the possibility of exploring other avenues. Accordingly, this item did not fall within the cited exception, and was not properly within closed session.

4.3 pertained to cybersecurity measures taken by the City. As noted above, the reported cases state that "property of the municipality" need not be physical property. Measures to protect the IT infrastructure of the municipality therefore fit within the cited exception.

5.1 was a discussion of restructuring the IT department. No individuals were discussed, and the positions remained theoretical. As noted above, merely discussing workplace structures is not sufficient to trigger the labour relations exception. However, in our opinion it could have properly been discussed within the exception for negotiations, as there was considerable discussion of existing third-party contracts. However, the resolution moving into closed session was incorrect.

6.1 pertained to a potential lease of City land. This lease had been discussed at a previous closed session, but by this session the deal had fallen through. The closed session minutes indicate that Council was advised that the negotiations had been unsuccessful, and alternatives

were reviewed. Discussions were had of potential leases of City property. Accordingly, this was properly within closed session.

Items 6.2-6.8 of the agenda were not the subject of a complaint. In any event, they were not dealt with during this meeting.

### **November 13, 2020**

The publicly available agenda for this meeting reads:

- 3.1 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))

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. However, in the Investigator's opinion, certain details of the agenda for this meeting should remain confidential in order to protect the purpose of matters being discussed in closed. Below, we reproduce the agenda, with certain changes made to this effect, which are indicated in italics.

- 3.1 *Discussion of an industrial development*

[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))]

### Analysis

3.1 related to the ongoing Industrial Project. The discussion related to ongoing negotiations of an agreement, including both contents and legal advice on those contents. Accordingly, the matter fell within the cited exception.

### **November 15, 2020**

The publicly available agenda for this meeting reads:

- 3.1 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)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. However, in the Investigator's opinion, certain details of the agenda for this meeting should remain confidential in order to protect the purpose of matters being discussed in closed. Below, we reproduce the agenda, with certain changes made to this effect, which are indicated in italics.

- 3.1 Update on *an industrial development project*

[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))].

### Analysis

3.1 related to ongoing negotiations with an industrial developer. Both the City's bargaining position and legal advice were discussed. Accordingly, this matter properly fell within the cited exception.

### **November 17, 2020**

The publicly available agenda for this meeting reads:

- 3.1 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)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. However, in the Investigator's opinion, certain details of the agenda for this meeting should remain confidential in order to protect the purpose of matters being discussed in closed. Below, we reproduce the agenda, with certain changes made to this effect, which are indicated in italics.

3.1 *Update on an industrial development*

[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)).

Analysis

Although the agenda specified only an update on the development agreement, this meeting in fact involved a lengthy and comprehensive discussion of the Industrial Project. The discussion moved in and out of topics which properly fell within the cited exception. However, it is not expected that Council should move in and out of closed session with each comment or question. The essence of the discussion related to an update on the City's bargaining position in an ongoing negotiation, and legal advice thereon. Therefore, this meeting fell within the cited exception.

**November 19, 2020**

The publicly available agenda for this meeting reads:

3.1 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)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. It reads as follows:

3.1 Request to Extend Binding Letter of Intent Update



[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))].

### Analysis

Although only one item appeared on the agenda, Council held an extensive conversation regarding the Industrial Project. Indeed, the minutes indicate that the meeting lasted for about an hour and a half.

The proposed subject matter itself – an extension to the binding letter of intent with the developer – was well within the cited exception, as it involved giving instructions in ongoing negotiations. Council discussions however strayed into other aspects of the project. Based on the meeting minutes, it would appear that such discussion occurred naturally, and in response to the agenda item. Accordingly, this meeting was within the cited exception. While in this case we find, on a balance of probabilities, that the discussions did not stray so far as to bring the meeting out of compliance with the *Act*, Council should use caution to avoid opening discussions – and indeed, motions – on matters that are not directly related to the agenda item.

### **November 23, 2020**

We note that the meeting held on November 23, 2020, was not cited in the complaint and, therefore, was not considered.

### **November 24, 2020**

The publicly available agenda for this meeting reads:

- 3.1 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));

- 4.1 Personal matters about an identifiable individual(s) including municipal employees or local board employees) (section 239.(2)(b)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. However, in the Investigator's opinion, certain details of the agenda for this meeting should remain confidential in order to protect the purpose of matters being discussed in closed. Below, we reproduce the agenda, with certain changes made to this effect, which are indicated in italics.

### 3.1 *Industrial Development* Cost Sharing Agreement Update

[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));

### 4.1 Appointment of Deputy Mayor

[Personal matters about an identifiable individual(s) including municipal employees or local board employees) (section 239.(2)(b))].

## Analysis

The agenda with respect to item 3.1 is not reflective of the actual discussion held by Council. The minutes make clear that Council anticipated discussing two motions – one regarding the cost sharing agreement, and a second regarding a Ministerial Zoning Order (MZO) - and that the discussion was further subdivided into four topics. Beyond those topics, yet another conversation arose amongst Council regarding Councillor conduct on the ongoing Industrial Project. *Prima facie*, any planned discussion which does not relate to an update on the cost sharing agreement was not properly held in closed session.

The meeting began with a discussion amongst members of Council in the absence of the Mayor, CAO, and City Solicitor. Although the purpose and subject of the discussion are not altogether clear from the minutes, Council generally discussed the overall process of Council decisions and relations amongst Councillors, including concerns about decorum and conduct. This discussion did not pertain to plans or instructions regarding an ongoing negotiation, nor to legal advice. In fact, the subject matter – the workings and processes of council – would not appear to be covered by any exception, and would generally be a topic which Council ought to discuss publicly. Further, the discussion was already isolated from the rest of the agenda – it occurred at the beginning of the closed session, and staff and the Mayor left the meeting, presumably to allow for the discussion. A short recess occurred at the end of the discussion. Accordingly, this initial discussion was held contrary to the open meeting provisions of the *Act*.

The next portion of the meeting involved a varied discussion which, generally, came back to whether Council would agree to an extension to negotiating certain matters with the developer. In this case, while certain elements of the discussion strayed beyond the subject matter in the agenda, the overall discussion did indeed pertain to the City's position in ongoing negotiations, and to related legal advice. Therefore, this matter fell within the cited exception.

4.1 involved the appointment of a Deputy Mayor from amongst Council. Two members put their names forward, and a poll was taken. There is no indication in the minutes that any discussion was had, much less that any personal information was provided. This appeared to be similar, factually, to the *Burk's Falls/Armour* matter noted above. We would echo the conclusion that, where Council requires no further information or discussion regarding an appointment from within, the personal matters exception is not triggered. Accordingly, this matter did not fall within the cited exception.

### **December 7, 2020**

The publicly available agenda for this meeting reads:

- 3.1 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)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. However, in the Investigator's opinion, certain details of the agenda for this meeting should remain confidential in order to protect the purpose of matters being discussed in closed. Below, we reproduce the agenda, with certain changes made to this effect, which are indicated in italics.

- 3.1 *Industrial Development* Sharing Agreement Update

[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))]

Even the motion as contained in the closed session agenda does not accurately reflect the discussions which were had. The closed session minutes begin with a list of objectives, which

throughout the discussion are often referred to as agenda items. Within those particular items, still other topics were discussed.

An accurate agenda would read as follows:

1. A request by a Councillor to discuss a letter from the Mayor
2. An update on the Cost Sharing Agreement
3. Draft responses to a Q and A on *the industrial development Project*, to be posted for the public
4. A letter from the CAO regarding council-staff relations

These items cannot be reasonably construed as all pertaining to an update on the cost sharing agreement, and while the cited exceptions may apply for some of the discussions, they do not apply for others. Indeed, at times discussions ventured as far as the implementation of workshops on Council-staff relations, and policies around accountability and transparency.

Accordingly, only the actual update on the cost sharing agreement could have been properly within the closed session. The remainder of the meeting, even if otherwise falling within a closed meeting exception, was *prima facie* held in violation of the open meeting requirements.

### Analysis

The first discussion pertained to a letter the Mayor had written, which had been obtained by members of the public and brought forward to members of Council. As noted above, this was not an update on the industrial development project, and therefore was not covered by the motion to move into closed session. Rather, it pertained to a review of events which had already transpired, but within the course of negotiations which were very much ongoing. However, the matter otherwise did fall within the cited exception referring to the City's position in negotiations, as the overall discussion concerned the positions the City had already taken. Accordingly, with a proper open resolution this matter might have properly fallen within the cited exception.

It is helpful, with respect to this first item, to distinguish between items not on the agenda, and conversations which may occur naturally. As noted above, it is not the intent of the *Act* that Council should constantly be moving in and out of closed session. Naturally, portions of a discussion may occasionally drift away from the topic included in the motion. If Council, in receiving its update on the industrial development project, had then begun, organically, to discuss what had occurred to date, that would likely not raise the same concern. The issue, however, is that a discussion of this letter, dated two years prior, was in fact a planned part of the meeting. It did not occur spontaneously; it was simply one of several topics omitted from the public and closed session agendas entirely.

The second discussion held was, indeed, an update on the cost sharing agreement with the developer. The update pertained to Council's position in ongoing negotiations, and legal

advice was sought and received. Accordingly, this portion of the meeting fell within the cited exception.

The third discussion related to a draft question and answer document which staff had been preparing. If approved, the questions and answers would be made available publicly. The draft document included the release, or potential release, of certain details of the negotiations process, and accordingly fell within that cited exception.

Council then moved to a discussion of a letter from the CAO regarding Council-staff relations. A discussion was had on holding a workshop on the topic, to be provided by a lawyer. A particular lawyer was identified, and a motion passed that they be retained for this purpose. It was estimated that the session could cost between \$30,000 and \$40,000.

This matter was not within the cited exceptions, nor could it reasonably be said to have fallen within the confines of the closed meeting resolution. While it may have been protected under other exceptions, those were not cited. Accordingly, this topic ought not to have been discussed in this closed session.

Finally, Council voted on a motion to collaboratively, with staff, prepare a policy around processes. Very little information is contained in the closed meeting minutes; however, the cited exceptions do not apply.

## **December 9, 2020**

The publicly available agenda for this meeting reads:

- 4.1 Security of municipal property of the municipality or local board (section 239.(2)(a)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. However, in the Investigator's opinion, certain details of the agenda for this meeting should remain confidential in order to protect the purpose of matters being discussed in closed. Below, we reproduce the agenda, with certain changes made to this effect, which are indicated in italics.

- 4.1 IT Security Enhancements  
  - [Security of municipal property of the municipality or local board (section 239.(2)(a))];
- 5.1 *Industrial Development* Cost Sharing Agreement Update

[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))].

### Analysis

4.1 was a discussion of the cost of certain IT security enhancements. The minutes do not reveal what these enhancements were. However, it is clear that the agenda item pertained to actual steps taken to advance security of the City's IT services. Accordingly, this matter fell within the cited exception.

5.1 again, as was the case in the December 7, 2020, meeting, was used to discuss several sub-topics which varied in the extent to which they were actually related to the cost sharing update. The first such topic was draft answers to a Q and A. As noted above, this document pertained to the release of information properly within closed session, and thus was properly within the cited exception.

The second topic was a greenhouse gas report on the Industrial Project. The minutes do not contain any information on this item. As it pertained to ongoing negotiations with the developer, it was properly within the cited exception.

The third item was listed as reviewing the legal advice regarding the cost sharing agreement. A discussion regarding legal advice and the City's position ensued. Accordingly, this matter was properly within the cited exception.

The distinct discussions contained in this agenda item, although clearly delineated in the minutes of the closed session, were not individually listed in the motion to move into closed – or, in fact, even in the closed session agenda. Accordingly, they are prima facie improperly in closed session.

### **December 12, 2020**

The publicly available agenda for this meeting reads:

3.1 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)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. However, in the Investigator's opinion, certain details of the agenda for this meeting should remain confidential in order to protect the purpose of matters being discussed in closed. Below, we reproduce the agenda, with certain changes made to this effect, which are indicated in italics. It reads as follows:

3.1 *Industrial Development* Cost Sharing Agreement Update

[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))]

Analysis

3.1 concerned matters related to ongoing negotiations, as well as legal advice thereon. Accordingly, this meeting fell within the cited exception.

**December 14, 2020**

The publicly available agenda for this meeting reads:

4.1 Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

4.2 Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

5.1 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)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. However, in the Investigator's opinion, certain details of the agenda for this meeting should remain confidential in order to protect the purpose of matters being discussed in closed.

Below, we reproduce the agenda, with certain changes made to this effect, which are indicated in italics. It reads as follows:

4.1 Appointment to Festival Hydro Inc.

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];

4.2 Appointment to Festival Hydro Services Inc.

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];

5.1 *Industrial Development* Cost Sharing Agreement Update

[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))]

Analysis

4.1 and 4.2 were both the consideration of specific candidates, identified by Festival Hydro, to be appointed to its board. The meeting minutes reveal that there was no discussion on the matter, however the individuals' resumes were circulated. Accordingly, these items fell within the cited exception.

5.1 was a discussion of the City's position in an ongoing negotiation, and legal advice thereon. Accordingly, this matter was properly within the cited exception.

**December 17, 2020**

The publicly available agenda for this meeting reads:

3.1 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)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.



The agenda used in closed session more adequately meets the requirements of the *Act*. However, in the Investigator's opinion, certain details of the agenda for this meeting should remain confidential in order to protect the purpose of matters being discussed in closed. Below, we reproduce the agenda, with certain changes made to this effect, which are indicated in italics. It reads as follows:

3.1 *Industrial Development* Cost Sharing Agreement Update

[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))].

Analysis

3.1 pertained to the City's position in ongoing negotiations, and legal advice on the matter was sought and received. Accordingly, this meeting properly fell within the cited exception.

**December 21, 2020**

The publicly available agenda for this meeting reads:

- 4.1 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);
- 4.2 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).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. It reads as follows:

- 4.1 Request and consideration for current industrial land price per acre extension for Lot 6 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)];

- 4.2 Request and consideration for current industrial land price per acre extension for Lot 20 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)];

- 5.1 ADDED - OCE Grant Update

[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))];

- 6.1 ADDED - COVID-19 and Municipal Operations

[Security of municipal property of the municipality or local board (section 239.(2)(a)), And

Labour relations or employee negotiations (section 239.(2)(d))].

The City has provided us a copy of minutes clearly demonstrating that the “added” sections of the agenda were contained in the open session motion to move into closed.

### Analysis

4.1 related to the price for specific land being sold in the Wright Business Park. Accordingly, it properly fell within the cited exception.

4.2 related to the price for specific land being sold in the Wright Business Park. Accordingly, it properly fell within the cited exception.

5.1 was a discussion regarding a natural gas project. Staff advised that a grant for the project was set to expire, but that they may be permitted to use some funds beyond the deadline. There was no discussion of any negotiations, nor does it appear from the minutes that any actual negotiation was in progress in this matter. Accordingly, the matter was not properly within the cited exception.

6.1 was an update on municipal operations during COVID-19, and in particular the impact of increased lockdown measures. There was no discussion of any sort of precautions or steps being taken for the physical security of assets; only that some facilities would close, and some staff would work from home. As noted above, an actual, physical security risk to City assets must exist for this exception to be invoked. The mere fact that buildings will be left empty is not sufficient, nor is any hypothetical risk created by publicly discussing that buildings will be left empty. Similarly, while labour relations is also cited as an exception, discussion of staff was

limited only to whether there would be layoffs and whether staff would work from home. Accordingly, this matter was not within the cited exceptions.

### January 11, 2021

The publicly available agenda for this meeting reads:

- 4.1 Labour relations or employee negotiations (section 239.(2)(d)), And  
  - Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f));
- 5.1 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);
- 5.2 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));
- 6.1 Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. However, in the Investigator's opinion, certain details of the agenda for this meeting should remain confidential in order to protect the purpose of matters being discussed in closed. Below, we reproduce the agenda, with certain changes made to this effect, which are indicated in italics. It reads as follows:

- 4.1 Transition to Dispatch Services  
  - [Labour relations or employee negotiations (section 239.(2)(d)), And  
    - Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f));
- 5.1 Proposed Acquisition of Mornington Street Property for Sidewalk 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)];

## 5.2 *Industrial Development* Project Update

[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));

## 6.1 Appointment to Festival Hydro Services Inc.

Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)).

### Analysis

4.1 was a discussion of potential restructuring which had come up during contract negotiations with Unions representing City employees. Accordingly, this matter was properly within the cited exception.

5.1 related to the proposed acquisition of property for the construction of a sidewalk. Discussions were had with respect to negotiating position and price. Accordingly, this item was properly within the cited exception.

5.2 related to the Industrial Project. Legal advice was discussed, as was the City's position in negotiations. Accordingly, this matter was properly within the cited exception.

6.1 was the appointment of an individual to the board of Festival Hydro Services Inc. The individual's resume was part of the record; accordingly, this item was properly within the cited exception.

### **January 25, 2021**

The publicly available agenda read as follows:

- 4.1 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);

- 4.2 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 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));
- 6.1 Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. However, in the Investigator's opinion, certain details of the agenda for this meeting should remain confidential in order to protect the purpose of matters being discussed in closed. Below, we reproduce the agenda, with certain changes made to this effect, which are indicated in italics. It reads as follows:

- 4.1 Sale of Lot 20, Plan 44M-38, save and except Part 1 Plan 44R-5393, City of Stratford, Wright Business Park to Royal Indevco Properties Inc.  
  
[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)];
- 4.2 Approval of terms of Agreements of Purchase & Sale and release of the City's Option to Purchase for Lots 16, 17 and Part Lot 18 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)];
- 5.1 *Industrial Development* Project Update  
  
[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))];

## 6.1 Councillor Appointment to SeedCo. Board of Directors

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))]

### Analysis

4.1 discussed listing by-laws for the sale of property. Details as to the calculation of price were discussed. Therefore, this item properly fell within the listed exception.

4.2 discussed a release of the City's option to purchase two lots in the Wright Business Park. Negotiations leading to the release were discussed, and legal advice was obtained; therefore, this item properly fell within the listed exception.

5.1 concerned the receipt of legal opinions and discussion of options in an ongoing negotiation. Accordingly, this matter was properly in closed session.

6.1 discussed the appointment of one of its own Members to fill an open seat on the board of SeedCo. The open seat was reserved for Council members. Based on the minutes, those Councillors interested in the seat identified themselves, and gave a short speech detailing their interest. A poll was then taken, and Councillor Clifford was appointed. The minutes do not disclose that any personal information (addresses, telephone numbers, resumes, etc.) was discussed by council. Accordingly, this discussion was not properly held in closed session.

## **February 17, 2021**

The publicly available agenda read as follows:

- 3.1 Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. It However, in the Investigator's opinion, certain details of the agenda for this meeting should remain confidential in order to protect the purpose of matters being discussed in closed. Below, we reproduce the agenda, with certain changes made to this effect, which are indicated in italics. It reads as follows:

- 3.1 *Industrial Development Project Update*

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))].

## Analysis

3.1 discussed the cancellation of the Industrial Project. The City has confirmed that legal advice was provided; accordingly, this matter was properly held within closed session.

## **February 22, 2021**

The publicly available agenda read as follows:

- 4.1 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)), 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 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)), 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 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));

- 6.1 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);

- 6.2 Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. It reads as follows:

4.1 Expropriation Hearing 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)), 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 County Roads Agreement

[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)), 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 Request to purchase Part Lot 10, Plan 86 - 604 Downie Street

[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)];

5.2 Appointment of SABA Alternate Representative to fill a mid-term vacancy on the Heritage Stratford Committee



[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];

#### 6.1 ADDED - Role of Council Members / Release of In-camera

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))].

The City has provided us a copy of minutes clearly demonstrating that the “added” sections of the agenda were contained in the open session motion to move into closed.

#### Analysis

4.1 discussed advice on an ongoing litigation matter. Accordingly, this item was properly within the closed meeting exceptions.

4.2 discussed advice on an ongoing litigation matter. Accordingly, this item was properly within the closed meeting exceptions.

5.1 discussed a neighbouring property owner’s intent to purchase City-owned land. Council did discuss certain conditions. Accordingly, this matter was properly within closed session.

5.2 discussed the appointment of an individual as an alternate representative to fill an interim appointment on the Stratford Heritage Committee. The City has confirmed that the application contained personal information of the applicant. Accordingly, this matter was properly held in closed session.

6.1 discussed confidentiality concerns. The City Solicitor provided legal advice. As such, this item properly fell within the cited exception.

#### **March 8, 2021**

The publicly available agenda read as follows:

- 4.1 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 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).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. It reads as follows:

- 4.1 Proposed Acquisition of Morning Street Property for Sidewalk 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)];
- 5.1 Sale of Lot 20, Plan 44M-38, save and except Part 1 Plan 44R-5393, City of Stratford, Wright Business Park to Royal Indevco Properties Inc. 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)].
- 6.1 ADDED – Annexation Update Request
- [Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))].

The City has provided us a copy of minutes clearly demonstrating that the “added” sections of the agenda were contained in the open session motion to move into closed.

### Analysis

4.1 and 5.1 related to disposal of property by the City. In both cases, details of negotiations were discussed. Accordingly, these topics were properly in closed session.

6.1 related to the annexation of land from the neighbouring Township of South Perth, and the status of the MZO. The City confirms legal advice was discussed; accordingly, this matter could have been properly held in closed session.

### **March 15, 2021,**

The publicly available agenda read as follows:

- 3.1 Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. It reads as follows:

3.1 Annexation Update

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))].

Analysis

3.1 pertained to the annexation of lands from the Township of South Perth. As with previous discussions on this topic, advice subject to solicitor-client privilege was cited as the reason that this discussion was held in camera.

In the minutes, it is mentioned that the City Solicitor was present to answer any legal questions Council may have. A review of the discussion, however, reveals that the primary purpose of this meeting was not to discuss a legal opinion or to ask for one. Rather, at the meeting, staff and the Mayor discussed several issues relating to the annexation of territory, and had a lengthy discussion about another company that expressed interest in the annexed land, including next steps.

This appears strongly reminiscent of the meeting reviewed in the *Pappas* report, and we would echo the comments from that report: the fact that the City Solicitor will be available for questions is insufficient to close a meeting to the public. This is particularly true where substantive matters are discussed at the meeting. In order for a meeting to be closed under the legal advice exception, giving or receiving legal advice must be the reason the meeting is held. This meeting was clearly held to discuss several non-legal aspects of the annexed land. However, as the annexation of land is an acquisition of land, we find that the meeting could properly have been closed under this exception.

**March 22, 2021**

The publicly available agenda reads as follows:

- 3.1 Information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any of them (section 239.(2)(h));

A trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons or organization (section 239.(2)(i)); 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));

- 3.2 Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));
- 4.1 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);
- 4.2 Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. It reads as follows:

3.1 Renewable Natural Gas Project Status Update March 2021

[Information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any of them (section 239.(2)(h));

A trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons or organization (section 239.(2)(i)); 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));

3.2 Acting Director of Human Resources

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

4.1 Request to Purchase 51 McNab Street

[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)];

#### 4.2 Committee Chair Appointments – Finance and Labour Relations and Planning and Heritage

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))].

### Analysis

3.1 was a discussion of the City's renewable natural gas project. The discussion covered a range of topics, including grant funding, potential suppliers of organics, and studies and upgrades on the facility. There was no discussion of plans or positions for negotiations; indeed, aside from a brief mention of a potential organics supplier, there was no indication any negotiations were ongoing at all. Similarly, no third parties were discussed such as to engage the exception for trade secrets. However, information provided by government explicitly under conditions of confidentiality was discussed. For that reason, those portions of the discussion were properly held in closed; portions not relating to the confidential information, however, ought have been discussed in open session

3.2 pertained to a hiring matter. The background and experience of the selected candidate were discussed. Accordingly, this item was properly the subject of an in camera meeting.

4.1 pertained to disposal of property owned by the City. Discussion included conditions and a proposal from a purchaser; accordingly, this matter was properly within the cited exception.

4.2 pertained to committee chair appointments. The Minutes cite the exception for personal matters, however they do not reveal any discussion of personal information such as resumes, job experience, or addresses. All appointments were internal to council. As discussed above, internal Council appointments will rarely be the proper subject of an in-camera discussion. Accordingly, this item was not properly in camera.

### **April 7, 2021**

The publicly available agenda read as follows:

3.1 Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. It reads as follows:

3.1 Appointment of Director of Infrastructure and Development Services

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))].

Analysis

3.1 was the sole item on the closed session agenda. It pertained to presenting the preferred candidate for the position of Director of Infrastructure and Development Services. The discussion included a discussion of the candidate's background and job experience. Accordingly, this item was properly in closed session.

**April 12, 2021**

Sufficiency of the Resolutions in the Public Agenda

The publicly available agenda read as follows:

4.1 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)), 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 Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

5.2 Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. It reads as follows:

- 4.1 Grand Trunk / Cooper Site Expropriation 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)), 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 Appointment to Stratford City Centre Business Improvement Area  
 [Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));
- 5.2 Appointment of an Energy and Environment Committee Representative to the Active Transportation Advisory Committee  
 [Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))].

### Analysis

4.1 involved legal advice and strategizing with respect to ongoing litigation. It was, therefore, properly within the cited exception.

5.1 pertained to the appointment of a citizen representative to the Stratford City Centre Business Improvement Area Board of Directors. We have reviewed the report from staff and confirm that personal information was disclosed. Therefore, this matter was properly within the cited exception.

5.2 pertained to the appointment of an Energy and Environment Advisory Committee member to the Active Transportation Advisory Committee. The City's application for board or committee membership requests personal information, and the minutes indicate that the application was circulated. As such, this matter was properly within the cited exception.

**May 10, 2021**

The publicly available agenda read as follows:

- 4.1 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);
- 4.2 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);
- 4.3 Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. It reads as follows:

- 4.1 Sale to South West BuildCo Limited (South West Veterinary Services) of part of Lot 4 Plan 44M-38 designated as Part 2 on Plan 44R-5305 being all of PIN 53264-0146 (LT); part of Block 31 Plan 44M-38 designated as Part 4 on Plan 44R-5305 being all of PIN 53264-0148 (LT); and all of Lot 30 Plan 44M-38 designated as Part 6 on Plan 44R- 5305 being all of PIN 53264-0123 (LT), all in the City of Stratford, County of Perth

[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)];

- 4.2 Development plan update and subsequent request and consideration for industrial land price per acre extension for Lot 6 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)];



4.3 Purchase of Service Agreement with the Stratford Economic Enterprise Development Corporation

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))].

Analysis

4.1 pertained to the sale of property by the City, including a report on the parcels and requirements attached to the sale. Accordingly, this item was properly within the cited exception.

4.2 pertained to the sale of property by the City. Pricing was discussed; accordingly, this item was properly within the cited exception.

4.3 concerned advice on an agreement between the City and SeedCo. The City Solicitor provided advice, and therefore this matter was property within the cited exception.

**May 25, 2021**

The publicly available agenda reads:

- 4.1 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 Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)), and  
Labour relations or employee negotiations (section 239.(2)(d));
- 6.1 Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. It reads as follows:

- 4.1 Sale to 2809185 Ontario Inc. (Feltz Design Build Ltd.) of the property described as Lot 6 Plan 44M-38, City of Stratford, County of Perth being all of PIN 53264-0099 (LT), 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)];

5.1 Administrative Salary Review

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)), and

Labour relations or employee negotiations (section 239.(2)(d))];

6.1 Senior of the Year and Ontario Senior Achievement Award – 2021 Nominations

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))].

Analysis

4.1 requested City Council permission to sell a property. This matter fell within the cited exception.

5.1 pertained to an administrative salary review undertaken by a third-party contractor of the City's staff salaries. This was properly within the cited exception pertaining to labour relations or employees.

6.1 requested that Council consider a particular individual for nomination to the Senior of the Year Award and the Ontario Senior Achievement Award. While this does discuss an identifiable individual, no personal information appears in the minutes, nor in the report from staff. Accordingly, this discussion did not fall within the cited exception.

**June 7, 2021**

The publicly available agenda reads:

3.1 Labour relations or employee negotiations (section 239.(2)(d)), and

Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f));

4.1 Labour relations or employee negotiations (section 239.(2)(d));

- 5.1 Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately meets the requirements of the *Act*. It reads as follows:

- 3.1 SPFFA Negotiations Update

[Labour relations or employee negotiations (section 239.(2)(d)), and

Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f));

- 4.1 IBEW, ATU, CUPE Collective Bargaining Update of June 7, 2021

[Labour relations or employee negotiations (section 239.(2)(d))];

- 5.1 Closed Meeting Investigation Report 2020-01

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))].

### Analysis

3.1 and 4.1 were updates on ongoing negotiations with unions. This is properly within the cited closed meeting exception.

5.1 related to the previous closed session investigation. The minutes show that the City Solicitor provided advice on this matter. Accordingly, this was properly within the closed meeting exceptions.

### **June 14, 2021**

The publicly available agenda reads:

- 4.1 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).

As discussed above, this agenda is insufficient to meet the requirements of the *Act*.

The agenda used in closed session more adequately reflects the requirements of the *Act*. It reads:

#### 4.1 Development of Future City-Owned Industrial Lands

[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)].

#### Analysis

4.1 was a discussion of the strategic purpose of certain lands to the City. Although only limited discussion was had as to price, based on the closed meeting minutes this appears to have been a discussion which nonetheless spoke to the City's negotiating strategy in obtaining these lands. Accordingly, this was properly within the closed session.

#### **Conclusion and Recommendations**

In conclusion, we have found that numerous meetings and discussions were improperly held in closed session during the timeframe considered. The *Municipal Act* permits us to provide recommendations resulting from our findings. We note that one significant shortcoming – the motion adopted in open session – appears to already have been corrected as a result of the *Pappas Report*, and commend the City for its efforts to incorporate the recommendations in that report.

Our review indicated confusion amongst both Council and City staff with respect to the exceptions to the open meeting rules. To that end, we recommend that both staff and Council seek and complete comprehensive training on the open meeting requirements, and that such training be regularly re-offered to incoming staff and Council.

We also make several observations which may assist Council in ensuring compliance with the open meeting requirements on a go forward basis.

We noted several instances in which Council selected the wrong open meeting exception and would encourage Council and staff to thoroughly consider which sections are most applicable so that the appropriate resolution can be adopted. Council must consider whether they will actually receive advice from legal counsel or seek answers from legal counsel – if not, the exception for receiving legal advice cannot be relied upon.

Relying on the negotiation exception requires that Council be in negotiations, or be about to enter into negotiations, and the purpose of the meeting is to establish the strategy and criteria for those negotiations; ancillary discussions unrelated to negotiations are not properly held in closed session. Additionally, merely considering the appointment of an individual is not

sufficient to allow a discussion in closed session – personal information must be central to the discussion in order to allow for the matter to be held in closed under s. 239(2)(b).

It is also important that Council remain, as much as possible, within the four corners of the topic outlined in its motion to move into closed session. While Courts and closed meeting investigation reports alike have recognized that discussions may sometimes drift and touch on areas that would normally be discussed in open session, several of the meetings we reviewed went beyond a natural flow of conversation. In some cases, the agendas used by Council in closed session grouped multiple topics of discussion under a single agenda item; this practice is best avoided. It undermines the public's ability to scrutinize whether discussions are appropriate for closed session.

Finally, although beyond the purview of the complaint before us, we would remind Council that section 244 of the *Municipal Act* requires that all votes be held in open session, with the exception of very limited exceptions carved out in ss. 233 and 238.

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

TEF;jm