

REPORT ON CLOSED MEETING INVESTIGATION 2024-01

**THE CORPORATION OF THE MUNICIPALITY OF
STRATHROY-CARADOC**

Aird & Berlis LLP

John George Pappas

July 26, 2024

TABLE OF CONTENTS

I. Introduction.....	1
II. Closed Meeting Investigator – Authority & Jurisdiction	1
III. Request	2
IV. Review of Materials and Inquiry Process	2
V. The Meeting.....	3
VI. Analysis.....	4
(1) Statutory Framework.....	5
(2) Relevant Provisions of the Procedure By-law	5
(3) Council Did Not Contravene its Procedure By-law.....	6
VII. Conclusion	7
VIII. Recommendations.....	7

MUNICIPALITY OF STRATHROY-CARADOC REPORT ON CLOSED MEETING INVESTIGATION 2024-01

I. INTRODUCTION

1. This is a report on the investigation of a request made in accordance with subsection 239.2(10) of the *Municipal Act, 2001*.¹
2. A formal request for a closed meeting investigation, dated March 21, 2024 (the “**Request**”), was filed with the Clerk of The Corporation of the Municipality of Strathroy-Caradoc (the “**Municipality**”), and subsequently provided to our office, in our capacity as the closed meeting investigator (the “**Investigator**”) for the Municipality.
3. The Request seeks an investigation of a Special Meeting of the Council of the Municipality (“**Council**”) held on March 11, 2024 at 4:30 P.M. (the “**Meeting**”), and more specifically, the closed session portion thereof.
4. Upon concluding our investigation, we have found that the allegations in the Request cannot be sustained.

II. CLOSED MEETING INVESTIGATOR – AUTHORITY & JURISDICTION

5. The Municipality directly appointed Aird & Berlis LLP as its closed meeting investigator pursuant to section 239.1 of the *Municipal Act, 2001*.
6. Prior to accepting any investigation mandate, Aird & Berlis LLP conducts a thorough legal conflict search and makes other conflict inquiries to ensure our firm is in a position to conduct an independent and impartial investigation.
7. Our jurisdiction as Investigator is set out in section 239.2 of the *Municipal Act, 2001*. Our function includes the authority to investigate, in an independent manner, a complaint made by any person to determine whether the Municipality has complied with section 239 of the *Municipal Act, 2001* or a by-law enacted under subsection 238(2) (i.e. a procedure by-law) in respect of a meeting or part of a meeting that was closed to the public.
8. Upon conducting an investigation, our office reports to Council on the outcome of the investigation, together with any recommendations as may be applicable.
9. Our role as Investigator does not include engaging with the merits of any particular item of municipal business, or questioning the policies or priorities of the Municipality.

¹ *Municipal Act, 2001*, S.O. 2001, c. 25.

III. REQUEST

10. The Request was properly filed pursuant to section 239.1 of the *Municipal Act, 2001*.
11. The Request alleges that, at the Meeting, Council contravened the requirements of its Procedure By-law No. 97-18, as amended, (the "**Procedure By-law**") relating to the items of business that may be discussed at a special meeting of Council.
12. In particular, the Request alleges as follows. Section 20 b) i) of the Procedure By-law, dealing with the giving of notice for Special Meetings of Council, provides that Members shall consider only those matters which are included in the Notice of Special Meeting. The agenda for the Meeting, which constitutes notice, was published on March 8, 2024, and made reference to one item of business for closed session: a matter concerning an identifiable individual, which was a verbal update on an ongoing water infrastructure matter.
13. The Request asserts that at the closed session portion of the Meeting, Council discussed and subsequently voted on a matter that was not included on the agenda for the Meeting.
14. The Request did not assert any non-compliance with the open meeting rule enshrined in section 239 of the *Municipal Act, 2001*.

IV. REVIEW OF MATERIALS AND INQUIRY PROCESS

15. In order to properly consider the allegations in the Request and make our determinations, we have reviewed the following materials:
 - the Procedure By-law;
 - the Agenda for the open session portion of the Meeting;
 - the Minutes for the open session portion of the Meeting;
 - the Closed Meeting Agenda for the closed session portion of the Meeting;
 - the Closed Meeting Minutes for the closed session portion of the Meeting; and
 - the Video Recording of the Meeting.
16. In addition to our review of the materials referred to above, we interviewed individuals who we determined had relevant and useful information regarding the Meeting.
17. We have also had recourse to the provisions of the *Municipal Act, 2001*, and such secondary sources, case law, and reports of other closed meeting investigators we deemed necessary in order to make our determinations.
18. The Municipality and its representatives were fully cooperative and forthright during our investigation process. We commend their efforts in providing assistance to us as requested.

V. THE MEETING

19. In March 2024, a Special Meeting of Council (i.e., the Meeting) was called by the Mayor to discuss a sensitive matter in closed session. In accordance with the provisions of the Procedure By-law, notice of the Meeting was provided by way of publishing the agenda on the Municipality's website, which occurred on March 8, 2024.

20. The agenda for the open session portion of the Meeting indicated that Council would consider the following item of business:

5. In Camera Matters

A motion is required to move into closed session for the purpose of discussing the following:

- One item pursuant to Section 239(b) of the Municipal Act, 2001, as amended, regarding personal matters about an identifiable individual, including municipal or local board. (*sic*)

21. The agenda for the open session portion of the Meeting did not provide any further detail on what this item was about.

22. The agenda for the open session portion of the Meeting also contained the following recommendation:

2. Motion to Waive Notice Requirement

Recommendation

THAT: Council waive the Notice Requirement for the March 11, 2024 Special Meeting of Council in accordance with Section 20(b)(i) of Council's Procedure By-law.

23. The Meeting was called to order at 4:32 P.M. on March 11, 2024. Following Roll Call, Council proceeded to consider the first item on its agenda for the open session portion of the Meeting, being a recommendation to waive the requirements of its Procedure By-law. The minutes for the open session portion of the meeting indicate that Council passed the following resolution:

2. Motion to Waive Notice Requirement

Moved by Deputy Mayor McGuire

Seconded by Councillor Pammer

THAT: Council waive the Notice Requirement for the March 11, 2024 Special Meeting of Council in accordance with Section 20(b)(i) of Council's Procedure By-law.

Carried

24. The above resolution of Council was passed without any substantive debate or discussion.
25. Council subsequently passed the following resolution to convene a closed session meeting:

5. In Camera Matters

Moved by Deputy Mayor McGuire

Seconded by Councillor Pelkman

THAT: Council move into closed session at 4:32 p.m. for the purpose of discussing one item pursuant to Section 239(b) of the *Municipal Act, 2001*, as amended, regarding personal matters about an identifiable individual, including municipal or local board.

Carried

26. The agenda for the closed session portion of the Meeting identified one item of business, entitled “Verbal Update on Water Matter on [Street Name Omitted].”

27. During the closed session portion of the Meeting, Council received a verbal report from the Mayor and the Municipality’s solicitor dealing with an issue regarding a property and water matter, which Council had considered at an earlier closed meeting. During this update, the Municipality’s solicitor also discussed an employment matter relating to job performance of an individual.

28. Following deliberation by members of Council on that issue, Council voted to give Municipal staff direction with respect to an employment matter.²

29. Council reconvened in open session at 5:45 P.M., upon which the Mayor reported that Council discussed one item pursuant to subsection 239(2)(b) of the *Municipal Act, 2001* regarding a personal matter about an identifiable individual; no “report out” was made about the substance of Council’s closed session discussion.

30. Council subsequently voted to approve the direction given in the closed session portion of the meeting, and adjourned at 5:47 P.M.

VI. ANALYSIS

31. The Request raises one issue:

- Did Council contravene Section 20 b) i) of the Procedure By-law at the Meeting by considering a “matter” that was not listed on the Notice of Special Meeting?

² While a municipal council is generally prohibited from taking votes during a closed meeting, clause 239(6)(b) of the *Municipal Act, 2001* expressly permits a council to vote and to give instructions or direction to municipal staff during a closed meeting if the council is permitted to convene in-camera.

Although the Request did not take issue with the application of the closed meeting exception cited by Council, we are satisfied that the matter discussed by Council fell within the ambit of the closed meeting exception in clause 239(2)(b) as it dealt with an employment matter regarding a specific member of Municipal staff.

(1) Statutory Framework

32. The *Municipal Act, 2001* requires every municipality to adopt a procedure by-law to govern the calling, place and proceedings of meetings of council.³ Although a procedure by-law is integral to a municipality’s decision-making process, the *Municipal Act, 2001* does not prescribe the required content, nor the manner of procedure a municipality must adopt.⁴

33. In adopting a procedure by-law, a municipality has considerable latitude to provide for, *inter alia*, how council meetings will be conducted, and the manner of bringing items forward for council consideration. The courts have consistently commented that the procedure adopted by a council for transacting its business is a matter of “domestic concern” and “internal regulation.”⁵ Absent a demonstration of “illegality” (e.g., non-compliance with a statutory requirement), how a municipality chooses to regulate the conduct of its meetings is matter of domestic policy that is not subject to review for “unreasonableness.”⁶

34. As Investigator, we have jurisdiction to inquire into whether the Municipality complied with the provisions of its Procedure By-law as it relates to a closed meeting.⁷

(2) Relevant Provisions of the Procedure By-law

35. As it relates to the subject matter of the Request, the Procedure By-law provides as follows:

20. Notice of Meetings

...

b) Special Meetings

i) A special Meeting may be called by the Chair at any time. At a special Meeting the Members shall consider only matters included in the Notice of Special Meeting. The Notice requirement for a Special Meeting may be waived upon receipt of the consensus of Members to do so.

...

ii) In addition to the general Notice provisions in this Procedure By-law, Notice of a Special Meeting shall be made by providing an agenda at least twenty-four (24) hours prior to the Meeting or if the Meeting is to be scheduled in less than twenty-four (24) hours, then by providing an agenda at the first opportunity to do so

³ *Municipal Act, 2001*, s. 238(2).

⁴ This is confirmed by the Ministry of Municipal Affairs and Housing’s publication, the *Ontario Municipal Councillors Guide, 2022*, which provides as follows:

Every municipality and certain local boards must pass a procedure by-law to govern the calling, place and proceedings of their meetings and meetings of certain committees. The content of the procedure by-law is generally up to the council or the local board.

⁵ See e.g., *Blyth v. Northumberland (County)* (1990), 2 M.P.L.R. (2d) 155, at para. 19 (Ont. Gen Div.).

⁶ *Municipal Act, 2001*, s. 272.

⁷ *Municipal Act, 2001*, s. 239.1.

- iii) Where deemed by the Chair to be expedient and in the interest of the community, the Mayor or their designate, may facilitate an informal caucus of members of Council regarding decisions which are pressing in nature. Informal caucus or Council decisions shall have no force until dealt with by way of Council resolution at the first available opportunity.⁸

36. The Request specifically alleges that Council contravened the requirement of Section 20 b) i) of the Procedure By-law that Council only consider those matters which are listed in the Notice of Special Meeting (i.e., the agenda). The Requestor asserts that because Council considered and made a decision on an employment matter which was not expressly listed on the agenda, Council violated its Procedure By-law.

(3) Council Did Not Contravene its Procedure By-law

37. In our opinion, Council did not contravene Section 20 b) i) of the Procedure By-law when it considered the employment matter at the closed session portion of the Meeting.

38. The issue with the Requestor's assertion is that it does not read the Procedure By-law in its entirety, but instead focuses on the language of a discrete sentence. The Request relies on the following language in the Procedure By-law:

"At a special Meeting the Members shall consider only matters included in the Notice of Special Meeting."

39. Despite this, that same provision enables Council to waive this restriction:

"The Notice requirement for a Special Meeting may be waived upon receipt of the consensus of Members to do so."

40. Understood in its entire context and with a view to its purpose, Section 20 b) i) operates as follows: the Mayor may call a special meeting at any time, the publication of the agenda for which constitutes the giving of notice. Given that special meetings are intended to deal with time sensitive or pressing matters, and do not serve to supplement Council's regular meeting schedule, Council is limited in its discussions to the item(s) of business listed on the agenda. However, recognizing that Council is "master of its procedures," Council can vote to waive this limitation.

⁸ "Informal Caucus" is defined by the Procedure By-law as "an impromptu or unscheduled consultation of members for the purpose of collecting feedback to be considered more formally at a later time." We wish to note that should a majority of members of Council be present at an informal caucus, there is a risk that such a gathering could be considered an illegal closed meeting.

Under s. 238(1) of the *Municipal Act, 2001* a "meeting" is deemed to be formed when a quorum of members come together and "materially advance" the business or decision-making of council. One-off conversations between two members of Council may not be problematic. However, members of Council should be vigilant in ensure the open meeting rule is observed.

41. The evidence from our investigation clearly demonstrates that before proceeding into closed session, Council validly voted to waive the limitations of Section 20 b) i) of the Procedure By-law:

2. Motion to Waive Notice Requirement

Moved by Deputy Mayor McGuire

Seconded by Councillor Pammer

THAT: Council waive the Notice Requirement for the March 11, 2024 Special Meeting of Council in accordance with Section 20(b)(i) of Council’s Procedure By-law.

Carried

42. Having so resolved, Council was unshackled from the requirement to only discuss those matters listed on the Notice of Special Meeting (i.e., the agenda).

VII. CONCLUSION

43. Based on the foregoing, we find that Council did not contravene the requirements of its Procedure By-law dealing with the consideration of matters at a special meeting. The Procedure By-law expressly entitles Council to waive the limitation that Council discuss only those matters which are listed on the Notice of Special Meeting, being the agenda. Council passed such a resolution at the outset of the Meeting.

VIII. RECOMMENDATIONS

44. Although we have not found a contravention of the Procedure By-law, we nevertheless wish to make some concluding observations and remarks, with the aim of identifying opportunities to enhance the openness and transparency of the Municipality’s decision-making process.

45. The issue underlying the Request was that Council’s deliberations and decision-making at the closed session portion of the Meeting deviated substantially from its description in the Notice of Special Meeting, such that Council arguably considered a different “matter” than the one included in the agenda.

46. However, in light of the context and background underlying the nominal “matter” on the agenda for the Meeting, it is also arguable that Council’s deliberations were genuinely about the “matters included in the Notice of Special Meeting”; the two items, while ostensibly separate, were sufficiently linked together by context. Members of Council would have been fairly appraised of the background, and may have reasonably contemplated discussion to flow as it did.

47. In our assessment, this gap may be bridged by the Municipality’s use of more descriptive language in its resolution to proceed in closed session. Pursuant to subsection 239(4) of the *Municipal Act, 2001*, a resolution to convene in closed session must state the “general nature” of

the matter to be considered in closed session, which is distinct from reciting the applicable closed meeting exception.⁹

48. Such a resolution should strive to balance the public interest in maximizing the information available to the public, while at the same time not undermining the very reason for excluding the public in the first place.¹⁰ As such, we recommend that the Municipality modify its resolutions to proceed into closed session to provide a sufficiently detailed description of what Council will consider in closed session, beyond the pertinent closed meeting exception.

49. This Report has been prepared for and is forwarded to Council for its consideration pursuant to subsection 293.2(10) of the *Municipal Act, 2001*.

50. We note that subsection 239.2(11) of the *Municipal Act, 2001* provides that this Report is to be made public.

51. As Investigator, we have discretion under the *Municipal Act, 2001* to disclose in our report such matters as, in our opinion, ought to be disclosed in order to establish our conclusions and recommendations.¹¹ We have exercised that discretion to disclose only those matters we felt necessary in order to consider and assess the issues raised in the Request.

Respectfully submitted,

AIRD & BERLIS LLP



John George Pappas

Closed Meeting Investigator for The Corporation of the Municipality of Strathroy-Caradoc

Dated this 26th day of July, 2024

61010856.2

⁹ See *Farber v. Kingston (City)* (2007), 32 M.P.L.R. (4th) 31 (Ont. C.A.).

¹⁰ The sensitivity of the matter dealt with in the present circumstance may have been sufficient justification for a less descriptive resolution, although that issue not presently before us.

¹¹ *Municipal Act, 2001*, s. 223.15(2), as applicable by virtue of s. 239.2(9).