

REPORT ON CLOSED MEETING INVESTIGATION – 2020-02

THE CORPORATION OF THE COUNTY OF BRUCE

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INTRODUCTION

A complaint (the “**Complaint**”) was filed with the office of the Clerk of The Corporation of the County of Bruce (the “**County**”) on August 25, 2020. Our office was provided with the Complaint and all applicable documentation and records on September 17, 2020 in our capacity as the closed meeting investigator (“**Investigator**”) for the County. The Complaint alleges that the County’s Executive Committee (the “**Committee**”) contravened section 239 of the *Municipal Act, 2001*¹ or the Township’s Procedure By-law.²

CLOSED MEETING INVESTIGATOR – AUTHORITY & JURISDICTION

The County appointed Local Authority Services Inc. (“**LAS**”) as its closed meeting investigator pursuant to section 239.1 of the *Municipal Act, 2001*. LAS has delegated to Aird & Berlis LLP its authority to act as the Investigator for the County.

Our jurisdiction as Investigator is set out in section 239.2 of the *Municipal Act, 2001*. Among other things, we are authorized to investigate, in an independent manner, complaints made by any person to determine whether the County 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, and to report on the investigation to Council, together with any recommendations as may be applicable.

THE COMPLAINT

The Complaint was properly filed pursuant to section 239.2 of the *Municipal Act, 2001*.

The Complaint alleges that the Committee acted in contravention of its legislative obligations under section 239 of the *Municipal Act, 2001* and the requirements of the Procedure By-law for various reasons, detailed below, when it held closed meetings on September 8, 2016, March 2, 2017, April 6, 2017, May 4, 2017, September 7, 2017 and November 2, 2017.

In summary, the Complaint alleges that these meetings were improperly closed pursuant to clause 239(2)(b) or subsection 239(3.1) of the *Municipal Act, 2001*. In addition, the Complaint alleges that at most of these meetings, the Chair failed to properly report in open session on the closed

¹ S.O. 2001, c. 25, as amended.

² The County had two (2) procedure by-laws in effect during the period of time of the meetings in question: Procedure By-law Nos. 2016-013 and 2017-024 (collectively, the “Procedure By-law”). When a specific by-law is being referenced in this Report, the by-law number will be used. We would note also that there were no substantive changes between the applicable provisions of Procedure By-law 2016-013 and 2017-024. The content of the applicable provisions as between the two by-laws is identical. As such, we have not included within, or attached to this Report, a comparative analysis as between the two by-laws.

portions of these meetings. The Complaint also alleges that the closed meeting minutes from most of these meetings were improperly circulated to the members of the Committee “under separate cover” or were improperly approved in closed session. Lastly, the Complaint alleges that an improper vote may have occurred during one of the closed meetings.

INVESTIGATION

In order to assess this matter and make a determination with respect to the issues, we have reviewed the following materials, in addition to the applicable law, as set out below:

- the Complaint, including supplementary correspondence and materials received from the Complainant;
- the County’s By-law Nos.: 2016-013 and 2017-024;
- the County’s Closed Meeting Procedures; and
- the open and closed meeting minutes, agendas and reports for the meetings at issue.

Additionally, we interviewed the County’s Clerk and Deputy Clerk who were in attendance at the closed meetings that are the subject of the Complaint.

We also reviewed, considered and had recourse to such applicable secondary source materials, including other closed meeting investigation reports, that we believed to be pertinent to the issues at hand.

The County was fully cooperative with respect to the conduct of our investigation.

This is a report on the investigation of the Complaint made in accordance with subsection 239.2(10) of the *Municipal Act, 2001*.

APPLICABLE LAW

(1) *Municipal Act, 2001*

Subsection 239(1) of the *Municipal Act, 2001* provides that all meetings of Council are to be open to the public, unless otherwise excepted.³ Therefore, all council or committee meetings, unless they deal with a subject matter falling within a specific exception, are required to be held in a public forum.

³ The term “meeting” is defined in s. 238(2) of the *Municipal Act, 2001* as follows:

“meeting” means any regular, special or other meeting of a council, of a local board or of a committee of either of them, where,

- (a) a quorum of members is present, and
- (b) members discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of the council, local board or committee.

The exceptions that are relevant to this matter are set out in subsections 239(2) and 239(3.1) of the *Municipal Act, 2001*:

Exceptions

239 (2) A meeting or part of a meeting may be closed to the public if the subject matter being considered is,

...

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

...

Educational or training sessions

239 (3.1) A meeting of a council or local board or of a committee of either of them may be closed to the public if the following conditions are both satisfied:

1. The meeting is held for the purpose of educating or training the members.
2. At the meeting, no member discusses or otherwise deals with any matter in a way that materially advances the business or decision-making of the council, local board or committee.

Section 244 of the *Municipal Act, 2001* provides that votes cannot be taken by secret voting, unless the exceptions in sections 233 or 238 apply.⁴

A vote cannot be taken when a meeting is closed to the public in accordance with subsection 239(5), except if the vote is for a procedural matter or for giving directions or instructions to officers, employees or agents of the municipality in accordance with subsection 239(6):

Open meeting

239 (5) Subject to subsection (6), a meeting shall not be closed to the public during the taking of a vote.

Exception

(6) Despite section 244, a meeting may be closed to the public during a vote if,

- (a) subsection (2) or (3) permits or requires the meeting to be closed to the public; and
- (b) the vote is for a procedural matter or for giving directions or instructions to officers, employees or agents of the municipality, local board or committee of either of them or persons retained by or under a contract with the municipality or local board.

The *Municipal Act, 2001* contains no requirements regarding the provision of a report following the conclusion of a closed meeting or with respect to closed meeting minutes.

⁴ The exception in s. 233 permits the appointment of the head of council by secret ballot, and the exception in s. 238 permits a vote by secret ballot to designate a member of council, other than the head of council, to preside at meetings of council.

(2) Procedure By-law

Subsection 238(2) of the *Municipal Act, 2001* requires the County to pass a procedure by-law for governing the calling, place and proceedings of meetings. As noted above, the closed meetings that are referenced in the Complaint are subject to two (2) different versions of the County's Procedure By-law:

- the closed meetings that occurred on September 8, 2016, March 2, 2017 and April 6, 2017 were subject to By-law 2016-013; and
- the closed meetings that occurred on May 4, 2017, September 7, 2017 and November 2, 2017 were subject to By-law 2017-024.

The Procedure By-law provides that its rules of procedure apply to each Committee of Council, which includes the Committee.⁵

In summary, the applicable provisions of the Procedure By-law include:

- a presumption that all meetings are open to the public unless certain subject matters are being discussed, which subject matters are identical to those contained in subsections 239(2), (3) and (3.1) of the *Municipal Act, 2001*;
- a prohibition on voting during a closed meeting, except where both of the following criteria are met:
 - the meeting is permitted or required to be closed to the public; and
 - the vote is for a procedural matter or for giving directions or instructions to officers, employees or agents of the municipality.
- a requirement that upon resuming open session, the Chair:
 - state the matters considered in closed session; and
 - confirm that no motions were carried in closed session other than procedural motions or directions to staff.⁶

The Closed Meeting Procedures, which apply to the Committee, require the Committee to adhere to various additional requirements regarding closed meetings. The following procedural requirements, set out at Section 3 of the Closed Meeting Procedures, are applicable to this matter:

- voting during closed meetings is restricted to procedural matters or for giving directions or instructions to officers, employees or agents of the municipality or the committee of either of them or persons retained by or under contract with the municipality;

⁵ Section 21(N) of By-law 2016-013 and s. 22(N) of By-law 2017-024. References to "Council" in the Procedure By-law are equally applicable to the Committee.

⁶ Section 6 of By-law 2016-013 and s. 6 of By-law 2017-024.

- once back in the open session, the Chair shall confirm that the Committee discussed only those matters identified in the resolution to go into a closed meeting and that this shall be recorded in the minutes;
- closed meeting minutes shall be approved at the next closed meeting;
- closed meeting minutes and confidential reports shall be circulated to the members electronically, in advance of the meeting, to allow members time to read the minutes and reports;
- recipients shall not copy, forward or in any way share the confidential information; and
- it is recommended the email containing the confidential information related to the closed meeting be deleted immediately following the closed meeting.

PRELIMINARY MATTER REGARDING PREVIOUS REPORTS

We are aware that the County has made changes in its policies, practices and procedures and has taken other steps to enhance accountability and transparency with respect to closed meetings in response to findings and recommendations of previous recent closed meeting investigation reports.⁷ We note that the findings contained in this Report relate to meetings that occurred prior to the County making such changes and taking such steps. Nothing in this Report should be viewed as an express or implied criticism of the County's recent efforts to improve its closed meeting practices.

FINDINGS

(1) September 8, 2016 (the "September 8, 2016 Meeting")

The Complaint alleges that the September 8, 2016 Meeting was improperly closed pursuant to subsection 239(3.1) of the *Municipal Act, 2001* and that no report appears to have been provided following the Committee's return to open session.

The public minutes from the September 8, 2016 Meeting demonstrate that the Committee passed the following resolution before proceeding *in camera*:

That the Committee move into a closed meeting pursuant to Section (2) (b) of the Municipal Act related to personal matters about an identifiable individual, including municipal or local board employees and to discuss the Annual and Mid-Term Council Objectives pursuant to Section (3.1) for the purpose of educating or training the members.

⁷ Local Authority Services, *Report to the Corporation of the Council of the County of Bruce Regarding the Investigation of the Closed Sessions of the Bruce County Museum Committee Meetings of May 17, 2018; July 5, 2018; July 12, 2018; October 4, 2018 and January 3, 2019* (December 2019: Amberley Gavel Ltd.) [the "December 2019 Report"]; and Local Authority Services, *Report on Closed Meeting Investigation – 2020-01* (July 2020: Aird & Berlis LLP) [the "July 2020 Report"].

In terms of what was discussed during the closed meeting, the closed meeting minutes indicate that the Committee discussed matters pertaining to the personnel of the County, with specific reference being made to “staffing”. These minutes also indicate that the Committee reviewed the process related to the development and presentation of the departmental annual business plans.

The public minutes show that the Committee passed the following resolution following the closed portion of the meeting: “That the Committee rise and report from the closed meeting.”

These minutes also provide that the Chair “reported that direction was given to staff regarding the closed meeting agenda items”.

(a) The September 8, 2016 Meeting was Not Closed for a Permitted Purpose

The education and training exception under subsection 239(3.1) of the *Municipal Act, 2001* permits the County to hold a closed meeting where the purpose of the meeting is to educate or train members of Council, a local board or a committee of either of them. This exception has been narrowly construed and can only be used if no member discusses or deals with any matter that materially advances the business or decision making of Council, the local board or the committee.

The Ontario Ombudsman has determined that it must be clear that the purpose of a meeting closed under the education or training exception relates to education only, and that a municipality cannot circumvent the open meeting rule by characterizing the subject matter as “educational.” The Ombudsman wrote as follows in a report regarding an investigation into closed meetings in the City of Oshawa:

Councils and committees should avoid using closed education sessions as opportunities to consider information that will form the basis for their future decision-making, unless they otherwise come with the exceptions to the open meeting requirements and are properly authorized on that basis.⁸

In a report regarding a closed meeting in the County of Essex, LAS wrote that the education and training exception is only appropriate where “the sole purpose is to provide education or training and no transactional business or decision making occurs during the session.”⁹ In that case, LAS rejected the County’s assertion that updating councillors regarding the status and progress of various initiatives of a local development corporation amounted to “education and training”, concluding that to find otherwise “would allow Council to go into closed session any time a member wanted merely to impart information.”¹⁰

Similarly, in a report by the Ontario Ombudsman regarding an investigation into a closed meeting in the Town of Moosonee where the council obtained information from a municipal advisor about specific grants the Town would be receiving and the conditions attached to those grants, the Ontario Ombudsman determined that the consultant’s presentation was not a proper use of the training or education exception.

⁸ *Investigation into the City of Oshawa, Development Services Committee special meeting of May 22, 2008, “The ABCs of Education and Training”*, Ontario Ombudsman (March 2009) at para. 29.

⁹ Local Authority Services, *Report to the Corporation of the County of Essex Regarding the Investigation of the Closed Meeting of Essex County Council Held On July 2, 2009* (September 2009: Amberley Gavel Ltd.) at p.13.

¹⁰ *Ibid.*

The Ontario Ombudsman determined that the information presented was not general in nature and related to matters that directly impacted the business of the municipality. In this case, after receiving the consultant's presentation, the council voted in open session to approve the course of action presented by the municipal advisor.¹¹

The Ontario Ombudsman reached a similar conclusion in its report on an investigation into a closed meeting in the City of Welland, where, following a presentation from staff, Council specifically discussed the information that was provided as it pertained to the City and the suitability of the City as a distribution node. The Ontario Ombudsman concluded that the purpose of the meeting was to inform Council's decision making and advance the formulation of the City's economic strategy, which did not fall within the education or training exception.¹²

The topic that the Committee purportedly received education and training on in the September 8, 2016 Meeting was the "Annual and Mid-Term Council Objectives".

The Committee's mandate, as set out in Sections 22(C) and 23(C) of Procedure By-law 2016-013 and Procedure By-law 2017-024, respectively, is as follows:

The Executive Committee is responsible for matters that are outside the authority and responsibility of all other Standing Committees, **generally related to the long-term strategic goals of the County of Bruce**. Responsibilities also include administration related to Council and legislation affecting the County. [Emphasis added]

In addition, Sections 22(B) and 23(B) of Procedure By-law 2016-013 and Procedure By-law 2017-024, respectively, provide that, among other things, the role of the Committee shall generally be to "make recommendations to Council on matters which are in [the Committee's] jurisdiction".

Consideration of the Annual and Mid-Term Council Objectives seem to fall squarely within the Committee's mandate. This is because the objectives of Council on an annual and mid-term basis can fairly be said to constitute the long-term strategic goals of the County.

In view of the Committee's purpose, it can be inferred that rather than to purely receive educational or training information about the Annual and Mid-Term Council Objectives, the Committee was receiving such information with an eventual aim to provide recommendations to Council on same. This clearly constitutes the business the municipality, and the receipt of such information would not fall within the scope of the exception for education and training under subsection 239(3.1).

On this basis, the September 8, 2016 Meeting was not closed for a permitted purpose in relation to this topic of discussion.

¹¹ *Town of Moosonee Letter*, Ontario Ombudsman, 9 September 2014.

¹² *Investigation into multiple closed meetings by Council for the City of Welland from June 2012 to May 2014*, "Property and Propriety", Ontario Ombudsman (November 2014).

(b) The Report following the Closed Portion of the September 8, 2016 Meeting was Deficient

As noted above, the open meeting minutes indicate that, following the closed portion of the September 8, 2016 Meeting, the Committee passed a resolution that “the Committee rise and report from the closed meeting”. The minutes also indicate that the Chair “reported that direction was given to staff regarding the closed meeting agenda items”. This appears to be the extent of the information provided by the Chair about what went on during the closed session.

“Reporting out” or “reporting back” is not required under the *Municipal Act, 2001*. However, this practice is required pursuant to Sections 5(G) and 6(G) of Procedure By-law 2016-013 and Procedure By-law 2017-024, respectively. These provisions require that, upon resuming open session, the Chair shall state:

- (a) the matters which were considered and;
- (b) confirmation that no motions were carried in closed other than procedural motions or directions to staff.

The Closed Meeting Procedures also require that the Chair “confirm that the Committee discussed only those matters identified in the resolution to go into a closed meeting and that this shall be recorded in the minutes.”

We find that the report in this instance was deficient and is in contravention of Sections 5(G) and 6(G) of Procedure By-law 2016-013 and Procedure By-law 2017-024, respectively, as well as Section 3 of the Closed Meeting Procedures.

This is because the report does not state the matters which were considered and does not confirm that no motions were carried in closed session other than procedural motions or directions to staff. The minutes also do not indicate that the Chair confirmed that the Committee discussed only those matters identified in the resolution to go into a closed meeting.

Specifically, the report provides no information on what was actually discussed at this meeting. It does not even reiterate that the Committee “received education and training” on the Annual and Mid-Term Council Objectives. It also contains a statement that direction was given to staff.

We understand that the County’s former practice was to include a boilerplate statement in its report to open session following a closed meeting that direction had been given to staff following a closed meeting, whether or not direction had, in fact, been given. This practice is clearly inappropriate and derogates from the accountability and transparency objectives of *the Municipal Act, 2001* and the Procedure By-law. However, we understand that this is no longer the County’s practice.

(2) March 2, 2017 (the “March 2, 2017 Meeting”)

The Complaint alleges that the March 2, 2017 Meeting was improperly closed pursuant to clause 239(2)(b) of the *Municipal Act, 2001*. The Complaint also takes issue with the fact that the minutes from this meeting were “emailed under separate cover”.

The public minutes from the March 2, 2017 Meeting demonstrate that the Committee passed the following resolution before proceeding *in camera*:

That the Committee move into a closed meeting to discuss County Grant Procedure pursuant to Section 239 (2) (b) of the Municipal Act related to personal matters about an identifiable individual, including municipal or local board employees.

The public minutes provide that, following the closed portion of the meeting, the Committee passed the following resolution:

That the Committee rise and report from the closed meeting.

These minutes also indicate that the Committee passed the following resolution:

That a decision on the report presented during the closed meeting be deferred for further discussions.

In terms of what was discussed during the closed meeting, the closed meeting minutes indicate that the Committee received a report from the CAO on the County's current practice regarding the County's provision of Fire Service Grants and recommendations in relation to same. This included a discussion regarding the County's practice of providing a stipend to those who occupy certain official fire prevention and safety positions within the County, but did not include a discussion about a specific individual.

(a) The March 2, 2017 Meeting was Not Closed for a Permitted Purpose

A municipality is entitled to hold a closed meeting under clause 239(2)(b) of the *Municipal Act, 2001* when discussing personal matters regarding an identifiable individual.

The *Municipal Freedom of Information and Protection of Privacy Act*¹³ provides guidance for interpreting the information that constitutes "personal matters regarding an identifiable individual", which includes information that, if publicly disclosed, would give rise to a reasonable expectation that a person can be identified.¹⁴

As a general rule, information associated with an individual in a professional, official or business capacity is not "personal information" about the individual.¹⁵ However, the information may qualify as personal information if the information reveals something of a personal nature about the individual.¹⁶ For example, if information relates to an evaluation of that person's performance or an investigation of their conduct, that information may be considered "personal information" even if it is in respect of an individual acting in his or her professional capacity.¹⁷

¹³ R.S.O. 1990, c. M.56.

¹⁴ *Ontario (Ministry of Correctional Services) v. Goodis* (2008), 290 D.L.R. (4th) 102 at para. 69 (Ont. Div. Ct.).

¹⁵ *Clarington (Municipality) (Re)* (2008), IPC Order MO-2368; *Aylmer (Town)(Re)* (2007), IPC Order MO-2204.

¹⁶ *Ibid*, IPC Order MO-2204.

¹⁷ *Madawaska Valley (Township)(Re)* (2010), IPC Order MO-2519 (IPC).

Similarly, discussion or evaluation of the educational and professional background of potential volunteer committee members, and discussion of their potential as a committee member, has been found by the Ontario Ombudsman to fit within the “personal matters” exception.¹⁸ However, general staffing and hiring policies or remuneration considerations do not fall within the exception under clause 239(2)(b). By way of example, the exception would apply to discussion about a specific individual’s salary, but would not apply to discussion of the salary range for a position.¹⁹

As noted above, the matter under discussion during the closed portion of the March 2, 2017 Meeting was, among other things, the County’s practice of providing a stipend to those who occupy certain official fire prevention and safety positions within the County; the matter did not include a discussion about a specific individual. This does not constitute a discussion regarding “personal matters” about an “identifiable individual”.

The matter in question is general in nature and pertains to a stipend that is received as a result of a person’s position or role in a professional or official capacity. Furthermore, no “identifiable individual” appears to have been discussed at this meeting.

Accordingly, we find this meeting was not closed for a permitted purpose.

(b) The Closed Meeting Minutes were Not Improperly Circulated

The Closed Meeting Procedures explicitly indicate that any confidential reports and minutes shall be circulated by email to the members of the Committee, and also includes additional provisions to ensure such information is safeguarded from disclosure. In other words, the Committee was not required to make publicly available the closed meeting minutes from a previous closed session.

In addition, while a municipality may choose to adopt closed meeting minutes in open session, this is not a requirement under the *Municipal Act, 2001*, the Procedure By-law or the Closed Meeting Procedures. As such, the approval of closed meeting minutes in closed session does not constitute a contravention of any applicable requirement. We see no issue with the manner in which the closed meeting minutes from a previous meeting were circulated in this instance.

(3) April 6, 2017 (the “April 6, 2017 Meeting”)

The Complaint alleges that April 6, 2017 Meeting was improperly closed pursuant to subsection 239(3.1) of the *Municipal Act, 2001*, that the report following the closed portion of this meeting was deficient and that the closed meeting minutes from a previous meeting were improperly discussed during the closed portion of this meeting.

The Complaint also notes that if the meeting was not permitted to be closed, then any direction to staff provided at the meeting would be improper, as would any associated vote.

¹⁸ *Investigation into whether Council for the Town of Bracebridge held illegal closed meetings on December 9 and 17, 2014*, Ontario Ombudsman (March 2015), at paras. 38, 41, 42.

¹⁹ *Investigation into whether the Town of Mattawa Council and its Ad Hoc Heritage Committee held improperly closed meetings*, Ontario Ombudsman (December 2010) at para. 53.

The public minutes from the April 6, 2017 Meeting demonstrate that the Committee passed the following resolution before proceeding *in camera*:

That the Committee move into a closed meeting to receive an update from the Business Investment Specialist, Energy pursuant to Section 239 (3.1) of the Municipal Act, for the purpose of educating or training the members; and,

Pursuant to Section 239 (2) (e) litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board.

In terms of what was discussed during the closed meeting, the closed meeting minutes indicate that a consultant provided an update on the activities of the partnership initiative between the County and Bruce Power.

The public minutes provide that, following the closed meeting, the Committee passed the following resolution:

That the Committee rise and report from the closed meeting.

These minutes also state that:

... the Warden reported that staff were given direction in closed session.

(a) The April 6, 2017 Meeting was Not Closed for a Permitted Purpose

As noted above, the exception pertaining to education and training under subsection 239(3.1) of the *Municipal Act, 2001* is intended to apply only in circumstances where the *sole* purpose of the meeting in question is for the members of the council, local board or committee to receive education and training. This exception is narrowly construed and will not cover matters that, in essence, constitute the business of the council, local board or committee.

Also, as noted above, the Committee's mandate is "generally related to the long-term strategic goals of the County of Bruce", and the Committee is responsible for making recommendations to Council on such matters.

We have determined that the receipt by the Committee of information from a consultant regarding an update with respect to the activities of the partnership initiative between the County and Bruce Power is not covered by the scope of the exception under subsection 239(3.1). It is our view that this topic seemingly falls squarely within the Committee's official mandate and directly pertains to its function in relation to the business of the municipality.

Accordingly, we find that the April 6, 2017 Meeting was not closed for a purpose that is permitted under subsection 239(3.1) of the statute.

(b) The Report following the Closed Portion of the April 6, 2017 Meeting was Deficient

The report with respect to the closed portion of the April 6, 2017 Meeting is sparse. There is no indication that the Chair stated "the matters which were considered" or confirmed that "no motions were carried in closed other than procedural motions or directions to staff". The minutes also do not indicate that the Chair confirmed that the Committee discussed only those matters identified in the resolution to go into a closed meeting.

Accordingly, we find that the report in this instance is deficient and is in contravention of Sections 5(G) and 6(G) of Procedure By-law 2016-13 and Procedure By-law 2017-024, respectively, and Section 3 of the Closed Meeting Procedures.

(c) The Closed Meeting Minutes were Not Improperly Circulated

Again, we find no issue with the manner in which closed meeting minutes from a previous closed session were circulated. Such minutes were circulated in accordance with the applicable provisions of the Closed Meeting Procedures. We find no contraventions on this basis.

(d) There was No Improper Vote at the April 6, 2017 Meeting

While the report on the closed portion of this meeting does indicate that staff were given direction in closed session, there is no evidence to suggest that such direction was actually given, or that an underlying vote actually occurred regarding the partnership initiative between the County and Bruce Power. As noted above, we understand that the County's former practice was to include a boilerplate statement in its report to open session following a closed meeting indicating that direction had been given to staff following a closed meeting, whether or not direction had in fact been given.

On this basis, we find that the Committee did not vote regarding this matter and, therefore, there can be no contravention of subsection 239(5) of the *Municipal Act, 2001* or the applicable provisions of the Procedure By-law or Closed Meeting Procedures.

(4) May 4, 2017 (the "May 4, 2017 Meeting")

The Complaint alleges that the May 4, 2017 Meeting was improperly closed pursuant to subsection 239(3.1) of the *Municipal Act, 2001* and that the report following the closed portion of this meeting was deficient. The Complaint also takes issue with the fact that the minutes from various closed meetings, including this meeting, were "emailed under separate cover".

The public minutes from the May 4, 2017 Meeting demonstrate that the Committee passed the following resolution before proceeding *in camera*:

That the Committee move into a closed meeting pursuant to:

Section 239 (2) (b) of the Municipal Act, personal matters about an identifiable individual, including municipal or local board employees; and,

Section 239 (3.1) for the purpose of educating or training the members.

In terms of what was discussed during the closed meeting, the closed meeting minutes indicate that the CAO provided the Committee with an update on matters related to a complaint that had been made by a member of the public about a municipal matter.

The public minutes provide that, following the closed meeting, the Committee passed the following resolution:

That the Committee rise and report from the closed meeting.

These minutes also state that:

... the Warden reported that staff were given direction in closed session.

(a) The May 4, 2017 Meeting was Not Closed for a Permitted Purpose

We find that the meeting was properly closed pursuant to clause 239(2)(b), which excepts matters pertaining to personal matters about an identifiable individual. This is because it is clear that the discussion was regarding an identifiable individual (i.e. the member of the public who made the complaint) and that the discussion would be about “personal matters” (i.e. the complaint made by this person, and any additional identifying information about this person that may arise as a result of the discussion on the complaint).

However, there is no indication that the Committee members received any education or training during the closed portion of the May 4, 2017 Meeting. As such, this meeting was not properly closed pursuant to subsection 239(3.1) of the *Municipal Act, 2001*.

Thus, we find that the Committee’s discussion with regards to the personal matter of an identifiable individual was properly conducted *in camera* in accordance with clause 239(2)(b), however the Committee improperly relied on subsection 239(3.1) as an exception to permit an *in camera* session, as no indication of education or training was found.

(b) The Report following the Closed Portion of the May 4, 2017 Meeting was Deficient

The report with respect to the closed portion of the May 4, 2017 Meeting is sparse. There is no indication that the Chair stated “the matters which were considered” or confirmed that “no motions were carried in closed other than procedural motions or directions to staff”. The minutes also do not indicate that the Chair confirmed that the Committee discussed only those matters identified in the resolution to go into a closed meeting.

Accordingly, we find that the report in this instance is deficient and is in contravention of Sections 5(G) and 6(G) of Procedure By-law 2016-13 and Procedure By-law 2017-024, respectively, and Section 3 of the Closed Meeting Procedures.

(c) The Closed Meeting Minutes were Not Improperly Circulated

Again, we find no issue with the manner in which closed meeting minutes from a previous closed session were circulated. Such minutes were circulated in accordance with the applicable provisions of the Closed Meeting Procedures. We find no contraventions on this basis.

(5) September 7, 2017 (the “September 7, 2017 Meeting”)

The Complaint alleges that the September 7, 2017 Meeting was improperly closed pursuant to subsection 239(3.1) of the *Municipal Act, 2001* and that the report following the closed portion of this meeting was deficient. The Complaint also seemingly takes issue with the fact that the minutes from the May 4, 2017 Meeting were not included with the minutes for this meeting and were “emailed under separate cover”.

The public minutes from the September 7, 2017 Meeting demonstrate that the Committee passed the following resolution before proceeding *in camera*:

That the Committee move into a closed meeting pursuant to:

Section 239 (2) (b) of the Municipal Act relating to personal matters about an identifiable individual, including municipal or local board employees relating to the CAO position description and Bruce County Economic Development Strategy; and,

Section 239 (2) (3.1) 1. of the Municipal Act for the purpose of educating or training the members in relation to the Bruce County Economic Development Strategy; and,

Section 239 (2) (e) of the Municipal Act relating to litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board to receive an update from County Solicitor, Tammy Grove-McClement on the Saugeen and Nawash - Treaty and title litigation – Scheduling Mandatory Mediation.

In terms of what was discussed during the closed meeting, the closed meeting minutes indicate that the Committee reviewed a recommendation from the County's Director of Human Resources regarding the salary grid for non-unionized employees. The Committee also reviewed and approved the Job Description for the CAO and received a report from the CAO on a potential new municipal initiative with respect to the County's economic development strategy, and received an update on the Saugeen and Nawash treaty and title litigation matter.

The public minutes provide that the Committee passed the following resolution after the closed meeting: "That the Committee rise and report from the closed meeting."

However, there is no indication that any such report was provided.

(a) *The September 7, 2017 Meeting was Not Closed for a Permitted Purpose*

We find that the part of the closed portion of the September 7, 2017 Meeting that was closed for the Committee to receive a report from the CAO regarding the County's Economic Development Strategy was not properly closed pursuant to subsection 239(3.1) of the *Municipal Act, 2001*.

As noted above, this exception is reserved solely for the education and training of members, and is not to be used for the Committee to receive information on matters that fall squarely within their mandate and that relate directly to the business of the municipality. The receipt of information about the County's Economic Development Strategy would qualify as one such matter. Therefore, the Committee was not permitted to consider this matter in closed session pursuant to subsection 239(3.1) of the *Municipal Act, 2001*.

(b) *The Report following the Closed Portion of the September 7, 2017 Meeting was Deficient*

There seemingly was no report with respect to the closed portion of the September 7, 2017. We find this to be in contravention of Sections 5(G) and 6(G) of Procedure By-law 2016-13 and Procedure By-law 2017-024, respectively, and Section 3 of the Closed Meeting Procedures.

This is because, as noted above, these provisions require the Chair to state "the matters which were considered" and confirm that "no motions were carried in closed other than procedural motions or directions to staff" following the closed portion of a meeting. No such report seems to

have been provided at the meeting. The minutes also do not indicate that the Chair confirmed that the Committee discussed only those matters identified in the resolution to go into a closed meeting.

(c) The Closed Meeting Minutes were Not Improperly Circulated

We have determined that there is no issue with the manner in which closed meeting minutes from a previous closed session were circulated. Such minutes were circulated in accordance with the applicable provisions of the Closed Meeting Procedures. We find that there is no contravention on this basis.

(6) November 2, 2017 (the “November 2, 2017 Meeting”)

The Complaint alleges that the November 2, 2017 Meeting was improperly closed pursuant to subsection 239(3.1) of the *Municipal Act, 2001*.

The public minutes from the November 2, 2017 Meeting demonstrate that the Committee passed the following resolution before proceeding *in camera*:

That the Committee move into a closed meeting pursuant to:

Section 239 (2) (b) of the Municipal Act relating to personal matters about an identifiable individual, including municipal or local board employees relating to the Committee Chair Selection; and,

Section 239 (2) (3.1) 1. of the Municipal Act for the purpose of educating or training the members.

In terms of what was discussed during the closed meeting, the closed meeting minutes indicate that the Committee received information and engaged in discussion regarding the selection process for the chairs of certain committees of Council, among other related matters. These minutes indicate that “there was an agreement” regarding these matters and that a further review of them would be undertaken (presumably by staff) in the coming months.

(a) The November 2, 2017 Meeting was Not Closed for a Permitted Purpose

For the reasons outlined above with respect to the other meetings that were improperly closed pursuant to subsection 239(3.1) of the *Municipal Act, 2001*, we find that the November 2, 2017 Meeting was similarly not permitted to be closed pursuant to this provision. Specifically, the chair selection process for various committees of Council falls squarely within the Committee’s mandate and pertains directly to the business of the municipality. As such, this meeting was not closed for a permitted purpose.

(b) There was an Improper Vote at the November 2, 2017 Meeting

While not specifically alleged under the Complaint, the closed meeting minutes from this meeting clearly show that an informal vote was taken by the Committee regarding the chair selection process in the form of an “agreement” by the members regarding this matter. Since the meeting was not permitted to be closed, this vote was in contravention of subsection 239(5) of the *Municipal Act, 2001*.

CONCLUSIONS

Based on the foregoing, we conclude that the Committee contravened the *Municipal Act, 2001*, the Procedure By-law and the Closed Meeting Procedures with respect to the conduct of the meetings set out in the Complaint.

In particular, we have determined that the Committee:

- was not permitted to proceed *in camera* pursuant to subsection 239(3.1) at the meetings on September 8, 2016, April 6, 2017, May 4, 2017, September 7, 2017 and November 2, 2017;
- was not permitted to proceed *in camera* pursuant to clause 239(2)(b) at the March 2, 2017 Meeting;
- did not provide a sufficient post-closed meeting report in accordance with Sections 5(G) and 6(G) of Procedure By-law 2016-013 and Procedure By-law 2017-024, respectively, and Section 3 of the Closed Meeting Procedures at the meetings on September 8, 2016, April 6, 2017, May 4, 2017, and September 7, 2017; and
- conducted an improper vote at the meeting on November 2, 2017 in contravention of subsection 239(5) of the *Municipal Act, 2001* and the applicable provisions of the Procedure By-law and Closed Meeting Procedures.

We further conclude that the Committee did not contravene the *Municipal Act, 2001*, the Procedure By-law or the Closed Meeting Procedures with respect to the manner in which it circulated the closed minute meetings from previous closed sessions.

RECOMMENDATIONS

As noted above, we are aware that the County received findings and recommendations under two (2) recent closed meeting investigation reports, the December 2019 Report and the July 2020 Report.²⁰

We are also aware that the County has made changes in its policies, practices and procedures and has taken other steps to enhance accountability and transparency as a result of these reports. For example, as noted in the July 2020 Report,²¹ a training session for members of Council and County staff entitled “Closed Session Best Practices” was held at the County on February 13, 2020 – this session was open to the public.

In terms of specific recommendations, the December 2019 Report, as well as the July 2020 Report by way of reference to the December 2019 Report, recommended as follows:

²⁰ *Supra* note 7.

²¹ *Supra* note 7 at p. 26.

County staff should familiarize themselves, and members of Council and Committees with the proper application of the requirements of Section 239 of the Municipal Act and reaffirm their commitment to open and transparent local government as cited in their procedure bylaw.

We continue to agree with the foregoing recommendation and recommend that the County ensure that it is complied with to the extent, if any, that it has not already been complied with.

We would also specifically reiterate the following recommendation contained in the July 2020 Report regarding "reporting out" in open session:

We recommend that the County ensures it reports out on matters that occur in closed session in as accurate and detailed a manner as is reasonable given the nature of the closed session subject matter in question. This recommendation is in furtherance of the concept of open and transparent local government.²²

This recommendation is also applicable within the context of this Report insofar as one of the main allegations regarding the meetings listed in the Complaint was that the Committee failed to provide a proper report following the closed portions of the meetings, which we have now determined was founded. Again, while we understand that steps have already been taken to address this issue, we would recommend that the County ensure its compliance with this recommendation to the extent, if any, that such compliance is not already occurring.

This Report has been prepared for and is forwarded to Council for its consideration. Subsection 239.2(11) of the *Municipal Act, 2001* provides that this Report be made public. Subsection 239.1(12) provides that Council shall pass a resolution stating how it intends to address this Report.

AIRD & BERLIS LLP



Rebecca Hines

Closed Meeting Investigator for The Corporation of the County of Bruce

Dated this 31st day of December, 2020

²² *Supra* note 7 at p. 27.