

AIRD BERLIS

Laura Dean
Direct: 416.865.7706
E-mail: ldean@airdberlis.com

REPORT ON CLOSED MEETING INVESTIGATION 2025-01

THE CORPORATION OF THE TOWN OF CALEDON

Aird & Berlis LLP

Laura Dean

July 22, 2025

TABLE OF CONTENTS

I.	INTRODUCTION	3
II.	CLOSED MEETING INVESTIGATOR - AUTHORITY AND JURISDICTION.....	3
III.	STATUTORY FRAMEWORK.....	3
IV.	REQUEST	4
V.	THE MEETING	5
VI.	ANALYSIS	5
VII.	FINDINGS	6
VIII.	CONCLUSIONS	7

THE CORPORATION OF THE TOWN OF CALEDON REPORT ON CLOSED MEETING INVESTIGATION 2025-01

I. INTRODUCTION

1. Aird & Berlis is the Closed Meeting Investigator for the Town of Caledon (the “**Town**”).
2. In our capacity as Investigator, on May 29, 2025, we received a formal request for a closed meeting investigation dated May 27, 2025 (the “**Request**”).
3. The Request seeks an investigation concerning a portion of a closed meeting held by Town Council which took place on May 20, 2025 (the “**Meeting**”).
4. As set out in detail below, we find the closed session of the Meeting did not contravene the “open meeting rule” contained in subsection 238(1) of the *Municipal Act, 2001*.¹

II. CLOSED MEETING INVESTIGATOR - AUTHORITY AND JURISDICTION

5. The Town has appointed Local Authority Services (“**LAS**”) to provide closed meeting investigation services pursuant to section 239.1 of the *Municipal Act, 2001*. LAS has delegated its authority as Closed Meeting Investigator to Aird & Berlis LLP.
6. As the Closed Meeting Investigator, our jurisdiction is limited to investigating whether a municipality or local board complied with:
 - 1) section 239 of the *Municipal Act, 2001*; or
 - 2) a procedure by-law under subsection 238(1) of the *Municipal Act, 2001* in respect of a meeting or part of a meeting that was closed to the public.
7. We have no jurisdiction to investigate questions of procedural fairness with respect to the conduct of a meeting.
8. During this investigation, we interviewed the Town’s Commissioner or Corporate Services & Chief Legal Officer and the Town’s Clerk who were in attendance at the closed session of the Meeting. We found these officers to be credible.

III. STATUTORY FRAMEWORK

9. Ontario’s “open meeting rule” is enshrined in section 239 of the *Municipal Act, 2001*, which requires that “meetings” be open to the public, unless otherwise excepted.
10. Subsection 238(1) of the *Municipal Act, 2001* defines “meeting” broadly as:

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

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

- (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.
- 11. Unless they deal with a subject matter falling within a specific enumerated exception in subsection 239(2), all meetings are required to be held in an open forum where the public is entitled to attend and observe local government in process.
- 12. The purpose of the “open meeting rule” is to foster democratic values, increase transparency, and enhance public confidence in local government. However, it has been long recognized that there are certain circumstances where open meetings, or full transparency in the immediate term, would not serve the public interest or the interests of the municipal corporation. In providing for certain limited exceptions to the general rule, section 239 seeks to balance the need for confidentiality in certain matters with the right of the public to information respecting the decision-making process of local government.
- 13. Subsection 239(2) lists eleven (11) matters that permit a council or a committee of council to hold a meeting that is closed to the public, including the following:

Exceptions

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

...

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

IV. REQUEST

- 14. The Request seeks an investigation into whether a specific portion of the closed session of the Meeting complied with the *Municipal Act, 2001*, the Town’s Procedural By-law No. BL-2015-108 (the “**Procedural By-law**”) and principles of procedural fairness.
- 15. The portion of the closed session of the Meeting which is relevant to this Request related to reimbursement for legal expenses pursuant to the relevant Town by-law.
- 16. The Request communicates the Requester’s concern that Council may not have had all relevant information before it during the closed session, and that the criteria in the relevant Town by-law may not have been properly or fairly considered.
- 17. We note that we do not have jurisdiction as the Closed Meeting Investigator to consider questions of procedural fairness with respect to the conduct of a meeting. We also do not have jurisdiction to opine on Council’s interpretation of the Town’s by-laws. Accordingly, the analysis that follows considers only whether the relevant portion of the closed session of the Meeting was closed and proceeded with in accordance with the *Municipal Act, 2001* and the Town’s Procedural By-law.

V. THE MEETING

18. The public agenda for the Meeting provided notice that part of the Meeting would be closed to the public. The closed session item is listed in the agenda under the heading “Closed Session”:

11.3 Closed Session Staff Report 2025-0245: Legal Remuneration Matter

Pursuant to Section 239(2)(f) of the *Municipal Act, 2001*, as amended, as the subject matter pertains to advice that is subject to solicitor-client privilege, including communications necessary for that purpose.

19. At the Meeting, Council passed the following resolution to go into closed session:

That the Council does now go into closed session pursuant to section 239(2) of the *Municipal Act, 2001*, as amended, to discuss Closed Session Staff Report 2025-0245: Legal Remuneration Matter under section 239(2)(f) of the *Municipal Act, 2001*, as amended, as the subject matter pertains to advice that is subject to solicitor-client privilege, including communications necessary for that purpose.

20. Council considered two other items during the closed session of the Meeting.
21. One member of Council recused themselves from the portion of the closed session where the above matter was considered. Eight members attended the entire closed session of the Meeting.
22. According to the Closed Meeting minutes, Item 11.3, which is the subject of the Request, was considered very briefly, from 3:18-3:26 p.m.
23. The public minutes of the Meeting indicate that once Council returned to open session, the following motion was defeated by a vote of 5-3 with one member of Council declaring a conflict:

11.3 Closed Session Staff Report 2025-0245: Legal Remuneration Matter

That Council provide direction to the Chief Legal Officer to proceed with option 1 as outlined in Confidential Staff Report 2025-0245.

24. The agenda for the closed session of the Meeting included Closed Session Staff Report 2025-0245, which appended materials that were relevant to the remuneration matter.

VI. ANALYSIS

25. The open meeting exception in clause 239(2)(f) of the *Municipal Act, 2001* permits a council or committee to meet in the absence of the public in order to consider advice that is subject to solicitor-client privilege, including communications necessary for that purpose, in order to protect the municipality's interests as a client in seeking and obtaining legal advice from its lawyer.

26. There is a tripartite test that is used for determining whether a verbal or written communication is subject to solicitor-client privilege in order for the exception under clause 239(2)(f) to apply. The communication must:
- (a) be between a client (i.e. the municipality) and its lawyer;
 - (b) entail the seeking or giving of legal advice; and
 - (c) be considered confidential by the parties.²

VII. FINDINGS

(i) Section 239 of the *Municipal Act, 2001*

27. For the reasons that follow, we find that the relevant closed session of the Meeting entailed the seeking of or giving of confidential legal advice or communications regarding confidential legal advice between Council and its solicitor, and was therefore permitted to be closed pursuant to clause 239(2)(f) of the *Municipal Act, 2001*.
28. A review of the Closed Session Staff Report 2025-0245 and the closed session minutes combined with our interviews of the Clerk and the Town's Commissioner of Corporate Services & Chief Legal Officer established that the brief closed session of the Meeting fell within the exception under clause 239(2)(f) of the *Municipal Act, 2001* for solicitor-client privilege.
29. Closed Session Staff Report 2025-024, prepared by the Town's Commissioner of Corporate Services & Chief Legal Officer, who is a licensed lawyer, set out the relevant provisions of the Town's by-law for consideration by Council regarding the reimbursement of legal expenses.
30. We understand that at the beginning of the closed session, the Town's Commissioner of Corporate Services & Chief Legal Officer explained the legal test to be met for reimbursement. The closed session minutes also reveal that a brief discussion between Council members took place regarding the options set out in the Closed Session Staff Report 2025-0245.
31. In April 2024, we released a Closed Meeting Investigation Report finding that a closed meeting of Town Council to discuss a similar matter – reimbursement for legal expenses – did not contravene the "open meeting rule". In that report, we noted the Ontario Ombudsman's observation that, on its own, a council discussion regarding whether or not to reimburse an individual for legal fees in accordance with its indemnification policy does not fit within any exceptions in the *Municipal Act, 2001*.³

² *Solosky v. R.* (1979), 105 D.L.R. (3d) 745 (S.C.C.).

³ [Letter from Ombudsman of Ontario to the Town of Midland](#), (February 4, 2014), [Norfolk \(County\)](#), 2016 ONOMBUD 7 at para. 33; [Amherstburg \(Town of\)](#), 2016 ONOMBUD 9 at para. 77.

32. Based on our investigation in that case, however, we determined the Committee expressly received and considered legal advice that was subject to solicitor-client privilege at the closed portion of the relevant meeting. We have made the same finding with respect to this Investigation.
33. We reiterate that we have no jurisdiction to consider matters of procedural fairness with respect to the conduct of a meeting.

(ii) Procedural By-law

34. The Procedural By-law governs the calling, place and procedure of meetings. Section 5.5 of the Procedural By-law contains provisions for closed meetings.
35. We have reviewed the Procedural By-law with respect to the holding of closed meetings and find the closed session of the Meeting complied with the requirements of the Procedural By-law.

VIII. CONCLUSIONS

36. This Report has been prepared for and is forwarded to Council for its consideration. Given that we have not found a contravention of the *Municipal Act, 2001* or the Procedural By-law, no Council action is required.
37. Subsection 239.2(11) of the *Municipal Act, 2001* requires this Report to be made public.

Respectfully submitted,

AIRD & BERLIS LLP



Laura Dean
Partner

LD/JM/ke

64821325.2