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## **CLOSED MEETING INVESTIGATION 2020-01**

## **THE CORPORATION OF THE TOWN OF INNISFIL**

**Laura Dean**  
**Aird & Berlis LLP**

**November 30, 2020**

## CLOSED MEETING INVESTIGATION 2020-10

### I. SUMMARY

A request for a closed meeting investigation pursuant to section 239.1 of the *Municipal Act, 2001* was filed with our office on November 3, 2020 (the “**Request**”) in our capacity as closed meeting investigator. The Request alleged that council for The Corporation of the Town of Innisfil (the “**Town**”) contravened section 239 of the *Municipal Act, 2001* when it went into closed session at a Special Council Meeting held on February 12, 2020.<sup>1</sup>

Specifically, the Request alleges that the reason for closing the meeting was to discuss an email sent to council by a member of the public dated February 6, 2020 which contained allegations of wrongdoing against a named member of council.

We reviewed the Complaint and determined that it warranted an investigation.

### II. APPOINTMENT & AUTHORITY

The Town of Innisfil appointed Local Authority Services (“LAS”) as a Municipal Closed Meeting Investigator and authorized LAS to conduct investigations upon receipt of a complaint in respect of meetings or part of meetings that are closed to the public in order to determine compliance with section 239 of the *Municipal Act, 2001* and/or or the Town’s Procedural By-law.

Our jurisdiction as Investigator is set out in section 239.2 of the *Municipal Act, 2001* wherein we are authorized 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 its Procedure By-law enacted under subsection 238(2), 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.

### III. MATERIALS REVIEWED

In order to undertake our investigation and prepare this report, we have reviewed and considered the following materials:

- A copy of the email from a member of the public dated February 6, 2020 which was alleged to have been discussed at the closed session of a Special Council Meeting held on February 12, 2020;
- A copy of the request for a closed meeting investigation dated November 3, 2020;
- A certified copy of the Town’s procedure by-law for council and committees;
- A certified copy of the Town’s notice by-law;

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<sup>11</sup> The Town’s Corporate Policy CP-08-03 provides that “All requests will be treated

- A certified copy of the agenda with all relevant attachments or handouts relating to the meeting(s) in question, including any closed meeting materials;
- A certified copy of the notice given for the meeting(s);
- A certified copy of the minutes of the meeting(s);
- A certified copy of any audio or audio-visual recording of the meeting(s);
- A certified copy of any duties assigned by the Town to the Closed Meeting Investigator; and
- A contact list for all members of Council and for all other persons present at the meeting(s), including mailing and email addresses and telephone numbers.

## APPLICABLE LAW

### (a) *Municipal Act, 2001*<sup>2</sup>

Ontario's "open meeting rule" is set out in subsection 239(1) of the *Municipal Act, 2001*, which provides that all meetings of a municipal council are to be open to the public, unless excepted:

#### **Meetings open to public**

**239 (1)** Except as provided in this section, all meetings shall be open to the public.

The term "meeting" is defined in subsection 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.

In the Town, "quorum" means "the majority of the total voting Members required to constitute Council or a Committee" or a majority of the members of a committee."<sup>3</sup>

The exception that is relevant to this matter is set out in subsection 239(3.1) as follows:

#### **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:

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<sup>2</sup> A complete list of statutory provisions setting out the closed meeting requirements and the authority of a closed meeting investigator pursuant to the *Municipal Act, 2001* is provided in the Appendix to this report.

<sup>3</sup> This meaning accords with how the term "quorum" is set out in s. 237(1) of the *Municipal Act, 2001*.

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.

**Resolution**

(4) Before holding a meeting or part of a meeting that is to be closed to the public, a municipality or local board or committee of either of them shall state by resolution,

- (a) the fact of the holding of the closed meeting and the general nature of the matter to be considered at the closed meeting; or
- (b) in the case of a meeting under subsection (3.1), the fact of the holding of the closed meeting, the general nature of its subject-matter and that it is to be closed under that subsection.

**(b) Procedure By-law**

Policy No. GG-003: Proceedings of Council and Committees is incorporated by reference into the Procedure By-law.

Section 3.0.0 of the Policy provides that “In-Camera shall refer to a Meeting of the Council of the Corporation of the Municipality of Wawa closed to the Public to discuss certain items and subject matters as set out in this policy.”

Section 12.0.0 of the Policy provides that “Meeting means any Regular, Special, Committee or other Meeting of Council, Committee, or Local Board.”

The following provisions of the Policy are relevant to the Complaint:

**1.0.0 Council Meetings**

**1.1.0 Meetings of Council**

1.1.1 Notice of all meetings shall be given through the availability of meeting agendas, this by-law, and the municipal website.

...

**1.6.0 Regular Council Meeting Agenda**

1.6.2 The Clerk shall make available electronically, an Agenda and a copy of all applicable reports, Motions or items on the Agenda to each Member at least three (3) days prior to the Meeting at which same are to be considered.

...

**1.7.0 Quorum**

1.7.1 A quorum of Council shall be a majority of the total Members (5) thereof that is three (3) Members, unless a two-thirds majority shall be required by statute or by-law.

1.7.2 A quorum of any of the Committees appointed by Council shall be a majority of its Members.

...

**1.15.0 Open Meetings of Council**

1.15.1 Except as provided in this section, all meetings shall be open to the public.

...

**1.16.0 In-Camera (Closed) Portion of Meetings of Council**

1.16.1 Any portion of a Council Meeting that proceeds to an “In-Camera” or Closed session shall be considered a separate meeting. “In-Camera” Meetings shall be held and conducted under the process as dictated in this policy and according to the *Municipal Act, 2001*.

1.16.2 The Minutes of an Open Meeting of the Council shall record the movement to an In-Camera session but not the deliberations.

...

#### 1.20.0 **Account of Proceedings**

1.20.1 The Clerk shall keep a full and correct record of the proceedings of every Meeting and ensure that the Minutes when confirmed are signed by the Mayor or Presiding Member and the Clerk.

1.20.2 A separate Agenda and Minutes must be maintained for In-Camera meetings.

...

#### 3.8.0 **Public Access to Committee Meetings**

3.8.1 Committees of the Corporation, as appointed through by-law, shall generally be governed by the contents and direction of this procedural bylaw. Such governance shall strictly include applicability to the sections respecting "open" and "closed" meetings.

...

#### 3.9.1.1 **Committee Procedures**

...

3.9.14 All Committee Meetings of the Council shall be open to the public except as identified in Section 3.8.1.

### **IV.**

### **V. FINDINGS**

We have reviewed the above noted documents and are satisfied that Council did not contravene section 239 of the *Municipal Act, 2001* when it went into closed session at a Special Council Meeting held on February 12, 2020.

Based on our review of a certified copy of the minutes of the February 12, 2020 closed session and a confidential staff report dealing with the closed session item, it is clear that the subject matter of the closed session had nothing whatsoever to do with the February 6, 2020 email from a member of the public to Council.

We find that the Special Council Meeting held on February 12, 2020 was closed in accordance with section 239 of the *Municipal Act, 2001* and the Town's Procedural By-law.

### **VI. CONCLUSIONS**

For the reasons noted above, the Request is dismissed.

AIRD & BERLIS LLP

November 24, 2020  
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Laura Dean

Closed Meeting Investigator for the Town of Innisfil

Dated this 30<sup>th</sup> day of November, 2020

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