



REPORT ON CLOSED MEETING INVESTIGATION 2024-01

THE CORPORATION OF THE MUNICIPALITY OF NORTH GRENVILLE

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MUNICIPALITY OF NORTH GRENVILLE REPORT ON CLOSED MEETING INVESTIGATION 2024-01

I. INTRODUCTION

1. This is a report on the investigation of a request made in accordance with section 239.1 of the *Municipal Act, 2001*.¹
2. A formal request for a closed meeting investigation, dated November 6, 2024 (the “**Request**”), was filed directly with our office, in our capacity as the closed meeting investigator (the “**Closed Meeting Investigator**”) for The Corporation of the Municipality of North Grenville (the “**Municipality**”).
3. The Request alleges that the closed meeting of Council held on October 22, 2024 (the “**Closed Meeting**”), contravened section 239 of the *Municipal Act, 2001*.
4. Upon concluding our investigation, we have found that the Municipality has contravened section 239 of the *Municipal Act, 2001* and its Procedure of Council By-law (4-19) with respect to the Closed Meeting.

II. CLOSED MEETING INVESTIGATOR – AUTHORITY & JURISDICTION

5. The Municipality appointed Local Authority Services Inc. (“**LAS**”) as its closed meeting investigator pursuant to section 239.1 of the *Municipal Act, 2001*. LAS has delegated its authority to act as closed meeting investigator to Aird & Berlis LLP.
6. Aird & Berlis LLP was selected by LAS through a competitive procurement process to provide closed meeting investigation services to its participating municipalities; Aird & Berlis LLP was not directly selected by the Municipality to act in this particular matter or, in general, as its closed meeting investigator. 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* 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. REQUEST

8. The Request was properly filed pursuant to section 239.1 of the *Municipal Act, 2001*.
9. As indicated above, the Request alleges that the Closed Meeting contravened the *Municipal Act, 2001*. The Request contends that Council considered an investigative report from the Municipality’s Integrity Commissioner (the “**IC Report**”) in closed session.

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

10. On November 5, 2024, the IC Report was included on the agenda for the meeting of Council as a consent item. Council voted at that meeting on the Consent Agenda and the matter of the IC Report proceeded without any discussion on the recommendations contained in the IC Report.

11. The Request raises two issues with respect to the Closed Meeting.

12. First, the Request alleges that the member of Council who was the respondent in the Integrity Commissioner's investigation either attended the Closed Meeting at which the IC Report was presented or was informed of the discussion at the Closed Meeting. The Request notes that "this raises concerns about potential conflicts of interest and a lack of impartiality in Council's deliberation process."

13. Second, the Request submits that Council voted and made a decision with respect to the IC Report at the Closed Meeting. The Request asserts as follows:

It appears that the council, as a whole, decided how to proceed with the Integrity Commissioner's report without bringing the matter into open session. This lack of transparency undermines public trust and may not comply with principles of open governance.

14. The Request seeks an investigation to "assess whether Council's actions comply with the requirements governing closed session discussions, including any potential violations of the Municipal Act or transparency guidelines."

IV. REVIEW OF MATERIALS AND INQUIRY PROCESS

15. In order to properly consider the allegations in the Request and make our determinations on the issues, we have reviewed the following materials:

- Procedure of Council By-law 4-19, as amended ("**Procedure By-law**");
- Council Agenda for the Closed Meeting;
- IC Report;
- Minutes for the meeting on October 22, 2024;
- Approved Minutes of the Closed Meeting (the "**Closed Minutes**");
- Confidential Notes of the Closed Meeting (the "**Closed Notes**");
- Video-recording of the open session of the meeting on October 22, 2024;
- Council Agenda for the meeting of Council on November 5, 2024 (the "**Open Meeting**");
- Approved Minutes of the Open Meeting (the "**Open Minutes**"); and
- Video-recording of the Open Meeting.

16. Following our review of the materials, we conducted a virtual interview with the Municipality's CAO who attended the Closed Meeting and prepared the Closed Minutes. We then interviewed the Mayor who had requested the IC Report to be dealt with in the Closed Meeting. Both the Mayor and the CAO had direct, relevant knowledge about the subject matter of the Request. We also conducted an interview with the Clerk. The Municipality and the aforementioned officers cooperated fully with our investigation.

V. CLOSED MEETING

17. The Closed Meeting held by Council on October 22, 2024 is listed as a "Special Meeting" on the agenda.

18. The Clerk was not invited to the Closed Meeting. The CAO, who has been appointed as Deputy Clerk pursuant to subsection 228(2) of the *Municipal Act, 2004*, attended the Closed Meeting and maintained a record of the proceedings.

19. Item F on the Agenda for the Closed Meeting is entitled CLOSED SESSION and lists five (5) items for consideration by Council *in camera* as follows:

CLOSED SESSION

Be it resolved:

Council proceed to Closed Session pursuant to Section 239(2) of the *Municipal Act, 2001*, Subsection (f) - Advice that is subject to solicitor-client privilege, including communications necessary for that purpose; Subsection (a)² - Personal matters about an identifiable individual, including municipal employees - specifically an applications [sic] to advisory committees AND an integrity commissioner report; Subsection (k) - A position, plan, procedure, criteria, or instruction to be applied to negotiations - specifically a land use agreement; and Section 239(3.1) of the *Municipal Act, 2001* - Education or training.

F.1 Council Training

F.2 Advisory Committee Applications

F.3 Advice Subject to Solicitor-Client Privilege

F.4 Land Use Agreement

F.5 Integrity Commissioner Report

20. Item F.5 - Integrity Commissioner Report had been added to the agenda for the Closed Meeting the day before, on October 21, 2024. The Clerk provided notification of the addition of the IC Report to Council and copied the CAO. The Clerk wrote as follows:

² The citation to the closed meeting exception for personal matters about an identifiable individual is contained in s. 239(2)(b) of the *Municipal Act, 2001* – not in clause (a) as noted in the agenda.

Good Morning Council,

Please note that an additional item has been added to the Closed Agenda for tomorrow's Special Meeting. I am attaching the revised Agenda and the related report.

As a reminder for this item, it will rise to Open Session on November 5th at the Regular Council Meeting. All decisions and discussions about the recommendations contained within the report are to be conducted in Open Session on November 5th.

The required decisions of Council on this matter to be deliberated in Open Session are the following:

1. Receipt of the Report in Open
2. Decision of how to make the report public - note that council will be asked to decide if distribution on the public agenda is 'public' enough or if they wish to make the report public in any other way
3. Whether to accept the recommendations provided for in the report

At this time we have not asked the Integrity Commissioner to attend our meeting on November 5th.

Should you have any questions or concerns don't hesitate to reach out.

21. The approved Closed Minutes indicate that Council convened in closed session at 8.22 a.m. and that the meeting was conducted in a single session which adjourned at 3:57 p.m.

22. The Closed Minutes note the Deputy Mayor declared "an interest in Item F.5 of the agenda."

23. Council considered the IC Report in the Closed Meeting. The IC Report concerned a formal complaint under the Municipality's Code of Conduct against Deputy Mayor John Barclay.

24. Although the IC Report was not publicly available at that time it was subsequently published with the agenda for the Open Meeting.

25. The IC Report concerned a complaint that the Deputy Mayor interfered with a procurement process, and that he demeaned and injured the professional reputation of a member of the Municipality's administrative staff.

26. The IC Report determined that the allegation of interference with the procurement matter could not be sustained but that the Deputy Mayor's communications pertaining to the staff member were in breach of sections 2.4 and 3.3 of the Code of Conduct.

27. The Integrity Commissioner recommended two actions: (i) that Council require a written apology from the Deputy Mayor to the staff member; and (ii) that Council formally reprimand the Deputy Mayor.

28. The IC Report itself contains the following directions to Council:

At the meeting, Council must first receive the report for information. The only decision Council is afforded under the *Municipal Act* is to decide how the report will be made public, and whether to adopt any recommendations made by the Integrity Commissioner. Council does not have the authority to alter the findings of the report, only consider the recommendations.

29. The Closed Meeting adjourned at 3:57 p.m.
30. Council reported out in open session on three of the items from the Closed Meeting. Council did not report out any details respecting the IC Report.

VI. OPEN MEETING

31. The agenda for the Open Meeting contained the following item in the Consent Agenda:

Integrity Commissioner Report – Deputy Mayor John Barclay (see Item K.1.1)

And below the following:

I.5 Integrity Commissioner Report - Deputy Mayor John Barclay

Recommendation:

Be it resolved that Council

1. Receive the report from the Integrity Commissioner regarding the Code of Conduct Complaint against Deputy Mayor John Barclay for information purposes;
2. Accept that the inclusion of the report on the Public Council Agenda constitutes public circulation of the report; AND
3. Accept the recommendations of the Integrity Commissioner within the report.

32. The Open Minutes indicate that the IC Report was approved as presented as part of the Consent Agenda.

33. The Open Minutes contained the following:

G. CONSENT AGENDA

Mayor Nancy Peckford addressed the Integrity Commissioner report included on the Consent agenda. She advised that the vote for the Consent agenda as a whole will be adopted by a recorded vote in accordance with the Municipality's Code of Conduct given the inclusion of the Integrity Commissioner report.

Mayor Nancy Peckford requested item K.5.1 of the agenda be pulled from the Consent agenda.

34. At the Open Meeting, Council voted as follows on Resolution C-2024-335:

Mayor, Nancy Peckford - YAY

Deputy Mayor, John Barclay - Conflict

Councillor Doreen O'Sullivan - Absent

Councillor Kristin Strackerjan - YAY

Councillor Deb Wilson - YAY

35. Council did not discuss, debate or deliberate upon the IC Report at the Open Meeting.

VII. ISSUES

36. The Request raises two issues:

- (a) Was the Deputy Mayor entitled to attend the Closed Meeting which considered the IC Report?; and
- (b) Did Council vote contrary to subsection 239(6) of the *Municipal Act, 2001* with respect to the IC Report at the Closed Meeting?

VIII. ANALYSIS

(1) *Statutory Framework*

37. Ontario's "open meeting" rule is set out in section 239 of the *Municipal Act, 2001*, which requires that all meetings of a municipal council (or local board or a committee of either of them) be held in an open forum where the public is entitled to attend and observe local government in action.³

38. However, there are exceptions to this rule which balance the need for confidentiality in certain matters with the public's right to information about the decision-making process of local government.⁴

39. Subsection 239(2) sets out eleven separate subject matter exceptions that entitle Council to hold a meeting that is closed to the public, including the following exception which was incorrectly cited as clause 239(2)(a) on the Closed Meeting agenda:

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;

³ *London (City) v. RSJ Holdings Inc.*, [2007] 2 S.C.R. 588, 36 M.P.L.R. (4th) 1 at para. 38:

Municipal law was changed to require that municipal governments hold meetings that are open to the public, in order to imbue municipal governments with a robust democratic legitimacy. The democratic legitimacy of municipal decisions does not spring solely from periodic elections, but also from a decision-making process that is transparent, accessible to the public, and mandated by law. When a municipal government improperly acts with secrecy, this undermines the democratic legitimacy of its decision, and such decisions, even when *intra vires*, are less worthy of deference.

⁴ Stephen Auerback & John Mascarini, *The Annotated Municipal Act*, 2nd ed., (Toronto, ON: Thomson Reuters Canada Limited, 2017) (e-loose leaf updated 2021 – Rel. 1) annotation to s. 239.

40. The Procedure By-law provides as follows with respect to the meetings of Council:

4. MEETINGS

...

- d) All meetings shall be open to the public except as provided in the *Municipal Act 2001*, as amended. (see Appendix 1)

41. The entirety of subsections 239(1), (2), (3) and (3.1) of the *Municipal Act, 2001* are set out in Appendix 1 to the Procedure By-law.

(2) Exception for Personal Matters About Identifiable Individuals

42. The closed meeting exception in clause 239(2)(b) allows a council to close a meeting to the public where it will consider and discuss matters related to personal matters about an identifiable individual.

43. The IC Report concerned certain actions of the Deputy Mayor that were partially found to be contrary to the Code of Conduct. As such, the IC Report related to the exception under clause 239(2)(b) of the *Municipal Act, 2001* and, accordingly, Council could – subject to the rules in section 239 – consider the matter in a closed session.

44. That a council may consider an investigative report from an Integrity Commissioner concerning a code of conduct complaint in closed session is indirectly alluded to in paragraph 5(2.1) 2 of the *Municipal Conflict of Interest Act*⁵ (which will be referred to further below).

45. However, the predominant practice in Ontario is for the investigative reports of Integrity Commissioners to be presented and considered by councils in an open meeting. There are fundamental underlying public policy reasons for this, including to support the requirement the wrongdoing is publicly reported, that the public is made aware of why and how members of council will hold each other accountable, to ensure the public confidence in local government is maintained, and for the general purposes of openness, accountability and transparency.⁶

46. In fact, this was the explicit direction provided by the Clerk when she advised Council and the CAO on October 21, 2024 that the IC Report was being added on the agenda for the Closed Meeting (see paragraph 20).

47. Moreover, the Code of Conduct itself expressly addresses the matter in Section 6.8:

- 6.8 The Integrity Commissioner shall provide a report to Council in Open Session, which shall contain the Commissioner's opinion as to whether a breach of this code has occurred along with any recommended consequences or sanctions. Council shall be required to accept or decline, by recorded vote, the report of the Commissioner.

⁵ *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50.

⁶ The municipal accountability provisions are included in Part V.1 of *Municipal Act, 2001* which is entitled Accountability and Transparency.

48. The clear intent of Section 6.8 of the Code of Conduct is for the Integrity Commissioner to provide its report in an open public forum for Council to consider its opinion and to make a decision via a recorded vote.

49. The Clerk interpreted Section 6.8 as requiring Council to deliberate in open session on the IC Report. The Clerk had written to all members of Council one day before the Closed Meeting:

The required decisions of Council on this matter to be deliberated in Open Session are the following:

1. Receipt of the Report in Open
2. Decision of how to make the report public - note that council will be asked to decide if distribution on the public agenda is 'public' enough or if they wish to make the report public in any other way
3. Whether to accept the recommendations provided for in the report

50. The Integrity Commissioner did not attend the Closed Meeting and, therefore, did not present the report nor was he available to answer any questions from the members of Council.

(3) Attendance of the Deputy Mayor at the Closed Meeting

51. We have been advised that the Deputy Mayor attended the Closed Meeting but that he removed himself from the setting during Council's consideration of the IC Report. The Deputy Mayor declared "an interest in Item F.5 of the agenda."⁷

52. The general rule for when a member declares a pecuniary interest on a matter to be considered by their council is for the member not to attend the closed session. This prohibition is set out in subsection 5(2) of the *Municipal Conflict of Interest Act*:

Where member to leave closed meeting

5 (2) Where the meeting referred to in subsection (1) is not open to the public, in addition to complying with the requirements of that subsection, the member shall forthwith leave the meeting or the part of the meeting during which the matter is under consideration.

53. However, the general rule is displaced by the following provision in paragraph 5(2.1) 2 of the statute:

Exception, consideration of penalty

5 (2.1) The following rules apply if the matter under consideration at a meeting or a part of a meeting is to consider whether to suspend the remuneration paid to the member under subsection 223.4 (5) or (6) of the *Municipal Act, 2001* or under subsection 160 (5) or (6) of the *City of Toronto Act, 2006*:

⁷ The nature of the "interest" was not specified but is presumed to be a pecuniary interest because the Municipality's Code of Conduct does not refer nor pertain to conflicts of interest that are non-pecuniary in nature.

...

2. Despite subsection (2), in the case of a meeting that is not open to the public, the member may attend the meeting or part of the meeting during which the matter is under consideration.

54. Accordingly, the Deputy Mayor was entitled to attend the Closed Meeting even though the matter of the IC Report was before Council and Council had the authority pursuant to subsection 223.4(5) of the *Municipal Act, 2001* to impose a monetary penalty for the Deputy Mayor's contravention of the Code of Conduct. However, as noted, the Deputy Mayor did not attend the portion of the Closed Meeting relating to the IC Report.

(4) Improper Vote at Closed Meeting

55. In general, a municipal council is only entitled to vote (i.e., make a decision) in an open meeting. This rule is partially set out in section 244 of the *Municipal Act, 2001*.

56. However, subsections 239(5) and (6) of the *Municipal Act, 2001* provide:

Open voting

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.

57. Our investigation has determined that Council considered the recommendations of in the IC Report in the Closed Meeting. Council was allowed to do this. However, Council also made substantive decisions on the recommendation in the IC Report at the Closed Meeting in contravention of clause 239(6)(b) of the *Municipal Act, 2001*.

58. As part of our investigation we requested any notes that had been taken by the CAO at the Closed Meeting. We were provided with the Closed Notes that denoted the following:

→ lesson learned

1. Written apology to employee
2. Report on consent to receive report from Council + redacted copy of apology

59. When questioned about these notations and what they meant, the CAO responded that Council had made a decision to accept the recommendations of the Integrity Commissioner in the IC Report. The CAO acknowledged that Council had deliberated on the IC Report.⁸

60. During our interview, the Mayor advised us that there was no formal vote but that the members of Council did discuss the IC Report; that they reached a “general consensus” through “informal dialogue”; and that “everyone understood that an apology was needed.” The Mayor commented that while there was no formal vote, it was obvious that the “will of the room” was clear.

61. A general or implied consensus “is, for all intents and purposes, a vote of council.”⁹

62. Based on the foregoing, Council deliberated on the IC Report and it made a substantive decision in the absence of the public to accept the Integrity Commissioner’s recommendation “that Council require a written apology from the member to the staff member.”

63. The IC Report also recommended that “Council issue a formal reprimand to the Member.” This was accepted as part of the approval of the Consent Agenda but the formal reprimand from Council was not issued or provided at the Open Meeting nor was it included in the agenda package.¹⁰

64. This is not the first time that Council has had to consider an investigative report based on a complaint under the Code of Conduct. At its meeting on March 29, 2023, Council had a report from its Integrity Commissioner pertaining to another current member of Council.¹¹

65. That report concluded that the member of Council had contravened the Code of Conduct although the contravention was not so severe as to warrant a financial penalty or reprimand. The Integrity Commissioner did, however, recommend that the member issue a public apology. Council considered the report and the recommendation in open session and voted to accept it. In fact, at the conclusion of the meeting, the member asked to speak to the matter and offered a public apology.

⁸ This is also corroborated by an email communication sent by the Deputy Mayor to the Clerk on October 31, 2024 where he advised the Clerk:

I was not party to Council's deliberations on the Integrity Commissioner's report. Please check with [the CAO] (copied), who clerked, but I don't think all recommendations were approved by Council. I may be wrong.

⁹ Ombudsman of Ontario, [*Investigation into whether Council for the Town of South Bruce Peninsula held illegal closed meetings in April, May and June 2015*](#) (September 2015) at para. 67: “A direction based on council consensus is for all intents and purposes a vote of council.” See also Ombudsman of Ontario, [*Investigation into complaints about closed meetings held by the Township of the North Shore on December 13, 2017, February 7, 2018 and February 14, 2018*](#) (June 2018) at para. 69.

¹⁰ The absence of the formal reprimand appears to align with the Deputy Mayor’s understanding when he emailed the Clerk (see Footnote 8) noting that he did not “think all recommendations were approved by Council.”

When questioned about the formal reprimand, the Clerk advised us that “it was my understanding that the passing of the resolution (via Consent – whether permitted or not via procedure by-law) is the formal reprimand.”

¹¹ See Code of Conduct Complaint – Report, dated March 24, 2023, being Item H.3.1; online at <https://pub-northgrenville.escribemeetings.com/FileStream.ashx?DocumentId=28551>

66. That report from the Integrity Commissioner was not previously reviewed or considered *in camera* by Council. While members of Council did not have any questions or comments on the Integrity Commissioner's report, the matter was handled entirely in public for the purposes of openness, accountability and transparency.

67. The point in raising the earlier report is that Council dealt with it as intended – in an open session of Council. As noted by the Mayor, the Integrity Commissioner had made efforts to secure the confidentiality of certain information and, presumably, in keeping with the intent of the statute where code of conduct reports are to be made public, for purposes of accountability and transparency, the report was contained in the open session of Council and was also not listed on a consent agenda.

68. When questioned as to why the IC Report was dealt with in the Closed Meeting whereas the previous Integrity Commissioner's investigative report relating to a complaint under the Code of Conduct in 2023 was considered entirely in an open session of Council, the Mayor indicated:

- that she did not recall the previous process,
- that Council was aware that it "had to deal with the findings in the IC Report",
- that the Closed Meeting provided the "best opportunity" for Council to consider the matter; and
- that it was the "most practical" way to deal with the IC Report.

69. The Mayor indicated that Council was aware the IC Report would need to be publicly disclosed and decided to comply with the requirement by including the report in the agenda for the Open Meeting.

70. During our interview, the Mayor noted that the members of Council are relatively new and that they are very busy. She advised that the members had received "minimal" training at orientation at the County (together with members of other municipalities). She also noted that the Council had not received any kind of focused training on meetings and meeting procedures, and that Council "relies on staff" and particularly "relies heavily on the Clerk."

71. When questioned about those particular statements, the Mayor later acknowledged that they appeared in contradistinction to the actual events that occurred given that the Clerk was advised not to attend the Closed Meeting and that her unequivocal direction in her confidential memorandum to all members of Council and the CAO was somehow "missed."

72. We also asked both the Mayor and the CAO why Council decided to place the IC Report on the Consent Agenda for the Open Meeting.¹²

73. The CAO responded that matters generally get added on to a consent agenda "because they are administrative in nature and they get approved quick." The CAO indicated that a member of Council asked for the IC Report to be on the Consent Agenda.

¹² We understand that the Municipality requested and obtained a legal opinion on whether it could proceed to add the IC Report to a consent agenda. Both the request and the legal opinion were verbal so we could not verify the question that was asked nor the nuances of the advice that was provided.

74. When pressed as to why a member may have wanted it to be on the Consent Agenda, the CAO stated “Because they’re not discussed in the open meeting as a general rule because they are administrative in nature.”¹³

75. The Mayor indicated that there was no attempt to “bury” the IC Report or Council’s decision by including it on the Consent Agenda. She also stated that members are free to pull any item from the Consent Agenda and have it spoken to. The IC Report was not pulled from the Consent Agenda at the Open Meeting. As noted above, there was no discussion or debate on the item. The item passed unanimously along with the other items (Deputy Mayor Barclay did not vote).

76. The Closed Meeting was an excessively lengthy one – lasting some 7½ hours. When questioned about the length of time that Council deliberated on the IC Report, neither the Mayor nor the CAO could recall the duration. When asked if it could have been as little as 5 minutes or as long as 30 minutes, both the Mayor and CAO indicated that it “could have been”.

IX. FINDINGS

(a) Substantive Decision Made in Closed Session

77. Based on the foregoing, we have determined that Council contravened the *Municipal Act, 2001* by making a substantive decision respecting the IC Report in the Closed Meeting in contravention of clause 239(6)(b) of the *Municipal Act, 2001*.

78. While Council was permitted to rely on the exception as it related to personal matters about an identifiable individual under clause 239(2)(b), Council was not permitted to vote by general or implied consensus and thus make its substantive decision related to the IC Report and its recommendations in the absence of the public.

79. Council was familiar with the process for considering and making decisions on code of conduct complaints because it had done so previously with another investigative report where a contravention of the Code of Conduct had been found and where the Integrity Commissioner had recommended that the member apologize.

80. Council also had the benefit of having been provided with clear instructions and directions from its Clerk that Council deliberations and decisions on the IC Report were to be made in an open meeting. Moreover, the Code of Conduct itself stipulated the Integrity Commissioner was to provide its report in an open public forum for Council to consider its opinion and to make a decision by a recorded vote.

81. It is our view that Council did not meet its obligations of dealing with the IC Report in a transparent and accountable manner.¹⁴

¹³ However, a council’s decision with respect to the imposition of a statutory penalty under s. 223.4(5) of the *Municipal Act, 2001* is a quasi-judicial, adjudicative decision: [Chiarelli v. Ottawa \(City\)](#), 2021 ONSC 8256 (Div. Ct.) at paras. 10, 11, 147, 152.

¹⁴ [London \(City\) v. RSJ Holdings Inc.](#), [2007] 2 S.C.R. 588, 36 M.P.L.R. (4th) 1 at para. 4: “The open meeting requirement reflects a clear legislative choice for increased transparency and accountability in the decision-making process of local governments.”

82. First, Council considered the IC Report in the Closed Meeting where it made a decision on how the report would be resolved. This fails the transparency criteria.

83. Second, Council decided to list the IC Report on the Consent Agenda for the meeting of November 5, 2024, where items are not generally discussed. Council voted on a block of agenda items in a recorded vote and the matter was never openly discussed because it had already been dealt with in the absence of the public in the Closed Meeting. This fails to meet the accountability criteria.¹⁵

84. Council acted in convention of subsection 239(6) of the *Municipal Act, 2001* as well as in breach of Section 4 f) of its Procedure By-law.

(b) Technical Contraventions

85. The Municipality also committed several other technical contraventions of section 239 of the *Municipal Act, 2001*.

(i) Inaccurate Closed Meeting Exception Cited

86. The agenda for the meeting on November 5, 2024 listed the applicable closed meeting exception for the IC Report as clause 239(2)(a) of the *Municipal Act, 2001*. This is likely a typographical error and should state clause 239(b).

(ii) Education and Training Session Must be a Separate Session

87. The Closed Meeting was single lengthy meeting – lasting over 7 hours. The five items on the agenda are listed in a cluster. However, the first item on the agenda for the Closed Meeting related to a training session for Council with a facilitator. This matter ought to have been dealt as a stand-alone separate closed session item pursuant to subsection 239(3.1) of the *Municipal Act, 2001*.¹⁶

¹⁵ We acknowledge that it would not be necessarily inappropriate for a municipality to place an Integrity Commissioner report that did not find any contraventions by a member on a consent agenda because in such instances the council would not be not tasked with making a decision. Such a report would be before council as a form of information-only report. Subsection 223.4(5) of the *Municipal Act, 2001* only provides a council with a decision-making authority if there is a report that has determined that a member acted in contravention of a code of conduct. This was not the case in the present instance as Council had to make a decision on the recommendations in the IC Report.

¹⁶ Subsection 239(3.1) of the *Municipal Act, 2001*, provides:

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.

88. The sole purpose of a closed session for training under subsection 239(3.1) must relate exclusively to education or training.¹⁷

89. Council could have met on the same day and considered the same topics but it ought to have held the training session solely and exclusively in a separate closed session.

(iii) Incomplete Resolution to Convene into Closed Meeting

90. Before Council can convene into a closed session, subsection 239(4) of the *Municipal Act, 2001* provides that it must pass a resolution to authorize same:

Resolution

239 (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.

91. Council passed the Resolution C-2024-324 on October 22, 2024 which essentially clustered the five items that were to be considered in closed session:

Be it resolved:

Council proceed to Closed Session pursuant to Section 239(2) of the *Municipal Act, 2001*, Subsection (f) - Advice that is subject to solicitor-client privilege, including communications necessary for that purpose; Subsection (a) - Personal matters about an identifiable individual, including municipal employees - specifically an applications [sic] to advisory committees AND an integrity commissioner report; Subsection (k) - A position, plan, procedure, criteria, or instruction to be applied to negotiations - specifically a land use agreement; and Section 239(3.1) of the *Municipal Act, 2001* - Education or training.

CARRIED

¹⁷ *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):

While there are an infinite number of topics that could potentially form the subject of an education session, it must be clear that the purpose of such a meeting relates to education only...

See also Ombudsman of Ontario, *Open Meetings: Case Digest* – 239(3.1) [Education or Training](#):

The education or training exception is narrowly construed, and use of the exception will be carefully scrutinized. It will only apply to closed session discussions that are solely for the purpose of educating or training council members.

92. The statutory requirement is that the Council indicate the general nature of the subject-matter that will be considered. It may be argued that Council did, in fact, do with this with respect to three of the items (advisory committee applications, land use agreement and the IC Report) but that it did not do so with respect to the two matters relating to solicitor-client privileged advice and education or training.

93. The resolution that is required to properly convene into closed session should provide a “general description” of the issue to be discussed in a way that maximizes the information that is made available to the public while not, at the same time, undermining the very reason for excluding the public from the discussion and debate.¹⁸

94. Resolution C-2024-324 did not meet this standard by simply repeating the wording of clause 239(2)(f) of the *Municipal Act, 2001* as it related to solicitor-client privileged advice nor with respect to subsection 239(3.1), which only indicated that Item 1 related to education and training of the members.

95. We would also suggest that a collective grouping of closed meeting items is not a best practice and recommend that if multiple closed meeting items are to be discussed the various matters should be separated and clearly identified.

(iv) No Authority for Consent Agenda

96. The Municipality’s Procedure By-law does make any reference to and thus does not authorize a “Consent Agenda” – that is, a procedure to permit items to be listed on a separate agenda that will generally proceed without discussion or debate and move straight to approval unless any items therein are deliberately pulled.

97. While the Municipality appears to have proceeded in accordance with such a process or practice for at least a few years, it is not expressly nor impliedly authorized by the Procedure By-law.¹⁹

(v) Lack of Formal Reprimand of Member

98. Council voted to accept the recommendations of the IC Report on November 5, 2024. The first recommendation related to the Deputy Mayor’s apology. The second recommendation required Council to formally reprimand the Deputy Mayor for his contravention of the Code of Conduct. A formal reprimand normally takes the form of a public statement by the head of Council at an open meeting denouncing the actions of, and censuring, the member. It may also take the form of a written statement from Council that is released to the public. There is no evidence that a formal reprimand by Council has been issued.

¹⁸ [*Farber v. Kingston \(City\)*](#) (2007), 31 M.P.L.R. (4th) 31 at paras. 19-21 (Ont. C.A.).

¹⁹ When questioned about the absence of any authority in the Procedure By-law for a Consent Agenda, the Clerk advised us that she had researched the matter and that she understood that the Municipality had adopted the practice of using a Consent Agenda during the period of COVID-19 based on a legal opinion of what could and what could not be incorporated in such an agenda. We understand that the Council has been advised on numerous occasions of the need to update the Procedure By-law to reflect the practice of a Consent Agenda, amongst other things.

(vi) Failure to Maintain Proper Records of Meeting

99. As noted above, Council deliberated on the IC Report and made a substantive decision in the absence of the public to accept the Integrity Commissioner's recommendations.

100. The Closed Minutes set out the following with respect to the IC Report:

5. Integrity Commissioner Report

Deputy Mayor Barclay left the meeting for the item as noted for a Conflict declared.

Council members noted the report as a "lesson learned".

101. The Closed Minutes include no mention of the actual decision that Council had made with respect to the IC Report recommendations that were noted in the Closed Notes. Subsection 239(7) of the *Municipal Act, 2001* provides as follows:

Record of meeting

239 (7) A municipality or local board or a committee of either of them shall record without note or comment all resolutions, decisions and other proceedings at a meeting of the body, whether it is closed to the public or not.

102. Section 9 of the Procedure By-law also provides that minutes shall record "All resolutions, decisions and other proceedings at a meeting of the council without note or comment."

103. The Closed Minutes failed to record the decision that Council had made *in camera* with respect to the IC Report but added a comment for the public record: "Council members noted the report as a 'lesson learned'."

(vii) Failure to Record Declaration of Pecuniary Interest in Minutes

104. The Closed Minutes set out as follows regarding Item E – DISCLOSURE OF INTEREST:

Deputy Mayor John Barclay declared an interest in Item F.5 of the agenda.

105. The Open Minutes provide as follows under Item E – DISCLOSURE OF INTEREST:

Deputy Mayor John Barclay declared a conflict with the Consent agenda based on the Integrity Commissioner Report.

106. The *Municipal Conflict of Interest Act* provides, in part, as follows in clause 5(1)(a):

When present at meeting at which matter considered

5 (1) Where a member... has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the council or local board at which the matter is the subject of consideration, the member,

- (a) shall, prior to any consideration of the matter at the meeting, disclose the interest and the general nature thereof;

107. The Code of Conduct provides the same requirement in Section 4.3. In addition, Section 4.5 provides that “Declarations of pecuniary interest shall be recorded in the minutes.”

108. The Closed Minutes and the Open Minutes failed to comply with the requirements of the *Municipal Conflict of Interest Act* and the Code of Conduct. While they may have captured what Deputy Mayor Barclay declared at both meetings, they were not correct at law.²⁰

(c) Summary

109. While it may not have been the intent of the members to do so, Council breached the open meeting rule in section 239 of the *Municipal Act, 2001* by having made a substantive decision with respect to the recommendations of the Integrity Commissioner without doing so in an open meeting of Council. We concur with the requester that this lack of transparency undermines public trust and fails to adhere to the principles of open and accountable government.

110. The actions of Council give rise to a public perception that it sought to circumvent the open meeting rule so that it could deal with an ethical matter related to one of its own members in the absence of the public. This was compounded by Council’s decision to include the IC Report as part of the Consent Agenda for the public meeting. Any reasonable person would have a justifiable basis to believe that Council did not want to have the matter aired in public.

X. RECOMMENDATIONS

111. Based on our findings, we make the following recommendations:

- (a) Council and senior staff shall receive comprehensive training on the open meeting rule as set out in section 239 of the *Municipal Act, 2001* from a qualified and experienced third party within sixty (60) days of the receipt of this Report;
- (b) the Municipality shall update its Procedure By-law, at its earliest opportunity;
- (c) Council and all committees shall strive to include the Clerk at all of their meetings, recognizing that there may be some limited occasions when it may not be appropriate for the Clerk to attend a closed meeting;
- (d) Council shall issue a formal public reprimand to Deputy Mayor Barclay within thirty (30) days of the receipt of this Report; and
- (e) the Municipality shall create an “Accountability” page on its website to list pertinent information relating to the Municipality’s accountability officers (such as the Integrity Commissioner, Closed Meeting Investigator, Ombudsman, etc.) and any reports that have been submitted to Council by such accountability officers.

²⁰ We sought to access the registry that every municipality is required to maintain under s. 6.1 of the *Municipal Conflict of Interest Act*. We wanted to double-check the disclosures by the Deputy Mayor against the written statements that he was required to file with the Clerk at the meeting or as soon as possible afterwards pursuant to s. 5.1 of the *Municipal Conflict of Interest Act* but discovered that no written statements have, to date, been filed.

112. A draft of this Report was provided to the Municipality on February 5, 2025 for its review, consideration and comment. Council considered the draft Report at its meeting on February 11, 2025. We attended in closed session to discuss the draft Report with the members of Council.

113. While we did not receive formal final written submissions on the draft Report from the Municipality, we were asked to meet with the Mayor and CAO on February 13, 2025. At this meeting we were provided with information that had not previously been offered during the interviews with the Mayor and CAO nor that had been raised at the closed meeting with Council on February 11, 2025. We considered the new information and determined that our draft Report set out a proper and fair representation of the facts. We have accordingly not altered our Report.

114. As Closed Meeting Investigator, we have discretion under the *Municipal Act, 2001* to set out in our Report such matters as, in our opinion, ought to be disclosed in order to establish our conclusions and recommendations.²¹

115. This Report has been prepared for and is forwarded to Council for its consideration. Given that we have found contraventions of section 239 of the *Municipal Act, 2001* and the Procedure By-law, Council is required by subsection 239.2(12) to “pass a resolution stating how it intends to address the report.”

116. Subsection 239.2(11) of the *Municipal Act, 2001* provides that this Report is to be made public. The inclusion of this Report on a meeting agenda will, in our opinion, satisfy the requirement. However, as noted, we recommend that the Municipality create a webpage to facilitate public access to any reports that have been received by Council from any accountability officers or offices.

Respectfully submitted,

AIRD & BERLIS LLP



John Mascarin

Closed Meeting Investigator for The Corporation of the Municipality of North Grenville

Dated this 26th day of February, 2025

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²¹ *Municipal Act, 2001*, s. 223.15(2), as applicable by virtue of s. 239.2(9).