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REPORT ON CLOSED MEETING INVESTIGATION 2025-02

THE CORPORATION OF THE TOWN OF CALEDON

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THE CORPORATION OF THE TOWN OF CALEDON REPORT ON CLOSED MEETING INVESTIGATION 2025-02

I. INTRODUCTION

1. Aird & Berlis is the Closed Meeting Investigator for the Town of Caledon (the “**Town**”).
2. In our capacity as Investigator, on September 26, 2025, we received a formal request for a closed meeting investigation dated September 22, 2025 (the “**Request**”).
3. While the Request was acknowledged as received, it was unfortunately misplaced due to the writer’s error, and it was not acted upon until recently when a status update was requested. The Clerk had diligently forwarded the Request to us and had no reason to believe that it was not being actioned.
4. The Request seeks an investigation concerning an email exchange between members of Council which occurred on September 19 & 20, 2025 (the “**Email Exchange**”). The Request alleges that the Email Exchange contravened the “open meeting rule” contained in subsection 239(1) of the *Municipal Act, 2001*.¹
5. As set out in detail below, we find the Email Exchange contravened subsection 239(1) of the *Municipal Act, 2001*.

II. CLOSED MEETING INVESTIGATOR - AUTHORITY AND JURISDICTION

6. 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.
7. As the Closed Meeting Investigator, our jurisdiction is limited to investigating whether a municipality or local board complied with:
 - (a) section 239 of the *Municipal Act, 2001*; or
 - (b) 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.
8. The Request outlined the nature of the complaint as “Violation of open meeting requirements through electronic communications that materially advanced council business outside of properly constituted public meetings.” The reference to “open meeting requirements” could refer to both section 239 of the *Municipal Act, 2001* as well as the Town’s Procedure By-law No. 2015-108 (which contains provisions related to Closed Session Meetings in Part 31).
9. We have based our review of this matter primarily on the whether Council complied with section 239 of the *Municipal Act, 2001*.

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

III. STATUTORY FRAMEWORK

10. 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.
11. 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,

 - (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.
12. Unless a meeting or part of a meeting deals with a subject matter falling within a specific enumerated exception in subsection 239(2), it is required to be held in an open forum where the public is entitled to attend and observe local government in process.

IV. REQUEST

13. The Request seeks an investigation into whether the Email Exchange contravened the open meeting requirements. As noted, we have focused our review and assessment on whether the Email Exchange contravened the requirements of section 239 of the *Municipal Act, 2001*.

V. THE EMAIL EXCHANGE

14. On September 19, 2025, a member of the public sent an email (the "**Original Email**") to all members of Council raising concerns about the future of a Town reserve fund (the Northwest Caledon Indoor Recreation Facility Reserve). The email also copied the Premier of Ontario, the Credit Valley Conservation Authority, the Niagara Escarpment Commission, the Town's CAO, the Town's Commissioner of Corporate Services & Chief Legal Officer and two media outlets.
15. That evening, a second member of the public (presumably bcc'd on the Original Email), responded to the Original Email, copying all original recipients, expressing support for the expressed concerns. Later that evening, the Mayor responded to the second member of the public, copying all original recipients stating in part:

Hello Joe,

As I indicated in my previous email the reserve fund for the above will remain and not consolidated [*sic*].

Councillor Maskell raised this last week at the workshop and made it very clear that this reserve fund should remain where it was intended and that is for Ward 1.

Kind regards,

Annette Groves

16. That evening On September 20, 2025, Councillor Kiernan responded, copying all original recipients (i.e. including all members of Council), as follows:

Thank you Annette.

But to be clear, as the Councillor for Ward 1, and the Representative for NW Caledon, I raised the issue during the workshop and reminded staff and the CAO of a motion to engage with the Ag Society from July 2024!

To say it was Cllr Maskell is small, and I will ask you, again, to stop this pettiness.

Best,

Lynn

17. That evening Approximately ten minutes later, the Mayor responded, again copying all original recipients, as follows:

Cllr. Kiernan, you will recall that Cllr. Maskell was the one who raised the concern at which point you spoke and said "you were going to wait to raise it when the report came forward"

Just stating the facts. The point is the funds will remain where they belong and will not be consolidated as previously suggested by staff at the workshop.

Kind regards,

Annette Groves

18. That evening Some six minutes later, Councillor Kiernan responded, once again copying all original recipients, as follows:

Annette

Let me refresh your memory and go back to the workshop.

I raised the issue there.

Facts matter.

Your continued behaviour towards me as an elected member of council is apparent and seen by the public.

Again, this pettiness must stop.

I repeat my request for professional courtesy and consideration.

As the representatives elected by the residents of Ward 1, Councillor Early and I are engaged with the members of the community and the Fair board.

Again, this pettiness must stop!

Lynn

19. That evening Approximately four hours latter, Councillor Maskell responded, coping all original recipients, as follows:

Good morning, All:

After reviewing the series of messages on the Northwest Caledon Indoor Recreation Facility Reserve and what transpired at the September 10, 2025 Council workshop on Reserves, I took some time to review the video of the meeting this morning. I have produced a synopsis of the sequence of events as they unfolded, if you wish to view the video in its entirety, please see the attached link.

Meeting Synopsis:

1. Commissioner Cummings presented his workshop materials until 23:30 [sic]
2. Councilor [sic] Maskell, Chair of General Committee begins the questioning 23:30
3. Councilor [sic] Kiernan begins questioning at 29:20. She asks questions on the types of reserves and the broadband reserve
4. From 32:25 [sic] to 46:00 Councilors [sic] Russo, Rosa, Sheen and Mayor Groves ask questions
5. At 46:15 [sic] Chair Maskell asks about the Northwest Caledon Indoor Recreation Facility Reserve referring to it as “a promise made by Council to those people”
6. At 49:40 Councilor [sic] Kiernan introduces her questioning with this statement: “I was going to wait until it came back on the report to mention the Northwest Caledon...”

pub-caledon.escribemeetings.com/Players/ISISStandAlonePlayer.aspx?id=c717a2a6-8b65-43ac-aef8-08647d230ab9

As Chair of General Committee, I want to remind everyone of the purpose of Council Workshops. These workshops are intended for Staff to inform Council on a specific matter **prior** to the submission of a Staff Report or Memorandum to Council. Staff rely upon Councilors [sic] to express any concerns they have with an issue or proposal at the Workshop stage, so that these discussions can inform their recommendations to Council. During this term of Council, under the leadership of Clerk Klingenberg, Council Workshops are now held in Council Chambers, recorded and open for public delegations, rather than being conducted in the basement of Town Hall.

In addition, if any member of Council believes that there is an issue with how they are being treated, there is a formal process, outlined by Town policies, on how this should be addressed. Engaging in those discussions in a public forum such as this is inappropriate and erodes public confidence.

Lastly, it has been clearly stated that the Northwest Caledon Indoor Recreation Facility Reserve **will not** be consolidated.

Sincerely,

AIRD BERLIS

20. That evening Subsequently, another four hours later, Councillor Kiernan responded, yet again copying all original recipients, as follows:

Good afternoon,

Thank you for your message and for attempting to provide clarification regarding the September 10, 2025 Council Workshop on Reserves. While I appreciate your synopsis and perspective, I respectfully disagree with several of the points raised.

Workshops, while designed to inform Council ahead of formal reports, are also an essential opportunity for open dialogue. Council members have a responsibility to represent the concerns of residents at every stage of the process, including workshops. It is not only appropriate but necessary that questions, context, and historical commitments—such as those surrounding the Northwest Caledon Indoor Recreation Facility Reserve—be raised transparently in these forums.

To limit such discussions risks creating the perception that important matters are being deferred or minimized, or worse, hidden.

Further, while I agree that policies exist for addressing interpersonal or procedural concerns, I do not share the view that raising them in a public setting automatically undermines public confidence. On the contrary, residents often expect that issues of accountability and transparency be aired openly, especially when tied to matters of public trust and long-standing community commitments.

Finally, while you state that the Reserve will not be consolidated, I am sure as Chair you realize that decisions are made by council as a whole, vs an individual member of council, notwithstanding the use of Strong Mayor Powers,

Regards,

Lynn

21. We have been advised that Council did not receive any formal training or education with respect to the open meeting rule during this current term. However, we understand that Council as a whole has been periodically reminded by Town staff of its obligations and the respective obligations of members in relation to having discussions respecting matters that should be before Council via other means.
22. Moreover, the open meeting rule is well-known and is outlined extensively in various sources such as the *Ontario Municipal Councillor's Guide* which is updated and published every four years by the Ministry of Municipal Affairs and Housing. There is a specific section on "Electronic meetings and open meeting requirements", including that,

The *Municipal Act* specifies requirements for open meetings to ensure that municipal business is conducted transparently, and with access for and in view of the public. There are limited circumstances under the *Municipal Act* when municipal meetings can be conducted in closed session.²

² Municipal of Municipal Affairs and Housing, [Ontario Municipal Councillors Guide](#), Chapter 3 – Meetings.

VI. ANALYSIS

23. As noted above, pursuant to subsection 238(1) of the *Municipal Act, 2001*, a “meeting” is defined as any regular, special or other meeting of a council, of a local board or of a committee of either of them, where “a quorum of members is present, and 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.”³
24. The definition of “meeting” requires that a quorum of members be present when a meeting occurs. The *Municipal Act, 2001* was amended in 2020 to permit members to count towards quorum when participating in electronic meetings.⁴
25. The Ontario Ombudsman, the default closed meeting investigator where a municipality has not appointed an alternative investigator, determined that for the purposes of an electronic meeting, the meeting “place” is electronic and that members may be “present” when they come together electronically to discuss and advance business.⁵
26. In a recent report to the Township of Frontenac Islands, the Ontario Ombudsman determined that when members of council exchange emails they are “present” in an electronic place.⁶
27. In the present investigation, since all members of Council were included in the Email Exchange, a quorum of members was present, satisfying the first component of the definition of “meeting”. It is immaterial whether or not all members of Council commented or forwarded emails to determine the issue of presence for purposes of quorum.
28. The second part of the test for whether a “meeting” is constituted for the purpose of the *Municipal Act, 2001* requires that the members materially advance the business or decision-making of the council. The Ontario Ombudsman has reported that assessing material advancement “involves considering the extent to which the discussions at issue moved forward the business of the municipality, based on factual indicators.”⁷
29. The Ontario Ombudsman has written that although mere updates on recent activities or communication of information are unlikely to materially advance business or decision-making, substantive things like “votes, agreements, direction or input to staff, and discussion or debates of a proposal, course of action, or strategy are likely to materially advance business or decision-making.”⁸

³ *Municipal Act, 2001*, S.O. 2001, c. 25, s 238(1). The definition of “meeting” was significantly revised by the *Modernizing Ontario’s Municipal Legislation Act, 2017*, S.O. 2017, c. 10, Sched. 1, s. 24(2), which added the two new conjunctive components to the definition.

⁴ *Municipal Act, 2001*, ss. 238(3.1)-(3.3) [added by S.O. 2020, c. 18, Sched. 12, s. 11].

⁵ *McKellar (Township of) (Re)*, [2023 ONOMBUD 3](#) at para 48.

⁶ [Ontario Ombudsman, Investigation into emails exchanged by council for the Township of Frontenac Islands on August 15 and 16, 2024 \(July 2025\)](#), at para. 24.

⁷ *Casselman (Village of) (Re)*, [2022 ONOMBUD 13](#) at para 26.

⁸ *Ibid* at para 27.

30. In this case, the Email Exchange was not merely an update or simple communication of information. The Original Email sought input from members of Council regarding plans for a reserve fund. Over email, members of Council debated the plans for the reserve fund and previous discussions regarding the reserve fund. These discussions formed a material part of Council's decision-making about what would ultimately happen to the reserve fund. As an example, members wrote via email reply to all members of Council that the fund would not be consolidated, even though no formal vote had taken place on the matter.
31. There is no doubt that the subject matter of the Email Exchange – the reserve fund – formed part of the business or decision-making of Council since it was considered in a Council Workshop and it was to be dealt with in a report from Town staff.
32. The Email Exchange was extensive and detailed with several members of Council commenting and debating the matter of the reserve fund. The Email Exchange did not only mention the reserve in passing or serve to respond to the originator by advising that the subject matter would be dealt with Council in the near future.
33. Given that the Email Exchange concerned a matter involving the business or decision-making of Council and the members weighed in significantly on the question of what would happen to the reserve fund, the Email Exchange served to materially advance the business or decision-making of Council.
34. In our view, the “dialogue” between all members of Council (since all members were party to the Email Exchange that we reviewed) was material and cannot be reduced to a mere receipt of information.⁹
35. Consequently, we have determined that the Email Exchange constituted a “meeting” under the *Municipal Act, 2001* as both components for a meeting were met: (i) a quorum of members were present for the Email Exchange; and (ii) the members dealt with the plans for the reserve fund in such a way that they significantly advanced the business or decision-making of Council.

VII. FINDINGS

36. For all of the reasons set out above, it is our finding that Council contravened section 239 of the *Municipal Act, 2001* when a quorum of members held informal discussions over email on September 19 and 20, 2025 that materially advanced Council business or decision making.
37. The Email Exchange contravened both section 239 of the *Municipal Act, 2001* as well as sections 5.1.1 and 5.5 of Procedure By-law 2015-108.
38. The Email Exchange constituted an improper closed meeting because it failed to comply with all of the requirements for a meeting to be held in the absence of the public under section 239 of the *Municipal Act, 2001*, including that:

⁹ We are not aware if there exist other email threads or whether certain members of Council splintered the exchange by emailing only some other members.

- (a) there was no open meeting called or convened with notice provided as required by Procedure By-law 2015-108;
 - (b) Council did not (and could) not pass a resolution to convene into closed session to discuss a matter in the absence of the public;
 - (c) there was no indication of the fact that a closed meeting was going to be held, what closed meeting exception(s) applied or the general nature of the matter to be considered;
 - (d) the Clerk was not present; and
 - (e) there was no formal record maintained.
39. The Email Exchange contravened subsection 239(1) of the *Municipal Act, 2001* as well as section 5.1.1 of Procedure By-law 2015-108 which both provide, respectively:

Except as provided in this section / by-law, all meetings shall be open to the public.

VIII. SUBMISSIONS FROM THE TOWN

40. In accordance with our standard practice, we provided a copy of a Draft Report to the Town to provide it with an opportunity to consider, review and provide us comments before we finalized our Report. We do this in all instances where we have made a preliminary finding that there has been a contravention of section 239 of the *Municipal Act, 2001* or the municipality's procedure by-law.¹⁰
41. We provided a copy of the Draft Report to the Town on February 10, 2026 and attended a closed meeting with Council on February 24, 2026 to present it.¹¹ We received a letter from the Town on March 5, 2026 indicating that it had no comments on the Draft Report.

IX. RECOMMENDATIONS

42. We make the following recommendations to assist the Town in fulfilling its obligations under section 239 of the *Municipal Act, 2001*:
- i. All members of Council shall be required to attend a comprehensive education and training session presented by a reputable and qualified resource on open/closed meetings under to the *Municipal Act, 2001*. Recognizing that this term of Council will be concluded in November, we recommend that the education and training session be required for the new Council sometime in the first quarter of 2027.¹²

¹⁰ Council is required to consider the Draft Report in a closed meeting pursuant to s. 239(3)(b) of the *Municipal Act, 2001*. The Draft Report remains a confidential document.

¹¹ As required and in accordance with s. 239(3)(b) of the *Municipal Act, 2001*.

¹² While the open meeting rule should certainly be referenced and outlined upon during council orientation, we strongly recommend that a **comprehensive training session** be held outside of the "orientation period" so that members can devote sufficient time and attention to this important topic.

- ii. Council members should refrain from sending or copying all or a majority of members of Council on electronic communications on any matters related to the business or decision-making of the Council.
 - iii. Council members should also refrain from sending or copying other members if they are aware of an email chain or email thread that involves other members on the same subject matter because it might constitute a serial email exchange involving a quorum of members.
43. Given that the Email Exchange related to matters that ought to have been discussed in an open public forum, we have reproduced the communications in this Report in order to support our findings and recommendations.¹³
44. This Report has been prepared for and is forwarded to Council for its consideration and determination with respect to the recommendations.
45. Council must pass a resolution under subsection 239.2(12) of the *Municipal Act, 2001* stating how it intends to address this Report.
46. Subsection 239.2(11) of the *Municipal Act, 2001* requires this Report to be made public.

Respectfully submitted,

AIRD & BERLIS LLP



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Partner

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¹³ Pursuant to s. 239.2(9) of the *Municipal Act, 2001*, s. 223.15 [in relation to a municipal Ombudsman] applies with necessary modifications with respect to the exercise of the functions of a closed meeting investigator under s. 239.2. Section 223.15 provides that "[t]he Ombudsman may disclose in any report made by him or her under this Part such matters as in the Ombudsman's opinion ought to be disclosed in order to establish grounds for his or her conclusions and recommendations."