

**INVESTIGATION INTO MUNICIPALITY OF  
NORTH PERTH RECREATION COMPLEX  
COMMITTEE & BUILDING SUBCOMMITTEE  
JOINT MEETING OF AUGUST 3, 2010  
REQUESTED BY RON SCOTT**

The Request

This investigation is as a result of a request by Ron Scott regarding an In-Camera session of the meeting of the Joint Committees held on August 3, 2010. Mr. Scott, in his written request, stated the reason for the request as follows:

“The Chair of the meeting directed that a portion of the said meeting was to be In-Camera and did not provide a legally valid reason what constituted this portion of the meeting to be in closed session.”

Investigation Jurisdiction

The jurisdiction to conduct this investigation is found in Section 239.1 of the *Municipal Act*, 2001, which came into effect on January 1, 2009. Pursuant to Section 239.1, a person may request an investigation of whether a Municipality or local Board has properly closed a meeting to the public pursuant to Section 239 of the *Municipal Act*. This section of the Act states that the investigation is to be conducted by (a) an investigator referred to in Section 239.2(i) of the Act or the Ombudsman if an investigator has not been appointed. Section 239.2(i) of the *Municipal Act* authorizes the Municipality to appoint an

investigator “to investigate in an independent manner, on a complaint made to him or her by any person whether the Municipality or a local Board has complied with Subsection 239 or a procedural By-law 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.

On December 10, 2007, by Municipality of North Perth By-law Number 159-2007, I was appointed by the Council as an investigator for the Municipality to conduct investigations pursuant to Section 239.1 of the *Municipal Act*.

#### Provisions for Closed Meetings

Section 239 of the *Municipal Act*, 2001 states that except as specifically provided in the Act, all meetings of a Municipal Council are to be open to the public. Section 239(ii) sets out certain exceptional situations in which a meeting or part of a meeting may be closed to the public:

- (a) the security of the property of the Municipality or local Board;
- (b) personal matters about an identifiable individual, including Municipal or local Board employees;

- (c) a proposed or pending acquisition or disposition of land by the Municipality or local Board;
- (d) labour relations or employment negotiations;
- (e) litigation or potential litigation, including matters before administrative tribunals, affecting the Municipality or local Board;
- (f) advice that is subject to solicitor-client privilege, including communications necessary for that purpose; and
- (g) a matter in respect of which a Council, Board, Committee or other body may hold a closed meeting under another Act.

The Subsection goes on to outline certain requirements before going into a Closed Session:

“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 that the holding of a closed meeting and the general nature of the matter to be considered at the closed meeting.”

The Act also states that with certain exceptions, the meeting shall not be closed to the public during the taking of a vote. The Act states that a meeting may be closed to the public during a vote if the Act permits or requires the meeting to be closed to the public and the vote is for

a procedural matter or for giving direction or instructions to officers, employees or agents of the Municipality.

The Municipality has adopted By-law 33-2007 which is a procedural By-law passed pursuant to Section 238 of the *Municipal Act*, 2001. Subsection 18 of the Procedural By-law outlines the requirements for conducting a Closed Meeting. That section of the By-law conforms with and repeats the provisions of Section 239 of the *Municipal Act* concerning meetings that are not open to the public.

Section 239(7) of the *Municipal Act* states that a Municipal Council shall record, without vote or comment, all resolutions, decisions and other proceedings at a meeting of the body whether it is closed to the public or not.

#### Investigation Process

The basis of Mr. Scott's request was very clear and concise in that he indicated his request to be based upon the allegation that the Chair of the meeting "did not provide a legally valid reason" for that portion of the meeting to be held in closed session. As the concern expressed is clear, that being a determination of whether or not the reasons given in the Motion were legally valid, I did not find it necessary to contact Mr. Scott for clarification or elaboration.

In the course of my investigation, I reviewed the various documents provided to me by the Municipality concerning the meeting which include the meeting Agenda, Minutes of the Committee Meeting and Minutes of the In-Camera Session

The Agenda referred to an In-Camera session as follows:

“4) ‘In-Camera’ Session – to address a matter in respect of which a council, board, committee or other body has authorized a meeting to be closed under another Act, being the Municipal Freedom of Information and Protection of Privacy Act, and to address a matter pertaining to the security of property of the Municipality or local board.”

### Findings

The Minutes of the Committee Meeting contain a Motion duly moved, seconded and passed which used the same words as those contained in the Agenda with respect to the In-Camera session. The Minutes of the In-Camera session indicate that the Committee heard from proponents with respect to details of their proposals concerning design and construction of a recreation complex. Each of these proponents was heard separately, in the absence of the other. The presentation of each of the proposals contains details of the proposal making reference to technical and commercial information concerning their particular proposal. The Minutes of the Committee Meeting indicate that upon resuming the open meeting of the Committee, a Motion was moved, seconded and carried to retain one of these proponents.

I contacted the Clerk of the Municipality to enquire as to the reason for the reference to the Municipal Freedom of Information and Protection of Privacy Act in the Motion to go into the In-Camera session. She explained that the three proponents were each, in the absence of the other, going to make presentations to the Committee concerning their proposal for the recreational complex. This potentially would involve technical and commercial information from each of them in the course of their proposals. The Committee was concerned that having this information presented in an open council session in the presence of the public and the other proponents, could well have the result of violating the rights of the proponents under the Municipal Freedom of Information and Protection of Privacy Act.

The request for this investigation was, as stated, based on the allegation by Mr. Scott that the reason given for the In-Camera session did not provide a legally valid reason for going into an In-Camera session. The Motion which was passed by the Committee stated to bases for the In-Camera session:

1. A matter in respect of which a council, board, committee or other body has authorized a meeting to be closed under another Act, being the Municipal Freedom of Information and Protection of Privacy Act; and

2. To address a matter pertaining to the security of property of the Municipality or local board.

As stated previously, Section 239(ii) of the Municipal Act, 2001, sets out the circumstances in which the Committee can hold a meeting or part of a meeting in an In-Camera session.

Among these are the following:

“Section 239(ii)(a) Security of the property of the Municipality or local board;

(g) a matter in respect of which a council, board, committee or other body may hold a closed meeting under any other Act”

The Committee’s Motion did specifically mention security of the property of the Municipality which, in the specific wording of the Act, is a legally valid reason for an In-Camera session. The Motion also referred to another Act, being the Municipal Freedom of Information and Protection of Privacy Act. Section 10 of that Act refers to “third party information”:

“10(1) a head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,

(a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons or organization;”

This wording in the Municipal Freedom of Information and Protection of Privacy Act affords individuals such as the proponents that were meeting with the Committee the protection of not having such information as referred to, released to the public. If the presentations of these various proponents were held in the presence of the public and, indeed in the presence of one another, it is quite possible that the rights of those proponents under the specific legislation would, or could have been violated.

### Opinion

It is my opinion as investigator that by virtue of the wording of the Motion for the Committee to go into an In-Camera session, a legally valid reason was stated for the Committee to proceed to an In-Camera session.

### Report

The Council of the Municipality of North Perth is required to make this report public in accordance with Section 239.2(1) of the Municipal Act.

Dated at Goderich, Ontario, this 1<sup>st</sup> day of November, 2010.



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Gregory F. Stewart, Investigator