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REPORT ON CLOSED MEETING INVESTIGATION 2024-01

BRANT COUNTY HEALTH UNIT BOARD OF HEALTH

Aird & Berlis LLP

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AIRD BERLIS

BRANT COUNTY HEALTH UNIT BOARD OF HEALTH
REPORT ON CLOSED MEETING INVESTIGATION 2024-01

I. INTRODUCTION

1. Aird & Berlis LLP is the Closed Meeting Investigator (the "**Investigator**") for the Brant County Health Unit Board of Health (the "**Board**").[1]

2. In our capacity as Investigator, we received a formal request for a closed meeting investigation, dated May 27, 2024 (the "**Request**").

3. The Request seeks an investigation concerning more than fifteen (15) *in-camera* sessions held by the Board as well as its Finance and Audit Committee and its Merger Sub-Committee (collectively the "**Committees**") between January 2023 and May 2024 (the "**Meetings**").[2]

4. This is a report on our closed meeting investigation (the "**Investigation**") made in accordance with subsection 239.2(10) of the *Municipal Act,2001*.[3]

II. CLOSED MEETING INVESTIGATOR – AUTHORITY & JURISDICTION

5. The Board is a "local board" as defined in section 1 of the *Municipal Act, 2001* and is created by regulation under the *Health Protection and Promotion Act*.[4]

6. The Committees were established by the Board. Subsection 239(1) of the *Municipal Act, 2001* requires all meetings of council, local boards or committees of either to be open to the public unless permitted to be closed by one of the exceptions in the statute.

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[1] On December 1, 2024, The Brant County Health Unit ("BCHU") and the Haldimand-Norfolk Health Unit ("HNHU") received approval from the Ministry of Health to merge into a single organization, effective January 1, 2025. The new entity, Grand Erie Public Health ("GEPH"), will serve the County of Brant, the City of Brantford, Haldimand County, and Norfolk County.

[2] Board of Health meetings held on: January 18, 2023; March 15, 2023; April 19, 2023; May 17, 2023; August 16, 2023; October 18, 2023; November 10, 2023; November 22, 2023; January 17, 2024; February 21, 2024; March 20, 2024; April 11, 2024; April 17, 2024; and May 15, 2024.

Finance and Audit Committee meetings held on: October 5, 2023; and March 7, 2024.

Merger Sub-Committee: No specific meeting dates identified.

[3] *Municipal Act, 2001*, S.O. 2001, c. 25.

[4] *Health Protection and Promotion Act,* R.S.O. 1990, c. H.7. See R.R.O. 1990, Reg. 553: *Areas Comprising Health Units.*

7. Subsection 239.1 permits any person to request an investigation into whether a municipality or local board has complied with section 239 of the *Municipal Act, 2001* or a procedure by-law in respect of a meeting or part of a meeting that was closed to the public.[5]

8. Subsection 239.2(1) of the *Municipal Act, 2001* provides that "the municipality" is authorized to appoint an investigator to conduct an investigation into whether a closed meeting complied with the requirements of the *Municipal Act, 2001* and the relevant procedure by-law.

9. Both the County of Brant and the City of Brantford have appointed Local Authority Services ("**LAS**") to perform closed meeting investigations pursuant to subsection 239.1 of the *Municipal Act, 2001*. LAS has delegated its authority as investigator to Aird & Berlis LLP. Both the County and the City concur that we have jurisdiction to conduct this Investigation into the Request under the authority of clause 239.1(a) of the *Municipal Act, 2001*.[6]

10. 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. Our conflict search was clear.

11. 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 request made by any person to determine whether the municipality or local board has complied with section 239 of the *Municipal Act, 2001*, or a by-law enacted under subsection 238(2) (i.e. a procedural by-law) in respect of a meeting or part of a meeting that was closed to the public.

12. Upon conducting an investigation, we report to the council or local board (as the case may be) on the outcome of the investigation, together with any recommendations, as may be applicable. Our role as Investigator does not include engaging with the merits of any particular matter before the Board or questioning the policies or priorities of the Board.

III. THE REQUEST

13. The Request was properly filed pursuant to section 239.1 of the *Municipal Act, 2001*.

14. The Request raised the following issues:

1. Did the Meetings comply with the open meeting requirements of section 239 of the *Municipal Act, 2001*? Specifically:

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[5] The Board adopted "Principles and By-laws of Brant County Board of Health to Regulate the Proceedings of the Board of Health" (the "**Procedure By-law**").

[6] *Municipal Act, 2001*, s. 239.1(a):

> **Investigation**
>
> **239.1** A person may request that an investigation of whether a municipality or local board has complied with section 239 or a procedure by-law under subsection 238 (2) in respect of a meeting or part of a meeting that was closed to the public be undertaken,
>
> (a) by an investigator referred to in subsection 239.2 (1);

(a) Did the subject matter of any *in-camera* portions of the Meetings properly fit within the identified closed meeting exception under clause 239(2) of the *Municipal Act, 2001*?

(b) Prior to holding a meeting or part of a meeting *in-camera*, did the Board or the Committees state by resolution the holding of the *in-camera* meeting and the general nature of the matter to be considered *in-camera*, as required pursuant to subsection 239(4) of the *Municipal Act, 2001*?

Did the Board or the Committees improperly take a vote *in-camera*, contrary to subsections 239(5) and (6) of the *Municipal Act, 2001*?

(c) Did the Board and the Committees comply with subsection 239(7) of the *Municipal Act, 2001* which requires them to 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?

2. Did the Board contravene the Procedure By-law, including by permitting members to attend the Meetings electronically during *in-camera* sessions?

3. Did the Board improperly hold special meetings on November 10, 2023 and April 11, 2024?

4. Did the Committee Meetings satisfy the record-keeping requirements in the subsection 239(7) of the *Municipal Act, 2001* and section 8.3 of the Procedure By-law?

IV. REVIEW OF MATERIALS AND INVESTIGATIVE PROCESS

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

- the Request;
- Brant County Health Unit Board of Health By-law (before June 2023);
- Brant County Health Unit Board of Health By-law (from June 2023 to July 16, 2024);
- Brant County Health Unit Board of Health By-law (as of July 17, 2024); and
- public and closed meeting agendas and minutes for the Meetings.

15. There are no audio or audiovisual records of any of the Meetings.

16. We provided the GEPH Board with a draft of this report prior to finalizing it. The GEPH Board considered the draft report at its May 21, 2025 meeting and provided comments to us through its Clerk on May 22, 2025 and May 26, 2025. We have considered these comments in preparing this final report.

V. STATUTORY FRAMEWORK

17. Ontario's open meeting rule is enshrined in subsection 239(1) of the *Municipal Act, 2001*, which requires that meetings be open to the public, unless otherwise excepted.

18. Subsection 238 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.

19. Subsection 237(1) of the *Municipal Act, 2001* provides a majority of the members of a municipal council is necessary to form a quorum.

20. The purpose of the open meeting rule is to foster democratic values, increase transparency, and enhance public confidence in local government.[7] However, it has been long recognized that there are certain situations where open meetings, or full transparency in the immediate term, would not serve the public interest or the interests of the municipal corporation.[8] In providing for certain limited exceptions to the general rule, section 239 seeks to balance the need for confidentiality in certain matters with the public's right to information about the decision-making process of local government.[9]

21. To that end, subsection 239(2) sets out certain subject matter exceptions that permit a municipality or local board to hold a meeting that is closed to the public, including the following, which are relevant to this report:

> **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
>
> (c) a proposed or pending acquisition or disposition of land by the municipality or local board;
>
> (d) labour relations or employee negotiations;

---

[7] See *RSJ Holdings Inc. v. London (City)* (2007), 36 M.P.L.R. (4th) 1 (S.C.C.).

[8] See Ontario, *Report of the Provincial/Municipal Working Committee on Open Meetings and Access to Information* (Toronto: The Committee, July 1984), at p. 7.

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

…

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

…

(i) a trade secret or scientific, technical, commercial, financial, or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

…

(k) a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board.

22. Further exceptions to the open meeting rule are provided in subsection 239(3):

Other criteria

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

(a) a request under the *Municipal Freedom of Information and Protection of Privacy Act*, if the council, board, commission or other body is the head of an institution for the purposes of that Act; or

(b) an ongoing investigation respecting the municipality, a local board or a municipally-controlled corporation by the Ombudsman appointed under the *Ombudsman Act*, an Ombudsman referred to in subsection 223.13 (1) of this Act, or the investigator referred to in subsection 239.2 (1).

23. Subsection 239(3.1) of the *Municipal Act, 2001* sets out certain requirements for meetings that are closed to the public for educational or training purposes:

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.

24. Subsection 239(4) of the *Municipal Act, 2001* sets out procedural requirements for meetings that are closed to the public:

> **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.

25. Subsection 239(5) provides that subject to subsection 239(4), a meeting shall not be closed to the public during the taking of a vote.

26. Despite the requirement for open voting, subsection 239(6) of the *Municipal Act, 2001* permits a vote to be taken in closed session if:

> (i) the meeting is permitted to be closed to the public pursuant to subsection 239(1); and
>
> (ii) 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.

27. Subsection 239(7) of the *Municipal Act, 2001* requires a municipality or local board or a committee of either of them to 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.

28. Subsection 239(8) requires the record of the meeting to be made by the clerk in the case of a meeting of council or the appropriate officer in the case of a meeting of a local board or committee.

VI. PROCEDURE BY-LAW

29. Section 56 of the *Health Protection and Promotion Act* requires boards of health to pass a by-law respecting proceedings at meetings. Accordingly, the Board has adopted "Principles and By-laws of Brant County Board of Health to Regulate the Proceedings of the Board of Health", which we have collectively defined as the "Procedure By-law" for the purposes of this report.[10]

[10] We have considered these by-laws be to be a procedure by-law for the purpose of s. 238(2) of the *Municipal Act, 2001*.

30. The meetings subject to the Request which took place prior and subsequent to June 2023 were governed by two different versions of the Procedure By-law, however, the provision dealing with closed meetings is identical as between the two versions.

31. Section 1 of the Procedure By-law provides:

> The purpose of the Board of Health is to ensure the provision, within local city and county bylaws and in accordance with its obligations under the Health Protection and Promotion Act (HPPA) (and in particular the Ontario Public Health Standards and the Ontario Public Health Organizational Standards) and other relevant legislation, of the best possible service to promote good health in Brant County.

32. Sections 12.8 -12.17 of the Procedure By-law contain the provisions governing *in-camera* meetings. These provisions reinforce and supplement the closed meeting requirements of section 239 of the *Municipal Act, 2001*, set out above. The relevant provisions of the Procedure By-law are reproduced below:

> 12.8 The Board of Health moves to In-Camera to deal with confidential matters in accordance with current legislation. The subject matter to be considered will fall within one of the following categories:
>
> i) security of the property of the Board;
>
> ii) personal matters about an identifiable individual, including Board employee;
>
> iii) proposed or pending acquisition of land for Board purposes;
>
> iv) labour relations or employee negotiations;
>
> v) litigation or potential litigation, including matters before administrative tribunals, affecting the Board;
>
> vi) receiving of advice that is subject to solicitor-client privilege, including communications necessary for that purpose;
>
> vii) matter in respect of which a Board has authorized a meeting to be closed under another Act.
>
> viii) educating or training the members and no member discusses or otherwise deals with any matter in a way that materially advances the business or decision-making of the Board.
>
> ix) risk management/issues that pose potential liability for the organization.[11]

[11] There is no exception in s. 239(2) of the *Municipal Act, 2001* to permit a meeting to take place in closed session for the reason identified in clause 12.8 ix) of the Procedure By-law, namely, "risk management/issues that pose potential liability to the organization." Pursuant to s. 14 of the *Municipal Act, 2001*, a by-law is without effect to the extent it conflicts with a provincial statute. Clause 12.8 ix) of the Procedure By-law conflicts directly with the limited permitted exceptions to the open meeting rule that are set out in s. 239 of the statute.

33. We note there is no exception in subsection 239(2) of the *Municipal Act, 2001* to permit a meeting to take place in closed session for the reason identified in clause 12.8 ix) of the Procedure By-law, namely, "risk management/issues that pose potential liability to the organization."

34. The Procedure By-law cannot create closed meeting exceptions that are not provided for in the *Municipal Act, 2001*. Subsection 239(1) is clear that "[e]xcept as provided in this section, all meetings shall be open to the public."

35. Accordingly, clause 12.8 ix) of the Procedure By-law is *ultra vires* the Board's authority. Therefore, any meeting that was closed to the public for this purpose did not comply with section 239 of the *Municipal Act, 2001*.

36. The following provisions of the Procedure By-law also apply to *in-camera* meetings:

> 12.9 The rules of the Board are observed in In-Camera meetings.
>
> 12.10 A Board member may not participate electronically in In-Camera meetings.[12]
>
> 12.11 Only procedural votes or those related to the giving of advice and direction to staff take place in an In-Camera meeting of the Board.
>
> 12.12 When a decision to go into In-Camera is made, the Board states by resolution to do so.
>
> 12.13 A written agenda is prepared by the Secretary for every In-Camera meeting and reviewed by the Chair prior to the meeting.
>
> 12.14 At the conclusion of the In-Camera business, the In-Camera meeting adjourns by motion and the regular meeting of the Board resumes. The Chair of the Board reports on any In-Camera business as appropriate.
>
> 12.15 Minutes of In-Camera meetings are kept separate and maintained by the Secretary in such a manner as to protect the confidentiality of information contained therein. All matters discussed In-Camera are considered to be confidential.

[12] Subsection 238(3.1) of the *Municipal Act, 2001* states that a procedure by-law may provide for a member to participate electronically in a meeting to the extent and in the manner set out in the by-law. We note the current in-force version of the Procedure By-law has been amended to permit electronic participation in *in-camera* meetings.

This amendment does not apply retroactively to any of the Meetings. Municipalities in Ontario may enact by-laws or resolutions that have a retroactive effect however, the intent must be clearly shown either through words or necessary and direct implication: *Patrie v. City of Elliot Lake (Integrity Commissioner),* 2023 ONSC 7017 at para. 73.

12.16 All presentations by delegations to In-Camera meetings are recorded and transcribed verbatim for inclusion in the In-Camera minutes.

VII. BOARD OF HEALTH MEETINGS

37. The Board consisted of nine members: four provincial appointees, two County Council appointees, and three City Council appointees. The Board's Finance and Audit Committee consisted of five Board members. The Merger Subcommittee consisted of four Board members and two staff members.

(a) January 18, 2023 Meeting

(i) Description

38. The Board met on January 18, 2023. The open and *in-camera* minutes state that the meeting was held "In-person/Virtual Hybrid". The minutes indicate that nine Members were present at the meeting. The Board passed the following resolution to move *in-camera*:

> THAT the meeting move to In-Camera at 11:00 a.m. regarding personal matters about an identifiable individual and risk management/issues that pose potential liability to the organization.

39. We are advised that at least one member participated electronically during the *in-camera* session. The *in-camera* minutes note that a member who participated electronically seconded additions to an agenda item during the closed session.

40. The open session minutes show that the Board passed a motion to move item 9.2 "Board of Health Delegation to ROMA Conference" to the *in-camera* portion of the meeting. The open session minutes contain a brief report which notes that the item was moved to the *in-camera* session. The report provides a brief description of summary reports which had had been prepared to provide evidence to help inform the Board's key messages and discussion with government officials and other stakeholders at the conference. The *in-camera* minutes describe the Board's discussion of this item.

41. The open session minutes indicate that no motions were passed during the *in-camera* session.

(ii) Findings

42. Based on our review of the *in-camera* minutes and further clarification received from the GEPH Board in its comments on a draft of this report, we find the Board contravened the *Municipal Act, 2001* when it discussed the "Board of Health Delegation to ROMA Conference" item *in-camera*. The Board's discussion of this matter did not fit within the exception noted in the resolution to go *in-camera*. As addressed above, we also find the Board relied upon an exception that is not recognized under the *Municipal Act, 2001*, being "risk management/issues that pose potential liability to the organization".

43. On reviewing a draft of this report, the GEPH Board advised that the *in-camera* discussion regarding the ROMA delegation pertained to discussions regarding the health unit merger. The *in-camera* minutes do not reflect that any such discussion took place. I recognize this may have been an error in note-taking and will accept the GEPH Board's advisement that its discussion regarding the ROMA delegation related to matters that would have been covered by the exemptions in clauses 239(2)(h) and/or 239(2)(k) of the *Municipal Act, 2001* for information supplied in confidence from the province and instructions to be applied to negotiations on behalf of a local board.

44. We also find the Board contravened section 12.10 of the Procedure By-law by permitting a member to participate in the *in-camera* session electronically, including permitting the member to move an item during the *in-camera* session.

(b) March 15, 2023 Meeting

(i) Description

45. The Board met on March 15, 2023. The open and *in-camera* meeting minutes state that the meeting was held "In-person/Virtual Hybrid". The open session minutes indicate that nine Members were present at the meeting. We were advised that at least one member participated electronically during the *in-camera* session.

(ii) Findings

46. We find the Board contravened section 12.10 of the Procedure By-law by permitting a member to participate in the *in-camera* session electronically.

(c) April 19, 2023 Meeting

(i) Description

47. The Board met on April 19, 2023. The open session and *in-camera* minutes state that the meeting was held "In-person/Virtual Hybrid". The open session minutes indicate that five Members were present at the meeting. The Board passed the following resolution to go *in-camera*:

> THAT the Brant County Board of Health meeting move to In-Camera at 9:33 a.m. regarding personal matters about an identifiable individual and risk management/issues that pose potential liability to the organization.

48. The open session minutes indicate that one motion was passed during the *in-camera* session but no further details are provided.

49. While *in-camera*, the Board discussed the appointment of the Medical Officer of Health and directed staff, by resolution, to apply to the Minister of Health and the Chief Medical Officer of Health for the appointment of a named individual as the full-time Medical Officer of Health for the Brant County Health Unit.

(ii) Findings

50. The open session minutes for the meeting indicate that the discussion involved "personal matters about an identifiable individual and risk management/issues that pose potential liability to the organization" which are exemptions under the Procedure By-law. Clause 238(2)(b) of the *Municipal Act, 2001* contains the exception for "personal matters about an identifiable individual".

51. To qualify as personal information, the information must be about an individual in their personal capacity, rather than in their professional, official or business capacity.[13] Information about an individual in their professional capacity may qualify as personal information if it reveals something of a personal nature about the individual.[14] The Ontario Ombudsman is the province's default closed meeting investigator for municipalities that have not appointed their own investigator. The Ombudsman has determined that information in job applications and resumés, such as information relating to education and employment history, is considered personal information for the purposes of the exemption under 239(2)(d) of the *Municipal Act, 2001*.[15]

52. Based on our review of the *in-camera* minutes, we find that the Board's discussion of the appointment of the Medical Officer of Health did reveal personal information. We therefore find the Board did not contravene subsection 239(1) of the *Municipal Act, 2001* when it discussed the appointment of the Medical Officer of Health *in-camera.*

Based on our finding that the discussion regarding the appointment of the Medical Officer of Health was permitted to take place *in-camera*, we find Council's *in-camera* motion directing staff with respect to the appointment was also permitted to take place *in-camera* pursuant to subsection 239(6) of the *Municipal Act, 2001*.

(d) May 17, 2023 Meeting

(i) Description

53. The Board met on May 17, 2023. The open session and *in-camera* minutes state that the meeting was held "In-person/Virtual Hybrid". The open session minutes indicate that seven members were present at the meeting. We were advised that at least one member participated electronically during the *in-camera* session.

(ii) Findings

54. As above, we find the Board contravened section 12.10 of the Procedure By-law by permitting a member to participate in the *in-camera* session electronically.

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[13] *Nipissing (Township of) (Re*), 2023 ONOMBUD 2 at para. 23.

[14] *Ibid*.

[15] *Burk's Falls / Armour (Village of / Township),* 2015 ONOMBUD 26 at para. 58.

(e) June 21, 2023 Meeting

(i) Description

55. The Board met on June 21, 2023. The minutes indicate that seven Members were present at the meeting. The Board passed the following resolution to convene *in-camera*:

> THAT the Brant County Board of Health meeting move to InCamera at 9:37 a.m. regarding personal matters about an identifiable individual and risk management/issues that pose potential liability to the organization.

56. The open session minutes indicate that two motions were passed at the *in-camera* session but do not provide any further details.

57. The *in-camera* session minutes indicate that the Board passed the following resolution:

> THAT the Brant County Board of Health officially acknowledges that John Sless was nominated, and accepted the nomination to join the Finance & Audit Committee.

58. The *in-camera* minutes also indicate that the Board passed the following resolution while *in*-camera:

> THAT the Brant County Board of Health accept the recommendation from the Finance and Audit Committee to approve the purchase of IT equipment, installation, and Managed Services & Support…

59. The *in-camera* minutes also note that the Chair identified a "clean-up item related to the previously approved change to the Finance & Audit Terms of Reference". No resolution was passed with respect to the "clean-up item".

(ii) Findings

60. Based on our review of the *in-camera* minutes, we find that the Board's nomination of the Member to the Finance & Audit Committee as well as the Board's resolution to approve the purchase of IT equipment did not reveal any personal information and did not, therefore, qualify for the exception to the open meeting rule. The resolution related to the nomination of the Member was to formalize the Board's previous decision to nominate him. No discussion took place *in-camera* that would reveal personal information about the Member. We therefore conclude that the Board contravened subsections 239(1) and (5) of the *Municipal Act, 2001* and sections 12.8 and 12.11 of the Procedure By-law, when it discussed and voted on these items during the *in-camera* session.

61. We also find the discussion did not qualify for the exception in clause 12.8 ix) of the Procedure By-law for "issues that pose potential liability to the organization", noting that we have found that exception to be *ultra vires*.

62. In our further opinion, the "clean-up item" related to the previously approved change to the Finance & Audit Terms of Reference should have been discussed in open session as it does not fit within any of the exceptions.

63. We further find that the resolution to move *in-camera* failed to describe the general nature of the matter to be discussed *in-camera*, contrary to subsection 239(4).

64. In *Farber v. Kingston (City)*, the Ontario Court of Appeal wrote that "the resolution to go into closed session should provide a general description of the issue to be discussed in a way that maximizes the information available to the public while not undermining the reason for excluding to the public."[16]

65. Citing only the wording of the applicable exception without including the general nature of what is being discussed in closed session will generally be determined to contravene the requirements in subsection 239(4).[17]

(f) August 16, 2023 Meeting

(i) Description

66. The Board met on August 16, 2023. The open session and *in-camera* minutes state that the meeting was held "In-person/Virtual Hybrid". The minutes indicate that seven Members were present at the meeting. We were advised that at least one member participated electronically during the *in-camera* session, including by moving an item.

67. The Board passed the following motion to convene *in-camera*. The motion was seconded by a member participating electronically.

> THAT the Brant County Board of Health meeting move to InCamera at 9:34 a.m. regarding personal matters about an identifiable individual and risk management /issues that pose potential liability to the organization.

68. While *in-camera*, the Board discussed and approved by resolution, a draft proposal for the future management structure of the Brant County Health Unit.

The open session minutes indicate that the Board passed one motion while *in-camera* but do not provide any further details.

(ii) Findings

69. Based on our review of the *in-camera* minutes, we have determined that the resolution to approve the draft proposal for the future management structure of the Brant County Health Unit did not reveal any personal information and did not therefore qualify for the exception to the open meeting rule identified in the resolution. The Board contravened subsections 239(1) and (5) of the *Municipal Act, 2001* and sections 12.8 and 12.11 of the Procedure By-law when it discussed and voted on this item at the *in-camera* session. We also find that the resolution to go *in-camera* failed to describe the general nature of the matter to be discussed, contrary to subsection 239(4) of the *Municipal Act, 2001*.[18]

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[16] *Farber v Kingston (City)*, 2007 ONCA 173 at para. 21.

[17] *Adjala-Tosorontio (Township of) (Re)*, 2023 ONOMBUD 10 at para. 56.

[18] We share the Ontario Ombudsman's position that citing an exception is a best practice, but is usually not sufficient to satisfy the requirements of section 239(4)(a) of the *Municipal Act*, *2001* as there is a requirement that municipalities/local boards add a level of "informative detail" to the resolution to close a session to the public.

We further find the discussion did not qualify for the exception in clause 12.8 ix) the Procedure By-law for "risk management/issues that pose potential liability to the organization", on the basis that this exception is *ultra vires* the Board's authority. Based on the above, we find the discussion and vote on the future management structure of the Brant County Health Unit should have taken place in open session.

70. We also find the Board contravened section 12.10 of the Procedure By-law by permitting a member to participate in the *in-camera* session electronically.

(g) October 18, 2023 Meeting

(i) Description

71. The Board met on October 18, 2023. The open session and *in-camera* minutes state that the meeting was held "In-person/Virtual Hybrid". The minutes indicate that eight members were present at the meeting. We were advised that at least one member participated electronically during the *in-camera* session. The Board passed the following resolution, moved by a member participating electronically, to go *in-camera*:

> THAT the Brant County Board of Health meeting move to Incamera at 9:35 a.m. regarding personal matters about an identifiable individual, including Board employee.

72. During the *in-camera* session, the Board considered the following items which, as discussed below, do not fit within any of the closed meeting exceptions in subsection 239(3) of the *Municipal Act, 2001*:

- The decision to establish a Merger Sub-Committee and the appointment of its members;
    - We note the motion related to this item was moved by a member who participated electronically.
- Freedom of Information Update and News Article;
- An update related to IT expenditures;
- Discussion and approval of the draft 2024 municipal budget for the Board.

73. The open session minutes note that the Board passed four motions during the *in-camera* session but do not provide any further details.

(ii) Findings

74. Based on the *in-camera* minutes, we have determined that the Board contravened subsections 239(1) and (5) and of the *Municipal Act, 2001* and sections 12.8 and 12.11 of the Procedure By-law when it discussed and voted on the Merger Sub-Committee matter, the IT expenditure update and the Board budget *in-camera*.

75. The decision to establish the Merger Sub-Committee did not involve discussion of personal matters about an identifiable individual. In order to qualify for the exception, discussions must reveal personal information about an identifiable individual and it must be reasonable to expect that an individual could be identified if the information were disclosed publicly.[19]

76. There is no exception that would have permitted the Board to receive the update related to IT expenditures or to review and vote on the 2024 municipal budget *in-camera*.

77. We find the discussion regarding the Freedom of Information Update and News Article involved discussion of an identifiable Board employee and was therefore properly conducted *in-camera*.

78. We also find the Board contravened section 12.10 of the Procedure By-law by permitting a member to participate in the *in-camera* session electronically.

(h) November 10, 2023 Meeting

(i) Description

79. The Board held a virtual special *in-camera* meeting on November 10, 2023. This meeting is described as a "special meeting" because it was called in addition to the Board's regularly scheduled meetings. We have not been provided with any open session minutes for this meeting. The *in-camera* minutes note that the Board passed the following resolution to go *in-camera*:

> That the Brant County Board of Health meeting move *in camera* at 3:05 p.m. to discuss a personal matter about an identifiable individual.

(ii) Findings

80. We find the Board contravened section 12.10 of the Procedure By-law by permitting the members to participate in the *in-camera* session electronically.

81. The Request alleges that this meeting violated the Procedure By-law which does not contain provisions for holding special meetings.

82. We note that section 8.2 of the Procedure By-law states that "extra meetings" may be called at any time by the Chair but not at a time that conflicts with other meetings and that the agenda and other matters for discussion are to be circulated to Board members in advance of the extra meeting.

83. Subsection 238(2.1) of the *Municipal Act, 2001* states that a procedure by-law is to govern, among other things, public notice of meetings.[20] This requirement applies to all meetings of council, committees, or local boards, including special meetings.[21]

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[19] *Ontario (Ministry of Correctional Services) v. Goodis*, [2008] O.J. No. 289 at para. 69.

[20] *Open Meetings: Guide for Municipalities*, Ontario Ombudsman, online: <https://www.ombudsman.on.ca/have-a-complaint/who-we-oversee/municipalities/municipal-closed-meetings/open-meetings-guide-for-municipalities>.

[21] *Brockville (City of) (Re)*, 2022 ONOMBUD 12 (CanLII) at para. 34.

84. The *in-camera* minutes for the November 10, 2023 meeting state that notice of the meeting and matters to be discussed was provided to all members prior to the meeting. It does not appear, however that any public notice was given for this meeting. The Procedure By-law appears to be silent on the subject of public notice.

85. Based on the above, we find the Board contravened subsection 238(2.1) of the *Municipal Act, 2001* by failing to provide public notice about the calling, place and proceedings of the special meeting on November 10, 2023.

(i) November 22, 2023 Meeting

(i) Description

86. The Board met on November 22, 2023. The public and closed meeting minutes state that the meeting was held "In-person/Virtual Hybrid". The open session minutes indicate that six members were present the meeting. The Board passed the following resolution to proceed *in-camera*:

> THAT the Brant County Board of Health meeting move to Incamera at 9:33 a.m. regarding a personal matter about an identifiable individual, including Board employee.

87. During the *in-camera* session, the Board discussed an item under the heading "FOI Update". The Board also received an update from the Merger Sub-Committee and voted on a resolution to approve the spending of funds to retain a merger consultant. The *in-camera* minutes note that three motions were passed *in-camera* but do not provide any further details.

(ii) Findings

88. We find the discussion regarding the "FOI Update" involved discussion of an identifiable Board employee and was therefore properly conducted *in-camera*.

89. We find, however that the Board contravened subsection 239(1) of the *Municipal Act, 2001* when it discussed the update from Merger Sub-Committee *in-camera*. This update did not relate to personal information about an individual.

90. We further find the Board contravened subsection 239(5) the *Municipal Act, 2001* and section 12.11 of the Procedure By-law by voting to approve the expenditure of funds *in-camera*.

(j) January 17, 2024 Meeting

(i) Description

91. The Board met on January 17, 2024. The open session and *in-camera* meeting minutes state that the meeting was held "In-person/Virtual Hybrid". The open session minutes indicate that there were nine members present at the meeting. We were advised that at least one member participated electronically during the *in-camera* session. The Board passed the following resolution to move *in-camera*:

> THAT the Brant County Board of Health meeting move to Incamera at 9:35 a.m. regarding labour relations or employee negotiations, education of board members, and a plan for negotiations to be carried on by or on behalf of the Board.

92. The open session minutes note that three motions were passed at the closed session which provided instructions to employees of the Board but do not provide further details.

93. During the *in-camera* session, the Board considered a further update from the Merger Sub-Committee and voted to adopt a resolution authorizing staff to proceed with a procurement.

(ii) Findings

94. We have determined that the Merger Sub-Committee item did not fall within any of the exceptions in subsections 239(2), (3) or (3.1) of the *Municipal Act, 2001*. We therefore find the Board's consideration of this matter *in-camera* contravened subsection 239(1) of the *Municipal Act, 2001* and section 12.8 of the Procedure By-law.

95. The closed session vote that was taken in relation to this item, which authorized staff to proceed with a single-source procurement, should have taken place in an open session, and thus contravened subsection 239(5) of the *Municipal Act, 2001* and section 12.11 of the Procedure By-law.

96. As above, we find the Board contravened section 12.10 of the Procedure By-law by permitting a member to participate in the *in-camera* session electronically.

97. We have also determined that the resolution to move into closed session failed to describe the general nature of the matter to be discussed *in-camera*, contrary to subsection 239(4) of the *Municipal Act, 2001*.

(k) February 21, 2024 Meeting

(i) Description

98. The Board met on February 21, 2024. The public and closed meeting minutes indicate that the meeting was held "In-person/Virtual Hybrid". The open session minutes indicate that nine members attended the meeting. We were advised that at least one member participated electronically during the *in-camera* session and was the deciding vote in a decision. The Board passed the following resolution to move *in-camera*:

> THAT the Brant County Board of Health meeting move to Incamera at 9:36 a.m., under the Municipal Act, Section 239(2), regarding labour relations or employee negotiations; education of board members with no discussion of any matter that materially advances the business or decision-making of the Board; and a plan for negotiations to be carried on by or on behalf of the board of health.

99. The open session minutes note that one motion was passed regarding a point of privilege during the *in-camera* session.

100. The request alleges that staff that were not required to attend were permitted to constitute an audience at the closed meeting.

(ii) Findings

101. We find that the Board was permitted to discuss the point of privilege *in-camera* but relied upon the incorrect exceptions in its resolution to go into closed session. The matter discussed related to the conduct of a Board member and revealed the views or opinions of one Board member about another. Based on the *in-camera* minutes, we find the exception in clause 239(2)(b) could have been applied to discuss the matter in a closed session.

102. We find the resolution to convene *in-camera* failed to include the general nature of the matter to be discussed in the closed session, contrary to the requirements of subsection 239(4) of the *Municipal Act, 2001*.

103. The Procedure By-law is silent on who may attend an *in-camera* session. In our opinion, the Chair of the Board has the discretion to determine who may attend a closed meeting. Such authority may be inferred from section 12.4 of the Procedure By-law, in effect at the meeting of February 21, 2024, which provides:

> 12.4 The Chair presides over the conduct of the meeting, including the preservation of good order and decorum, ruling the points of order and deciding all questions relating to the orderly procedure of the meetings, subject to an appeal by any member of the Board from any ruling of the Chair.

104. Based on the above, we find the Board did not contravene the Procedure By-law by permitting staff to attend the *in-camera* session.

105. As above, we find the Board contravened section 12.10 of the Procedure By-law by permitting a member to participate in the *in-camera* session electronically.

(l) March 20, 2024 Meeting

(i) Description

106. The Board met on March 20, 2024. The open and *in-camera* minutes state that the meeting was held “In-person/Virtual Hybrid”. The open session minutes indicate that nine members attended the meeting. We were advised that at least one member participated in the *in-camera* session electronically. The Board passed the following resolution to proceed into a closed session:

> THAT the Brant County Board of Health meeting move to Incamera at 9:32 a.m., under the Municipal Act, Section 239(2)(k), regarding labour relations or employee negotiations; education of board members with no discussion of any matter that materially advances the business or decision-making of the Board; a plan to be applied re: negotiations to be carried on by or on behalf of the board of health; and personal matters about an identifiable person, including Board employee.

107. The open session minutes note that six motions were passed during the *in-camera* session but do not provide any further details.

(ii) Findings

108. Among the *in-camera* items was an update from the Merger Sub-Committee. It is not clear from the resolution passed to go *in-camera* which exemption was intended to apply to this item however, the reference to "negotiations to be carried on by or on behalf of the board" would appear to be most relevant to this item. Clause 239(2)(k) of the *Municipal Act, 2001* permits a meeting to be closed to the public if the subject matter being considered is, "a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board."

109. The Ontario Ombudsman has found that the purpose of the exception in clause 239(2)(k) "is to allow a municipality to protect information that could undermine its bargaining position or give another party an unfair advantage over the municipality during an ongoing negotiation."[22]

110. For the exception under clause 239(2)(k) to apply, the municipality must establish that:

1. The *in-camera* discussion was about positions, plans, procedures, criteria, or instructions;

2. The positions, plans, procedures, criteria, or instructions are intended to be applied to negotiations;

3. The negotiations are being carried on currently, or will be carried on in future; and

4. The negotiations are being conducted by or on behalf of the institution.[23]

117. The Information and Privacy Commissioner of Ontario ("**IPC**") is the body that considers appeals of disclosure decisions by municipal institutions. Orders of the IPC that interpret the identical exemption in *Municipal Freedom of Information and Protection of Privacy Act* provide useful guidance in the context of closed meetings.

118. In a 2002 order from the IPC, which was subsequently upheld by the Divisional Court, the IPC determined that in order to satisfy part one of the above test, there must be "some evidence that a course of action or manner of proceeding is 'pre-determined' that is, there is some organized structure or definition given to the course to be taken."[24]

119. The IPC further found that a "plan" is "a formulated and especially detailed method by which a thing is to be done; a design, or scheme." The IPC also determined that the terms "positions, procedures, criteria, and instructions" are "similarly referable to pre-determined courses of action or ways of proceeding."

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[22] *Saugeen Shores (Town of) (Re)*, 2020 ONOMBUD 3 at para. 22.

[23] *St. Catharines (City of) (Re)*, 2019 ONOMBUD 1, at para. 31.

[24] Order PO-2034, (Ontario (Community and Social Services; August 21, 2002),aff'd *Ontario (Ministry of Community and Social Services) v. Ontario (Information and Privacy Commissioner),* [2004] O.J. No. 1854, 70 O.R. (3d) 680.

120. "Negotiation" has been interpreted by the Ontario Ombudsman, by reference to the ordinary dictionary definition: i.e., to negotiate is "to confer (with another) for the purpose of arranging some matter by mutual agreement; to discuss a matter with a view to a settlement or compromise."[25]

121. Based on our review of the *in-camera* minutes, we are satisfied that the subject matter of the discussions dealt with a plan regarding future negotiations related to a possible merger of health units. Accordingly, we find the Board's discussion of this item *in-camera* did not contravene the *Municipal Act, 2001*.

122. Following its receipt of the Merger Sub-Committee update, the Board voted *in-camera,* on a resolution to authorize and support certain next steps. The Board's resolution arising from this item was not for a procedural matter or to direct staff, and should have been voted on in an open session. The Board therefore contravened subsection 239(5) and subsection 12.11 of the Procedural By-law when it voted on the resolution *in-camera*.

111. The Board also considered an item related to the 2024 Annual Service Plan and Budget Submission at the *in-camera* session. We find that this item was not captured by any of the exceptions referenced in the resolution to go *in-camera* nor did it fall within any of the exceptions in subsection 239(2) of the *Municipal Act, 2001*. Accordingly, we find the Board contravened the *Municipal Act, 2001* when discussed and voted on this item *in-camera*.

112. We also find that the resolution to go *in-camera* failed to describe the general nature of the matters to be discussed, contrary to subsection 239(4) of the *Municipal Act, 2001*.

113. As above, we also find the Board contravened section 12.10 of the Procedure By-law by permitting members to participate in the *in-camera* session electronically.

(m) April 11, 2024 Meeting

(i) Description

114. The Board held another special meeting on April 11, 2024. The open and *in-camera* minutes state that the meeting was held "In-person/Virtual Hybrid". The open session minutes indicate that six members were in attendance. We were advised that at least one member participated electronically during the *in-camera* session. The Board passed the following resolution to convene *in-camera*:

> THAT the Brant County Board of Health meeting move to Incamera at 1:03.m. [*sic*], under the Municipal Act, Section 239(2)(k), regarding labour relations or employee negotiations; education of board members with no discussion of any matter that materially advances the business or decision-making of the Board; and a plan to be applied re: negotiations to be carried on by or on behalf of the board of health.

[25] *Leeds and the Thousand Islands (Township of) (Re),* 2022 ONOMBUD 5 at para. 52.

115. The open session minutes indicate that no motions were passed during the *in-camera* session.

116. The Request alleges that the special meeting was improperly convened and additional staff in attendance were improperly omitted from the meeting minutes.

(ii) Findings

117. As discussed above, while section 8.2 of the Procedure By-law permits "extra meetings" to be called by the Chair, we find the Board should have provided public notice of the meeting.

118. As above, we also find the Board contravened the Procedure By-law by permitting members to participate in the *in-camera* session electronically.

119. The names of all individuals present at a meeting should appear in meeting minutes. If names of certain staff were left off of the minutes, this is a matter that should be taken up with the note-taker or the Chair prior to the approval of the minutes at the subsequent meeting.

(n) April 17, 2024 Meeting

(i) Description

120. The Board met on April 17, 2024. The public and closed meeting minutes state that the meeting was held "In-person/Virtual Hybrid". The open session minutes indicate that nine members were in attendance. It was posited that a member participated electronically during the *in-camera* session and as a result, improperly seconded an item. It was also asserted that: (i) the Chair improperly introduced a resolution verbally without written copies being provided; (ii) introduced a resolution which should have been discussed in public session; and (iii) the Chair incorrectly attempted to introduce an item that should have been held in public session.

121. The Board passed the following resolution to move *in-camera*:

> THAT the Brant County Board of Health meeting move to Incamera at 9:49 a.m., under the Municipal Act, Section 239(2)(k), regarding a plan to be applied re: negotiations to be carried on by or on behalf of the board of health.

122. The open session minutes indicate that one motion was passed during the *in-camera* session but do not provide any further details.

123. During the *in-camera* session, the Board considered a further update regarding the Merger Sub-Committee.

124. A new item of business was raised during the *in-camera* session regarding the relocation of the Brant County Health Unit. The *in-camera* minutes note that members questioned whether the item should be considered in a closed session and the members voted for the item to be moved to the open meeting agenda.

(ii) Findings

125. We note that our jurisdiction to consider whether the provisions of a procedure by-law have been followed is limited to those provisions related to closed meetings. The question of whether written copies of a resolution should have been provided to members is a matter to be dealt with by the Chair. In this instance, it appears that written copies of the resolution were provided after the fact, upon request of the members.

126. Based on our review of the *in-camera* minutes, we find the Merger Sub-Committee item was properly held *in-camera* and that the discussion, as documented in the *in-camera* minutes was covered by the exception in clause 239(2)(k) of the *Municipal Act, 2001*.

127. We further find that the vote taken *in-camera* which directed staff to take certain actions was permitted pursuant to clause 239(6)(a).

128. Based on the open session minutes, we agree that the Brant County Health Unit relocation item was properly discussed in open session and should not have been the subject of an *in-camera* meeting.

129. As above, we find the Board contravened section 12.10 of the Procedure By-law by permitting a member to participate in the *in-camera* session electronically.

130. We also find that the resolution to proceed into closed session failed to describe the general nature of the matters to be discussed, contrary to subsection 239(4) of the *Municipal Act, 2001*.

(o) May 15, 2024 Meeting

(i) Description

131. The Board met on May 15, 2024. The public and closed meeting minutes state that the meeting was held “In-person/Virtual Hybrid”. The open session minutes note that seven members attended. We were advised that at least one member participated electronically during the *in-camera* session.

132. The Board passed the following resolution to move *in-camera*:

> THAT the Brant County Board of Health meeting move to Incamera at 9:45 a.m., under the Municipal Act, Section 239(2)(k) regarding a plan to be applied re: negotiations to be carried on by or on behalf of the board of health; Section 239(2)(i) a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization; and Section 239(3.1) for the purpose of education of the members.

133. The open session minutes note that one member questioned the reason for the education session to be *in-camera*. The minutes state, “The item will address culture and code of conduct”. The item was ultimately discussed *in-camera*.

134. The open session minutes further note that one motion was passed during the *in-camera* session. The open session minutes also note that during the *in-camera session*, an update was received on the proposed merger of health units and a signed Letter of Intent was provided. The minutes further provide that a draft Merger Business Case was presented and the motion to approve was carried.

135. The Request alleges the *in-camera* item related to the Merger Sub-Committee Update should not have been dealt with in a closed session because it largely referenced public discussions which were reported on in the media and discussed in public by municipal and provincial officials and staff. The Request additionally alleges that the "education and training session" item was not, in fact, an education session and that it should not have been conducted *in-camera*. The Request alleges that senior staff were "improperly in attendance" at the meeting.

(ii) Findings

136. Based on the *in-camera* minutes, we find that the closed meeting exceptions in clauses 239(2)(k) and 239(2)(i) likely applied to at least part of the discussion that took place regarding the Merger Sub-Committee Update, including consideration of a Letter of Intent. The discussion was tied to plans to be applied to negotiations regarding a potential merger.

137. We find, however, that the Board's subsequent vote, approving a preliminary business case, authorizing certain actions, agreeing to the creation of a joint Governance Transition Committee and appointing members to that committee, contravened subsection 239(5) of the *Municipal Act, 2001* and section 12.11 of the Procedure By-law. These items should have been voted on by the Board in open session.

138. The education and training session item related to the Board of Health Code of Conduct. The *in-camera* minutes state that the Vice-Chair initiated an "open conversation" on the Board's Code of Conduct and related policies. A review of the *in-camera* minutes reflect a structured overview by the Vice Chair of the accountability framework governing the Board and discussions related to the same topic.

139. Based on our investigation, we are satisfied that the purported education and training session on the Code of Conduct was within the exception in subsection 239(3.1) of the *Municipal Act, 2001* and section 12.8 viii) of the Procedure By-law.

140. With respect to the attendance of senior staff at the meeting, as noted above, the Board Chair has discretion to decide whether staff may attend an *in-camera* session.

141. We find that the resolution to go into closed session failed to describe the general nature of the matters to be discussed, contrary to subsection 239(4) of the *Municipal Act, 2001*.

142. As above, we find the Board contravened subsection 12.10 of the Procedure By-law by permitting a member to participate in the *in-camera* session electronically.

VIII. FINANCE AND AUDIT COMMITTEE MEETINGS

(a) October 5, 2023 Meeting

(i) Description

143. The Finance and Audit Subcommittee met on October 5, 2023. The Request alleges that the resolution regarding the budget should have been voted on in an open session.

144. The open session minutes note that the Committee passed the following resolution to move in-camera:

> THAT the Board of Health Finance & Audit Committee move to In-Camera at 9:04 a.m. regarding personal matters about an identifiable individual, including Board employee.

145. The open session minutes note that the following motion was carried during the *in-camera* session:

> THAT the Finance and Audit Committee recommend this Draft 2024 Budget to the Board of Health with the addition of a list of items to be discussed at the Board and information to be provided by management.

(ii) Findings

146. We find the resolution to recommend the budget to the Board should have been voted on in open session. The vote was not for a procedural matter nor for giving instructions. The Committee, therefore, contravened subsection 239(5) of the *Municipal Act, 2001* and section 12.11 of the Procedure By-law when it voted on the resolution in closed session.

(b) March 7, 2024 Meeting

(i) Description

147. The Finance and Audit Subcommittee met on March 7, 2024. The Board passed the following resolution to move *in-camera*:

> THAT the Board of Health Finance & Audit Committee move to Incamera, under the Municipal Act, Section 239, at 1:02 p.m., for the purpose of discussing personal matters about an identifiable individual and labour relations or employee negotiations.

148. The open session minutes indicate that during the open session one motion was passed endorsing the 2024 Annual Service Plan.

149. The Request alleges that the resolution related to the 2024 Annual Service Plan should have been voted on in open session.

(ii) Finding

150. We find that the resolution to recommend approval of the 2024 Annual Service Plan should have been voted on in open session. The vote was not for a procedural matter nor for giving instructions. The Committee, therefore, contravened subsection 239(5) of the *Municipal Act, 2001* and section 12.11 of the Procedure By-law when it voted on the resolution in closed session.

IX. MERGER SUB-COMMITTEE MEETINGS

151. The Merger Sub-Committee has now completed its mandate. We understand the Merger Sub-Committee was composed of four Board members: the Board Chair, a representative from the City, a representative from the County and a representative from the province as well as two staff.

152. The Request alleges that the Merger Sub-Committee met regularly without providing notice to the public and did not record minutes of its meetings. We were not provided with any agendas or minutes from the Merger Sub-Committee.

153. Subsection 238(1) of the *Municipal Act, 2001* defines a "committee" as any advisory or other committee, subcommittee or similar entity of which at least 50% of the members are also members of one or more councils or local boards. As noted at the outset, the Merger Sub-Committee was composed of four Board members and two staff members. The Merger Sub-Committee was a "committee" for the purpose of the *Municipal Act, 2001*.

154. Although the Merger Sub-Committee was permitted to meet in closed session, as a committee pursuant to the *Municipal Act, 2001*, it was also required to follow the open meeting and other requirements of the *Municipal Act, 2001* regarding the taking of minutes and the giving of public notice.

155. We have determined that the Merger Sub-Committee contravened subsection 238(2.1) of the *Municipal Act, 2001* by failing to provide public notice about the calling, place and proceedings of its meetings.

156. In failing to create and maintain any records of its meetings, we find the Merger Sub-Committee contravened subsection 239(7) of the *Municipal Act, 2001* which required it to record without note or comment, all resolutions, decisions and other proceedings at its meetings, whether closed to the public or not. This failure also contravened section 8.3 of the Procedure By-law which requires minutes of regular meetings to be taken.

157. We also have determined that the Merger Sub-Committee contravened subsection 239(1) of the *Municipal Act, 2001* and section 12.8 of the Procedure By-law by holding meetings in the absence of the public. No efforts were undertaken to justify or document these closed meetings pursuant to any of the exceptions in subsections 239(2), (3) or (3.1) of the *Municipal Act, 2001* or section 12.8 of the Procedure By-law.

X. CONCLUSIONS

158. Our Investigation of the Meetings has determined that the Board and Committees contravened the open meeting provisions of section 239 of the *Municipal Act, 2001* and various applicable provisions of the Procedure By-law on numerous occasions. As detailed above, these contraventions include:

(i) Discussing certain items *in-camera* which did not fall under any of the closed meeting exceptions in subsection 239(2) of the *Municipal Act, 2001* and section 12.8 of the Procedure By-law;

(ii) Citing exemptions in its resolutions to go *in-camera* which do not fit the nature of the *in-camera* discussion;

(iii) Failing to provide sufficient information in its resolutions to go *in-camera* regarding the general nature of the matter to be considered, pursuant to subsection 239(4) of the *Municipal Act, 2001*;

(iv) Taking votes *in-camera* regarding matters that are neither procedural nor for the giving of directions, contrary to subsection 239(5) of the *Municipal Act, 2001* and section 12.11 of the Procedure By-law;

(v) Failing to provide public notice of special meetings held on November 10, 2023 and April 11, 2024; and

(vi) Permitting members to participate electronically during closed sessions, including the allowing them to second items, contrary to the provisions of the previous Procedure By-law (which was subsequently amended to permit the virtual participation of members in *in-camera* sessions).

159. We also found the Merger Sub-Committee contravened subsection 239(7) of the *Municipal Act, 2001*, which required it to record without note or comment all resolutions, decisions and other proceedings of its meetings.

XI. RECOMMENDATIONS

160. It is clear from the multiple contraventions documented in this report that the Board and its Committees required formal training regarding the closed meeting provisions of the *Municipal Act, 2001* and the Procedure By-law. This would have ensured that the exceptions and processes for convening *in-camera* were understood and complied with and that public transparency was enhanced. We recommend that the Board of Health for the new GEPH receive formal training and that such training be conducted by a qualified and experienced third party as soon as practicable.

161. We further recommend that, if applicable, the Procedure By-law be amended to delete clause 12.8 ix) related to “risk management/issues that pose potential liability for the organization” from the list of open meeting exceptions as it is not authorized at law.

162. We also recommend that, if applicable, the Procedure By-law be updated in keeping with subsection 238(2.1) of the *Municipal Act, 2001*, to require the giving of public notice for meetings of the Board and Committees.

163. Lastly, the GEPH Board is requested to ensure that any future committees or subcommittees that it establishes do keep and maintain meeting minutes and provide public notice of all meetings.

164. Subsection 239.2(11) of the *Municipal Act, 2001* provides that this report is to be made public. Subsection 239.2(12) would have required the Board to pass a resolution stating how it intends to address this report. Given that the Board no longer exists, we request that the GEPH Board consider how to incorporate this report's recommendations into its existing governance framework.

Respectfully submitted,

AIRD & BERLIS LLP

Laura Dean

Closed Meeting Investigator for Brant County Board of Health

Dated this 4th day of June, 2025

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