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CONFIDENTIAL

November 28, 2025

SENT BY EMAIL TO: tgorgerat@khrtownship.ca

Township of Killaloe, Haggarty, Richards
c/c Tammy Gorgerat, CAO
1 John Street, P.O. Box 39
Killaloe, ON. K0J 2A0

Dear: Mayor and Council

**RE: Closed Meeting Investigation – Final Report
Our File No.: 33209-9**

This public report of our investigation is being provided to Council in accordance with Section 239.2(1) of the *Municipal Act*. We note that Section 239.2(11) of the *Municipal Act* requires that Council make the report public. The Clerk should place this report on the agenda for an open session Council meeting.

Should Council desire, the Closed Meeting Investigator is prepared to attend at the open session meeting to present the report and answer any questions from Council.

At the meeting, Council must first receive the report for information. Council does not have the authority to alter the findings of the report, only consider the recommendations. Per section 239.2 (12), if the report contains a finding that all or part of a meeting was held in closed session contrary to the *Act*, then Council is required to pass a resolution stating how it intends to address the recommendations in the report.

The Closed Meeting Investigator has included only the information in this report that is necessary to understand the findings. In making decisions about what information to include, the Investigator is guided by the duties set out in the *Municipal Act*. Members of Council are also reminded that Council has assigned to the Investigator the duty to conduct investigations

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in response to complaints under the *Municipal Act*, and that the Investigator is bound by the statutory framework to undertake a thorough process in an independent manner. The findings of this report represent the Investigator's final decision in this matter.

The Complaint

Our office received a complaint dated November 1, 2025, alleging that the closed session scheduled for November 4, 2025, was likely to contravene the *Municipal Act*. The complaint noted that the closed session agenda identified a matter as falling under the exception provided for in section 239(2)(f), advice that is subject to solicitor-client privilege, including communications necessary for that purpose.

Specifically, the complainant alleged that Council had waived privilege over the opinion from its solicitor when members of Council summarized the advice given at a meeting held on October 7, 2025. The complainant argued that if privilege was waived by disclosing the substance of the opinion in an open session of Council, that matter could not thereafter be discussed in closed session on November 4, as without solicitor-client privilege the exception did not apply.

Investigation

The *Municipal Act* provides the Closed Meeting Investigator with powers which include the ability to interview witnesses and review documents deemed relevant to the investigation process. In conducting the preliminary review, our process included:

- Reviewing the relevant provisions of the *Municipal Act*;
- Reviewing agendas, closed session resolutions, minutes, and Council recordings for the October 7 and November 4, 2025 meetings;
- Reviewing the opinion of the Township Solicitor dated October 27, 2025; and
- Reviewing the opinion of Aird & Berlis dated October 14, 2025 which was discussed at the open session of Council on November 4, 2025 (this opinion is now publicly available on the Township website).

Analysis

After the November 4 meeting occurred, we reviewed the draft minutes of the meeting (open and closed). The minutes confirmed that a member of Council, “provided a detailed overview of the legal opinion received from Aird & Berlis LLP, summarizing its key findings and interpretations regarding the strong mayor powers” in open session.

We confirmed that the opinion from the Township's solicitor discussed in closed session on November 4, 2025, was not the opinion from Aird & Berlis that was summarized in the open session earlier that meeting.

The opinion discussed in closed session was dated October 27, 2025 (was written by the Township solicitor and not Aird & Berlis) and addressed Mayoral Directive 7 only. We found no evidence that the October 27, 2025, opinion was mentioned or discussed by Council in open session so that solicitor-client privilege was waived. It goes without saying that the opinion dated October 27, 2025, could not have been discussed by Council in open session at its October 7, 2025, meeting.

Under the *Municipal Act*, the default position is that meetings of Council and similar bodies are open to the public. This is an important rule, as it reinforces principles of open and accountable government. However, there will, naturally, be circumstances in which Council must address issues that should not be discussed in public; for this reason, the *Act* includes a number of exceptions.

The scheme of the *Act*, and previous decisions of closed meeting investigators, make clear that for a meeting to be properly closed to the public, the following requirements must be met:

1. The meeting must begin in open session, and a resolution must be passed to move into closed session;
2. The resolution to move into closed session must cite the section of the *Act* relied upon and must give a general description of the matters to be discussed; and
3. The content of the meeting must actually fall within the cited exception.

There is a similar default position that voting cannot occur in closed session; again, there are exceptions. In order to be properly in closed session, a vote:

1. must pertain to a subject matter that falls within a closed session exception, and
2. must be procedural in nature or provide direction to staff or agents of the municipality. Substantive decision making in closed session is not permitted.

Did the Motion To Move In Camera Comply with the Requirements under the *Municipal Act*?

The resolution to move into closed session on November 4, 2025, cited the correct section of the Act, and gave a brief description of the nature of the matter. The resolution complied with the requirements of the Act.

Was the Subject Matter Discussed in Closed Session Compliant with the Act?

Section 239(2)(f) requires that the subject matter of the closed session relate to “advice that is subject to solicitor-client privilege”. The complainant mistakenly assumed the opinion that

was the subject matter of this discussion was the legal opinion that was discussed by Council on October 7, 2025.

Given our finding that the opinion of the Township's Solicitor dated October 27, 2025 addressed Mayoral Directive 7 (a matter not dealt with by Aird & Berlis) and that it was not otherwise discussed in open session (at either of the October 7 or November 4 meetings), there was no waiver of solicitor-client privilege and the matter was properly one that could be held in closed session.

If Votes Were Held, did They Comply With the Act?

There is no evidence that a vote was held in closed session in breach of the Act. The draft minutes reflect that a vote was held in open session to address actions taken with respect to Mayoral Directive 7.

CONCLUSION AND RECOMMENDATIONS

We found no breach of the *Municipal Act* and as such no recommendations are required.

As the issue of waiving privilege is raised in this complaint, and this issue may be of general importance to future closed session meetings, we will speak to the matter to ensure that Council understands the limits of the exception. The exception depends on solicitor-client privilege being present. The section uses the present tense – that the advice is subject to privilege. Therefore, if privilege has been waived, Council would not be able to discuss that opinion in closed session.

There are three important points for Council to consider for future meetings:

1. Members of Council must be very careful not to waive privilege inadvertently as this can deprive Council of the ability to discuss the opinion in closed session, the opinion itself is no longer protected from disclosure and the Township may lose the confidentiality over its legal advice.
2. It is an open question as to whether a member of Council can waive privilege on behalf of the corporation of the Township of Killaloe, Haggerty and Richards. Even though there may be a legal argument that privilege was not waived, deciding that question is costly and time-consuming. In this case, the issue is not in dispute as Council posted the letter from Aid & Berlis on its website, confirming privilege was waived, only with respect to that opinion.
3. Even if privilege is lost over the specific opinion, Council may still go into closed session to receive additional advice from its legal counsel or to ask additional questions of its legal counsel – the waiver does not operate to eliminate privilege

forevermore in the future, but the opinion itself cannot be discussed in closed once privilege is waived.

Our advice is that Council consider dealing with privileged matters at the beginning of a meeting so that individual members of Council do not inadvertently waive privilege and eliminate Council's ability to discuss the matter in closed session. As there was no breach of the Act found, this is not a recommendation that Council must respond to – we offer it as a suggestion only.

This concludes the investigation and report in this matter.

Sincerely,

Cunningham, Swan, Carty, Little & Bonham LLP



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