

May 13, 2013

Clerk Malcolm White and  
Deputy Clerk Rachel Tyczinski  
City of Sault Ste. Marie  
99 Foster Drive, P.O. Box 580  
Sault Ste. Marie, ON P6A 5N1

Dear Mr. White and Ms. Tyczinski,

I am writing further to our discussion on May 2, 2013 regarding the results of our review of a complaint that meetings of the City's Procedure By-Law Review Committee were improperly closed to the public. The complainant pointed out that the resolution establishing the Committee, passed on January 23, 2012, named three members of Council and three staff members to the Committee, bringing it within the definition of a committee of council that is subject to the open meeting requirements.

As you know, the *Municipal Act, 2001* (the Act) requires all meetings of Council, Local Boards, and their Committees to be open to the public, with limited exceptions. For the purpose of the open meeting requirements, a Committee is defined 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."

In reviewing this complaint, our Office spoke with Mayor Amaroso and the Deputy Clerk, and reviewed the City's Procedure By-Law, the January 23, 2012 resolution establishing the Procedure By-Law Review Committee, the relevant meeting documents, and the applicable sections of the Act.

According to the information received, the Procedure By-Law Review Committee held two meetings since its establishment - one on November 1, 2012 and the other on January 28, 2013. Four staff members (the Clerk, Deputy Clerk, City Solicitor, and CAO) attended both meetings, along with the Mayor, Councillor Christian, and Councillor Watkins at the November 1, 2012 meeting, and the Mayor and Councillor Watkins at the January 28, 2013 meeting. Both meetings were closed to the public and no public notice was provided.

The meeting records show that, over the course of the two meetings, the Committee reviewed previous amendments to the Procedure By-Law, and considered proposed substantive and structural changes to the By-Law. At the January 28, 2013 meeting, the Committee reviewed the draft amendments, which were then submitted for Council's consideration at a February 19, 2013 public meeting.

For the reasons set out below, we have determined that these meetings were not authorized to be held in closed session.

### **Composition of the Procedure By-Law Review Committee**

City Council's January 23, 2012 resolution to establish the Procedure By-Law Review Committee states:

“...that Council appoint a Procedure By-Law Review Committee consisting of the Mayor and two members of Council (Councillors Christian and Watkins) and the City Clerk, City Solicitor and Chief Administrative Officer...”

During our review both the Mayor and the Deputy Clerk advised that it was Council's intention to include the Deputy Clerk as a member of the Procedure By-Law Review Committee but, due to an oversight, the resolution did not name her as a member and Council did not formally amend the resolution to correct the omission. As noted above, the Deputy Clerk was in attendance at both Committee meetings.

### **Procedure By-Law**

Our Office reviewed the City's Procedure By-Law to assess whether the By-Law mandated the Procedure By-Law Committee meetings to be open to the public and/or to comply with the open meeting requirements of the Act.

Sault Ste. Marie's Procedure By-Law provides that, “Special Committees of Council may be appointed by Council or the Mayor at any time as is deemed necessary for the consideration of special matters.” The By-Law also states that “the Council or the Mayor may appoint persons to special committees who are not members of Council.” In terms of the Committee's meeting practices, the By-Law indicates that, “unless otherwise required by the *Municipal Act* its meetings shall be open to the public.”

In terms of whether the Procedure By-Law Review Committee is a “Special Committee”, the Mayor and the Deputy Clerk advised that neither Council nor the Committee ever really turned their minds to this. Instead, Council relied on the Act's definition of a

Committee and, as in their view, the Committee consisted of four staff members and three members of Council, it was not a “committee of council” as defined by the Act and, therefore, not subject to the open meeting requirements.

### **Analysis**

Given that the Committee as described in the resolution approved by council, was composed of three council members and three members of staff, it falls within the Act’s definition of a Committee of Council that is subject to the open meeting requirements - as at least 50% of the members are also members of Council.

While it is recognized that Council intended to include four staff members and three members of Council on the Procedure By-Law Review Committee, the Committee as formally established by Council’s resolution on January 23, 2012 fits within the *Municipal Act’s* definition of a Committee of Council that is subject to the open meeting requirements.

Further, regardless of the composition of the Committee, the Procedure By-Law also requires Special Committee meetings to be open to the public “unless otherwise required by the *Municipal Act*.” The Procedure By-Law Review Committee appears to be a special committee, as described in the By-Law, as it was established by Council for a special purpose. Therefore, the Committee’s meetings are required to be open to the public under the City’s Procedure By-Law.

In addition, the subject matter discussed at the November 1, 2012 and the January 28, 2013 meetings – amendments to the Procedure By-Law – does not appear to qualify for closed meeting consideration under the legislated exceptions to the open meeting requirements.

You advised that this letter would be shared with Council at a public meeting on June 10, 2013 and a copy made available to the public.

We would like to thank you for your cooperation with our review.

Sincerely,

Yvonne Heggie  
Early Resolution Officer  
Open Meeting Law Enforcement Team