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Communication	
CW:	SEPT 7/16
Item:	32

-----Original Message-----

From: Abrams, Jeffrey

Sent: September-02-16 12:30 PM

To: Magnifico, Rose

Cc: Bartolomeo, Julia

Subject: Fw: Deputation for item 32 Committee of the Whole Sept 7

Please process

Sent from my BlackBerry 10 smartphone on the Bell network.

Original Message

From: Carrie Liddy <[carrie.liddy@sympatico.ca](mailto:carrie.liddy@sympatico.ca)>

Sent: Friday, September 2, 2016 12:10 PM

To: Abrams, Jeffrey; Rosati, Gino; Ferri, Mario; Di Biase, Michael; Racco, Sandra;

Shefman, Alan; DeFrancesca, Rosanna; Carella, Tony; Iafrate, Marilyn; Craig, Suzanne

Subject: Deputation for item 32 Committee of the Whole Sept 7

Council, Commissioner,

Please see my written deputation submitted with regards to the closed meeting report.

Written deputation submitted with regards to the closed meeting report of April 13 2016

C4.2

Written Deputation: September 7 2016 Item 32

CLOSED MEETING INVESTIGATION REPORT REGARDING THE SPECIAL MEETING OF  
COMMITTEE OF THE WHOLE FOR THE CITY OF VAUGHAN IN CLOSED SESSION ON  
APRIL 13, 2016

The Report Findings

The closed meeting report is clear. The closed meeting held to create a new senior management position for the head lawyer and head of human resources of the City of Vaughan is improper and violates several sections of the Municipal Act. Holding closed meetings in contravention of the Municipal Act has been addressed by the Supreme Court, and they found illegal closed meetings to be a serious breach of people's rights.

***The matter is not trivial***

Discussion on Findings

I have listed recommendations at the end of this deputation and they are discussed here:

The creation of the new position is not valid and Council needs to take steps to address the situation.

Firstly, all bylaws enacted through the closed meeting need to be immediately rescinded. Secondly, the appointment of the City Manager can easily be voted on and the City Manager properly appointed immediately after rescinding the closed meeting in its entirety.

If Council still wishes to create another Deputy Manager position, there are several steps that need to be taken first and all steps must be in public. As I stated when I filed the complaint, the closed meeting violations have nothing to do with the person who was appointed to the position. The creation of the position is the issue.

This is substantiated in the report itself, page 3, paragraph 2.

What has to be remedied and how should Council go about fixing the violations? (I note that the situation probably cannot be remedied, and that indeed was also one of the findings of the Supreme Court.)

Written deputation submitted with regards to the closed meeting report of April 13 2016

## Facts

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Here are the facts:

- 1) an improper closed meeting was held to create a new senior management position for the top legal advisor and human resource advisor for the City of Vaughan
- 2) the previous City Manager underwent a restructuring process a few months before the April 13 closed meeting, during which time this same position was already rejected
- 3) after creating the position in the closed meeting, (against council's decision of a few months earlier), an individual was hired without a competitive process being held
- 4) neither the Clerk or Deputy Clerk attended the closed meeting or anyone from the Clerk's office : the Clerk is a mandatory and defined role and has a mandatory responsibility under the Municipal Act.
- 5) the previous city manager attended, for what appears to be in lieu of the city clerk, however, the Clerk position cannot be delegated without a vote of Council and the meeting may be nullified in any event because of this
- 6) the previous city manager (admittedly a lame duck) knew the meeting was improper (by his admissions to the closed meeting investigator) and knew council's decision was contrary to the earlier restructuring and took no steps to notify Council, or rectify the problem, compounding the issues with the closed meeting
- 7) the city clerk , who did not attend the meeting, was "shocked" to find out council acted as they did, however took no steps to address the closed meeting violations after being informed of the matter
- 8) the newly appointed top lawyer and head of human resources and the Clerk's supervisor, has a conflict and probably can't take any steps to rectify the closed meeting and in any event wasn't properly appointed

Council relies on senior staff for advice and in thus case, senior staff let Council down.

The actions of senior staff are adding significant complications to the closed meeting report. ***The matter of staff failing to advise Council and failing to take steps to rectify the matter needs to be addressed and it is hoped Council will address it in conjunction with addressing the closed meeting report.***

## Correcting the new position created in the improper Closed Meeting

If Council decides to repeat the creation of a new deputy manager position and appoint a person to the position, the breaches need to be addressed by undertaking a proper process, and amended the recently approved City governance structure.

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Note: If Council simply ignores the report, any resident can bring a Judicial Review and application to quash the bylaws of the decision of Council. It is very likely the bylaw will be quashed, given the significant and clear findings in the report. Bringing a judicial review and application to quash the bylaw and meeting **will cost taxpayers a significant amount of money.**

It is sincerely hoped Council will address these issues outside of the courts particularly given Council seems to have not been advised properly by Senior Staff.

#### Breaches identified in the Report

Here are the described breaches:

- 1) no notice for the added agenda item, for the new position of top legal advisor and top human resources advisors do appointment of an individual to the position
- 2) no competition for the two new top advisory positions
- 3) no notice to the public of the additional tens of dollars in staff costs
- 4) council unilaterally changed the newly implemented senior staff structure, adding a position that was already rejected and amending a previously enacted bylaw, without notice
- 5) the clerk failed in his duty to ensure council meetings are properly run and failed to meet the mandatory sections of the Municipal Act of keeping minutes, failed to report on the minutes in the official City minute book, (the minutes have been requested and to date have not been provided) and failed to ensure all meetings of council are properly listed on an agenda and held in council chambers.

It is the duty of the Clerk to inform council of the illegal nature of these meetings and in failing to do so, he failed to perform all the mandatory duties of his office. The result is that the improper closed meeting has now caused a significantly negative impact on the city, residents, the two senior staff members appointed in the meeting, and council itself.

6) Council breached its own procedural bylaw, a bylaw Council strictly enforces on the public, however the Clerk's duty is to inform council when violations of the procedural bylaw are taking place

7) an external consultant was hired to undertake a process for hiring a new city manager and council (inadvertent as it was) illegally used the closed meeting to

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amend the governance structure of the city and improperly appoint a new head lawyer and head of human resources

8) the decision of council to create the new senior staff position of top lawyer and head of human resources was already discussed , "brokered" and decided before the closed meeting : indicating there was a meeting or several meetings before the closed meeting held outside of council chambers, without notice and without any participation of the public and outside of council chambers and with no minutes and unknown participation of council and the clerk (page 6, para 5)

9) the Clerk did not act in his mandatory role of properly administering council meetings by; failing to ensure all meetings of council are held in the Council chambers ; all decisions of Council are discussed and held in public (unless closed meeting rules apply); and record all council meetings through written minutes, (whether in an open or closed meeting) and record and publish without comment.

The last two items are indeed important. Council met for a scant 11 minutes in the illegal meeting. (according to original minutes of the meeting, which appear to be amended) During that time, council appointed a new City Manager, created a new senior staff position of top legal advisor and head of human resources and appointed a person to the newly created position.

The impact of this is the Code of Ethical Conduct (part 1) has been breached. ***I note the breaches are most likely inadvertent, (given council was not told of the illegal nature of the violations identified in the report) but serious none-the-less and have to be addressed.***

#### Code of Ethical Conduct

The reasonable conclusion in the report is that the decision and discussions regarding the new position took place somewhere else and outside the public eye and this along with failing to adhere to the city human resources policies of hiring and budget changes that have to be made in public (and other policy and Municipal Act violations mentioned in the report that are outside of the closed meeting jurisdiction) now falls within the Code of Ethical Conduct.

This report draws attention to an illegal practice and that is Vaughan Council making decisions, and acting outside of council chambers and outside of the public eye.

The details of this closed meeting are important not only because of the violations of the closed meeting portion of the Municipal Act, but because of the serious implications on the **overall governance of the City of Vaughan** and the problems with senior staff that Council now needs to address.

Written deputation submitted with regards to the closed meeting report of April 13 2016

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However, having said that, the report findings outline a breach of the overall governance of the City of Vaughan by a few (**not all**) Council members that falls within the jurisdiction of the Integrity Commissioner and not the Closed Meeting investigator.

### Recommendations

- 1) The closed meeting bylaws be immediate rescinded by a vote of Council.
- 2) The City Manager be immediately reappointed
- 3) Vaughan Council schedule a public session to address expanding the senior manager of the City, (if in fact this new position is necessary and it is accepted after public consultation) and a competition to find the most suitable candidate
- 4) Each (or both) of the two members of Council (appears to be Regional Councillor Gino Rosati and Ward Councillor DeFrancesca) who first and seconded the motion to go into the improper closed meeting, schedule a meeting with the Integrity Commissioner and ask the Commissioner to prepare a report and give advice as to how to address the violations of the Code of Ethical Conduct, and the steps that need to be taken to prevent another improper closed meeting. ***I note not all of council violated the code, however this is an issue that applies to all of council going forward.***
- 5) Council address the bad advice from senior staff and the impact of senior staff failing to correct council's actions and takes steps to ensure council is properly advised on adhering to the Act, and policies of the city in order to avoid code of conduct violations. (note: this includes a report from the Integrity Commissioner)

Note that the alternative (as above) to rescinding the closed meeting bylaws is the courts and the alternative to resolving the breaches of the Code of Ethical in an amicable and cooperative manner, (and taking steps to ensure the code is not breached again) is any resident may file a complaint with the Integrity Commissioner.

I am confident council will make the right decision and take the recommended steps above.

Thank you for your time.