**REPORT TO**

**THE CORPORATION OF THE TOWNSHIP OF BROCK REGARDING THE INVESTIGATION OF THE CLOSED MEETING OF COUNCIL FOR THE TOWNSHIP OF BROCK ON MAY 15, 2015**

1. **COMPLAINT**

The Corporation of the Township of Brock (“Township”) received a complaint about a Closed Meeting of the Township Council held on May 15, 2015. The essence of the complaint is that the closed meeting did not meet the requirements of the *Municipal Act, 2001*[[1]](#footnote-1),as amended by Bill 130[[2]](#footnote-2) (“*Municipal Act*” or *“Act*”).

This request was sent to the offices of Amberley Gavel Ltd. (“Amberley Gavel”) for investigation.

1. **JURISDICTION**

The Township appointed Local Authority Services (LAS) as its closed meeting investigator pursuant to section 239.2 of the *Municipal Act*.

LAS has delegated its powers and duties to Amberley Gavel to undertake the investigation and report to Township Council.

1. **BACKGROUND**

Section 239 of the *Municipal Act* provides that all meetings of a municipal council, local board or a committee of either of them shall be open to the public. This requirement is one of the elements of transparent local government.

The section sets forth exceptions to this open meetings rule. It lists the reasons for which a meeting, or a portion of a meeting, may be closed to the public. The section confers discretion on a council or local board to decide whether or not a closed meeting is required for a particular matter. That is, it is not required to move into closed session if it does not feel the matter warrants a closed session discussion.

Section 239 reads in part as follows:

Meetings open to public

**[239.](http://www.e-laws.gov.on.ca/html/statutes/french/elaws_statutes_01m25_f.htm" \l "s239s1)**[(1)](http://www.e-laws.gov.on.ca/html/statutes/french/elaws_statutes_01m25_f.htm#s239s1)  Except as provided in this section, all meetings shall be open to the public. 2001, c. 25, s. 239 (1).

**Educational or training sessions**

(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.

The *Municipal Act* also prohibits the taking of a vote during any closed session unless the vote is for procedural matters or for given direction to staff and other municipal officers or agents (section 239.(5) and 239.(6)). Hence, a council, committee, or local board is prohibited from making substantive decisions in closed session.

The *Act* authorizes the municipality to appoint an investigator who has the function to investigate in an independent manner, on a complaint made to him or her by any person, whether the municipality or a local board has complied with 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, and to report on the investigation (section 239.(2)).

1. **INVESTIGATION**

Documents reviewed during the course of the investigation included the Agenda and Minutes and Supporting Documents for the Closed Meeting of Council on May 15, 2015, the Procedural By-Law and Notice By-law, and other relevant documentation. The Township CAO & Municipal Clerk (“Clerk”) was also consulted during the course of the investigation.

1. **BACKGROUND**
2. **The Complaint**

The complaint alleges that the discussion that took place at the Closed Meeting, as evidenced by statements made in the local press by the Mayor and the CAO and a follow up report to Council on June 16, 2015, was not properly the subject of a closed meeting. The complaint states that the subject matter was not “for purposes of training or educating the members of Council but rather to seek the input, opinions, and advice from members of Council”. Given that Council received a follow up report to this closed session at its Council Meeting of June 16, the complaint states that “the members of Council were obviously very involved in submitting information as to the direction the various members wish to take [for] The Township of Brock”.

1. **Agenda for the Council Meeting of May 15, 2015**

The Agenda for the Meeting of Council on May 15, 2015 indicates that portions of the meeting would be held in closed session “for education and training purposes”. It noted that, apart from routine procedural matters, Council would be having a “Strategic Planning Session”.

The Clerk advised that the workshop was held in closed session in order to allow for a “free flow” of ideas by workshop participants. He felt that the exemption to the *Municipal Act* relating to “education and training” (under section 239(3.1)) covered this type of workshop. He noted that it was always intended that the community would have input into the final strategic plan that was ultimately adopted by Council.

1. **Minutes of the Council Meeting of May 15, 2015**

The Minutes for the Meeting of Council on May 15, 2015 indicate that the meeting convened in open session at 9:04 a.m. and, after canvassing “declarations of pecuniary interest”, convened into closed session at 9:05 a.m. by Council resolution for “education and training purposes related to strategic planning initiatives”. The Minutes note that Council remained in closed session until 3:16 p.m., although the Clerk advised that the time noted, as 3:16 p.m., is a typographical error and the Minutes should have indicated that the closed session ended at 3:47 p.m. and the open meeting adjourned at 3:49 p.m.

1. **Minutes of the “In Camera Session” of Council of May 15, 2015**

The Minutes confirm that Council was in closed session to discuss strategic planning issues such as opportunities and challenges; the vision for the Township; a mission statement; governing principles for strategic initiatives; strategic goals; and strategic priorities. No votes, apart from procedural matters, were taken in closed session.

1. **Minutes of the Council Meeting of May 15, 2015**

The consultant who facilitated the strategic planning session produced a document which captured the discussion and direction from that session. That report was placed on the Council Meeting (in Open Session) on June 16, 2015.

The report indicates that:

* The purpose of the workshop was to allow members of Council and Senior Township Staff to collectively discuss the challenges and opportunities facing the Township of Brock and to identify an agreed-upon strategic platform for the next four year term.
* Council would be developing a “set of agreed upon strategic priorities for the coming term of Council” and that these strategic directions “would be used by Council, the CAO and Department staff as part of the budget setting and work planning process”.
* The session would be a “brainstorming exercise and that Council would collectively define the list of priorities and move toward a ranking of the order of priorities once the list had been fully developed”.
* During the session, Council and Senior Township staff agreed upon:
  + Challenges and Opportunities
  + Governing Principles that would “continue to drive their work as community and organizational leaders”
  + Preferred New Vision Statement
  + Corporate Mission Statement
  + Strategic Goals
  + Strategic Priorities
* That, as a result of the session, the participants made “tremendous progress in formulating a new Vision and Mission Statement, the articulation of key corporate values/governing fundamentals; the identification of six key goal areas and the development of the initial strategic priorities list [sic]”.
* The next step after the session would be for the participants to “review the draft list of Council-directed Strategic Priorities and that a gap analysis would be completed to ensure the list reflected the key areas of focus and was all-inclusive”.

According to the Clerk, the report was placed in open session of Council at its meeting on June 16, 2015. At that time, Members of Council, staff, and members of the public were invited to provide comments and to identify what, from the list contained in the workshop report, should be the top priorities for Council. Further public consultation is also being planned prior to a strategic plan being adopted.

1. **ANALYSIS AND FINDINGS**
2. **Section 239.(3.1) of the *Municipal Act***

The *Municipal Act* permits the holding of a closed meeting for the purposes of educating or training members of council. However, at any such meeting, members are prohibited from discussing or otherwise dealing with any matter in a way that materially advances the business or decision-making of the council. The *Act* does not define the terms “education” and “training”.

This discretionary exemption to the open meetings rule allows members of council to receive the benefit of education or training in an environment where they might feel more comfortable openly asking questions of the educators or trainers and when discussing their perceptions about their own personal level of knowledge or ability relating to a proficiency or skill. Examples of these types of sessions including training on communication skills, governance skills, team building, or leadership skills. The purpose of such training or education is not to discuss council business, either in terms of past business or decisions or potential future business or decisions.

In its 2013 publication entitled “What you need to know about: Closed Meetings”[[3]](#footnote-3), LAS explains the purpose of this discretionary provision as follows [emphasis added]:

Ongoing training of members of council, local boards or committees is a necessity. There is discretion whether the training is done in public or at a closed meeting. If the council, local board or committee chooses to receive training at a closed meeting then the restrictions found in subsection (3.1) apply. **When utilizing this reason for a closed meeting there can be no debate on an issue, and no member may encourage other members to support a particular position. This restriction includes merely discussing a matter in a manner that is intended to assist in understanding the business of the municipality or local board**.[[4]](#footnote-4)

It is clear from the Minutes of the Closed Meeting and the follow up report from the session that the workshop involved Members of Council discussing or otherwise dealing with strategic municipal matters in a way that would materially advance the business or decision-making of the council in the future. New Vision and Mission Statements were concluded; governing principles were established to guide future decision making; and strategic goals and priorities were identified which would steer Council’s work over the four year term. All of these conclusions materially advanced the future business or decision-making of the Council.

Although we also acknowledge that the decisions emanating from the workshop were to be subject to some form of public consultation, the Members of Council were establishing the parameters of such consultation by virtue of the vision, mission, principles, goals and priorities identified on May 15, 2015.

These decisions were subject to further prioritization and a gap analysis. Nevertheless, there were substantive discussions, leading to preliminary conclusions, that should not have been held in a closed session format.

We appreciate that a closed session allows for a more “free flow” of information and ideas as between Members of Council than if the discussion was taking place in an open, public session. However, to sanction that as an appropriate use of the “education or training” exemption could open the floodgates to a council, committee, or local board closing its meetings to the public whenever it wants to discuss “ideas” on any matter of council or local board business. That is not the intention of this “education and training” exemption under the *Municipal Act*.

We have determined that Township Council was in a Closed Session on May 15, 2015 to discuss matters that materially advanced the business and decision-making of Council. Since those discussions are impermissible under section 239.(3.1) of the *Municipal Act*, Council breached the open meetings provision of the *Act*. Indeed, Council went beyond mere discussions; it made certain substantive conclusions in closed session that were not procedural in nature or that did not involve directions to staff. Whether it did so by formal resolution or voting, or not, is immaterial. In order to ensure openness, transparency, and public accountability, substantive decisions cannot be made in a closed session of council, even if those decisions are subject to future public input.

Township Council members may have had the bona fide belief, guided by the establishment of the agenda by the Clerk, that they could use the “education and training” exemption to have a “free flowing” discussion prior to consulting with the public on the Township’s strategic plan. Such a belief was incorrect.

**VII. CONCLUSION**

Amberley Gavel has concluded that Council for the Township of Brock breached the open meetings requirement of the *Municipal Act* when meeting in closed session under section 239.(3.1) of the *Municipal Act* on May 15, 2015. Strategic Planning discussions clearly fall outside the provisions of Section 239.(3.1)

**VIII. PUBLIC REPORT**

We received full co-operation from the Clerk and we thank him.

This report is forwarded to the Council of the Township of Brock. The *Municipal Act* provides that this report be made public. It is suggested that the report be included on the agenda of the next regular meeting of Council or at a special meeting called for the purpose of receiving this report prior to the next regular meeting.

Nigel Bellchamber

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**AMBERLEY GAVEL LTD.**

**September 2015**

1. S.O. 2001, c. 25. [↑](#footnote-ref-1)
2. *Bill 130: An Act to amend various Acts in relation to municipalities*, S.O. 2006, c. 32 (“Bill 130”). [↑](#footnote-ref-2)
3. Available at: <http://www.las.on.ca/PDFs/Services/Closed-Meeting-Investigator/Resources/2013ClosedMeetingBooklet-FINAL.aspx>. [↑](#footnote-ref-3)
4. *Ibid.* at p. 11. [↑](#footnote-ref-4)