**REPORT TO**

**THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE**

**REGARDING ALLEGATIONS OF IMPROPERLY CLOSED MEETINGS OF THE COUNCIL FOR THE MUNICIPALITY OF KINCARDINE**

**BETWEEN FEBRUARY 6, 2013 AND JANUARY 20, 2014**

**I. COMPLAINT**

The Corporation of the Municipality of Kincardine (“Municipality”) received a complaint on April 16, 2014 about closed (in-camera) meetings of the Council for the Municipality (“Council”), held between the period February 6, 2013 and January 20, 2014, respecting the potential sale of Bruce Telecom by the Municipality. The essence of the complaint is that the holding of these closed meetings was in contravention of the open meetings provision 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 on May 12, 2014.

**II. JURISDICTION**

The Municipality 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 the Council of the Municipality.

**III. 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).

Exceptions

[(2)](http://www.e-laws.gov.on.ca/html/statutes/french/elaws_statutes_01m25_f.htm" \l "s239s2)  A meeting or part of a meeting may be closed to the public if the subject matter being considered is,

(a) the security of the property of the municipality or local board;

(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;

(e) litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board;

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

(g) a matter in respect of which a council, board, committee or other body may hold a closed meeting under another Act. 2001, c. 25, s. 239 (2).

Section 239(4)(a) of the *Municipal Act* requires that, “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 the fact of the holding of the closed meeting and the general nature of the matter to be considered at the closed meeting”.

Further, section 239(6) of the *Municipal Act* prohibits the taking of a vote in a closed meeting unless:

1. the *Act* permits or requires the meeting to be closed to the public; and
2. 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.

**IV. INVESTIGATION**

The investigation into the complaint began on May 16, 2013. Documents provided by the Municipality and reviewed during the course of the investigation included the Municipality’s Procedure and Notice By-laws, the Agendas and Minutes of the open and closed meetings of Council at issue, and other relevant documentation. The Clerk was consulted during the course of the investigation.

It should be noted that the role of an investigator of a complaint filed under Section 239.1 is fairly narrow. The investigator’s role is to determine “whether the municipality…has complied with section 239 or a procedure by-law under section 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). Accordingly, the role of the investigator is to examine and report on the *process* and not on the substance.

**V. BACKGROUND**

1. **Bruce Telecom**

Bruce Telecom provides telecommunication services to the municipalities of Kincardine, Paisley, Port Elgin, and Tiverton. It is a corporation that, to the point of its sale, was wholly owned by the Corporation of the Municipality of Kincardine.

On January 22, 2014 Council publicly resolved to sell Bruce Telecom for an amount of $24 million. According to the complaint, this was the first time that the public was aware that the Municipality was contemplating the sale of this municipal asset and that “no input on the sale was permitted by the taxpayers”. It was alleged that deliberations on the sale of Bruce Telecom occurred in eleven closed meetings of Council during the period February 6, 2013 to January 20, 2014, inclusive.

1. **Agenda and Minutes of the Open and Closed Meetings of Council**

The information listed on the agendas and the matters recorded in the open and closed meetings of Council during the time period in question are summarized on Appendix A of this investigation report.

**VI. ANALYSIS AND FINDINGS**

We were advised during our investigation that the meetings were all held in closed session because the subject matter dealt with security of the property of the municipality. It was indicated to us that a discussion in open session would affect the “economic value” of the transaction. We were told that Council’s concern was that public knowledge that the municipality was considering the sale of Bruce Telecom might cause a reduction in the value of the asset in the marketplace.

It was further indicated to us that the Agendas and Minutes do not disclose the general nature of this particular matter to be discussed, or which were discussed, because of the “sensitive nature” of the transaction. In other words, it would become public knowledge that Council was discussing Bruce Telecom, thereby affecting the “economic value” of the transaction.

Each of those reasons will be canvassed in light of the provisions in the *Municipal Act*.

1. **Section 239(2)(a) of the Municipal Act**

It was asserted that the subject matter dealt with the security of the property of the municipality and, therefore, an exception to the open meetings requirement was allowed by virtue of section 239(2)(a) of the *Municipal Act*.

The *Municipal Act* does not define the phrase “security of the property of the municipality”. However, the Information and Privacy Commissioner (“IPC”) considered the meaning of this phrase in a 2009 decision involving the City of Toronto and stated in part that [emphasis added]:

“The City takes the position that a closed meeting that deals with the financial matters pertaining to the sale of street and expressway lights is a meeting authorized by section 239(2)(a), as this subject matter can be characterized as “the security of the property of the City”. The City also argues that disclosure of the records would harm its financial and economic interest and that such a harm “falls squarely within the intent and meaning of ‘security of the property’ as contemplated in section 239(2)(a).”

After considering the arguments put forward by the City and the appellant, I conclude that the plain meaning of the phrase “security of the property of the municipality”, when used in the context in which it is employed in section 239(2) of the *Municipal Act, 2001*, is very different from the meanings the City wishes to give this phrase. I agree with the appellant that to give the phrase the meanings that the City urges is to distort its meaning.

**In my view, “security of the property of the municipality” should be interpreted in accordance with its plain meaning, which is the protection of property from physical loss or damage (such as vandalism or theft) and the protection of public safety in relation to this property**...”[[3]](#footnote-3)

Since the legislative aims of the *Municipal Freedom of Information and Protection of Privacy Act* are similar to the open meetings provision of the *Municipal Act*, in that the public has a right to open and transparent government, Amberley Gavel is guided in this instance by the meaning advanced by the IPC relating to the “security of the property of the municipality or local board”.[[4]](#footnote-4)

In terms of the potential harm to the municipality’s financial and economic interests in assets other than land, the IPC concluded:

“In coming to this conclusion, I recognize that this interpretation fails to prevent a harm which one might expect the Legislature to have addressed; premature disclosure of a municipality’s bargaining strategy when attempting to buy or sell assets other than land [i.e. sale of street and expressway lights]. The result of this “plain meaning” interpretation is that section 239(2) protects the confidentiality of negotiations for the purchase or sale of municipally-owned land (under section 239(2)(c)), but not of other municipally-owned assets.”[[5]](#footnote-5)

Hence, section 239(2)(a) of the *Municipal Act* would cover situations where the potential loss or damage to property extends to more than just land, such as other municipal assets. However, the application of the phrase “loss or damage” relates to physical protection of the asset (from vandalism or theft) or protection of public safety as a consequence of the use of the asset. Protecting the municipality’s bargaining strategy, in terms of shielding it from financial or economic loss, is not a loss or damage within the meaning of security of property in the *Act*.

For the purposes of this investigation, the Council must be found to have discussed in closed session considerations related to protection of property from loss or damage, but not relating to protection of financial and economic interests, in order to comply with section 239(2)(a) of the Municipal Act.

We have reviewed the minutes of the Closed Sessions of Council throughout the period February 6, 2013 to January 20, 2014. We have concluded that none of the discussions would permit the meeting to have been closed as an exemption under section 239(2)(a) to the open meetings provision of the *Municipal Act*. The discussions did not relate to the protection of a municipal asset from physical loss or damage or to the protection of public safety as a consequence of the use of the asset.

1. **Section 239(2)(c) of the Municipal Act**

The sale of Bruce Telecom included the sale of lands by the Municipality upon which the Bruce Telecom operations were located. Although Council did not invoke the exemption of the *Municipal Act* in section 239(2)(c) dealing with “a proposed or pending acquisition or disposition of land”, we will canvass this exemption.

The fundamental purpose of the open meetings rule in the *Municipal Act* is to foster transparency, openness, and accountability in municipal government. However, 239(2)(c) allows a council or local board to instruct officers, staff, agents, or a person retained under contract by the municipality or local board (collectively, “agent”) in closed session to negotiate the acquisition or disposal of land within certain parameters.

It makes sense that a council or local board would not have open public discussions about its negotiating strategy, most specifically the price it is willing to pay for lands that it wants to acquire title to or receive for lands that it wants to dispose of.[[6]](#footnote-6) Open disclosure of the price that a municipality is willing to pay for acquisition of land, or willing to accept for disposal of land, could detrimentally affect the municipality’s interest. Potential purchasers or sellers of land ought not to know what value a council is willing to accept or pay. The exemption under the *Municipal Act* protects the municipality’s economic interests by not compromising the municipality’s bargaining position. Hence, the discussion can be held in closed session.

The Municipality was not selling only the land owned by the Municipality as the sole shareholder of Bruce Telecom. It was selling the entire ongoing operation of a municipal asset.[[7]](#footnote-7)

We do not believe that the *Municipal Act* exemption dealing with the acquisition or disposition of land should be used so broadly as to encompass closed session discussions of an entire municipal operation, merely because that operation is situated on lands. If that were the case, a municipality or local board could discuss, behind closed doors, the sale of an entire municipal service (for example, all community centres) without the benefit of public disclosure or discussion, merely because the service operates on lands owned by the municipality or local board.

That is clearly not the intent of the *Municipal Act*. Had the Legislature intended to shield the sale of a municipal operation from public discussion or disclosure, it would have provided for that explicitly in the legislation.[[8]](#footnote-8)

We have reviewed the record of all of the closed sessions of Council throughout the period February 6, 2013 to January 20, 2014. We conclude that none of the discussions would permit the meeting(s) to have been closed as an exemption to the open meetings provisions of the Municipal Act under section 239(2)(c) dealing with the acquisition or disposition of land by a municipality or local board.

1. **Adding Supplementary Matters to the Agenda**

We noted a number of occasions where the subject matter of the complaint was introduced on the floor of Council, rather than in the published, advance agenda (May 8, 2013; December 18, 2013; January 20, 2014; and January 22, 2014).

While the Municipality’s Procedure By-Law does provide for “Amendments, Additions or Deletions to/from the Agenda”[[9]](#footnote-9), we would recommend that this be done only in circumstances needing immediate attention where advance notice is impossible.

Best practice is that the public knows in advance what will be on the agenda on a municipal council, local board, or committee of either so that they have notice of what will be discussed. This principle of transparency should be respected whenever possible even if the subject matter is one that can be properly discussed in closed session.

We also noted three occasions where the subject matter of the complaint was introduced without notice and in closed session (February 6, 2013, November 13, 2013; and November 20, 2013). Further, Council added an item, by resolution in closed session (October 2, 2013). In the above cases, the resolution to move into closed session did not include the authority to discuss this matter as an exemption to the open meetings rule of the *Municipal Act* (e.g. by citing the applicable section of the *Act* and the general nature of the matter to be discussed).

Council may discuss in closed session only those specific matters for which it is given authority by resolution in an open meeting of Council. A Council cannot add items in closed session.

We would suggest that Council be cautious about adding last minute items to its agenda. Further, Council must not discuss any items in closed session that have not been adequately and appropriately disclosed and authorized by resolution in the open session of its meetings.

1. **Disclosing the General Nature of the Item to be Discussed**

Section 239(4)(a) of the *Municipal Act* requires that, “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 the fact of the holding of the closed session and the general nature of the matter to be considered at the closed meeting”.

With the exception of those identified in (c) above, Council did pass a resolution at the open session of the various meetings that there would be a closed meeting of Council. However, none of the resolutions adequately disclosed the general nature of the matter to be deliberated at the closed session.

At minimum, the resolution should cite the reason for moving into closed session, referring specifically to the applicable reference in the *Municipal Act* that allows for the exception to the open meetings provision (e.g. sections 239(2)(a) to (g), or section 239(3), or section 239(3.1) as applicable).

Moreover, the wording of the resolution needs to do more than simply refer to the section of the *Municipal Act* that permits the closed meeting exception. The requirement to add a level of informative detail to the resolution was at issue in a recent case before the Ontario Court of Appeal.

In *Farber v. Kingston (City)*, the municipality resolved to move in-camera to discuss “legal matters”, without more specifics. The City argued that the *Municipal Act* required only that the municipality cite the applicable section in section 239 of the *Act* (although admitting that it did not even do that in the matter being contested). The Court disagreed, indicating that:

In the circumstances of this case, I do not think that the description “legal matters” is sufficient. In my view, the clear legislative purpose informing s. 239 is to maximize the transparency of municipal governance so far as that as possible in the circumstances.

…

The respondent argues that s. 239(4)(b) requires that the resolution do no more than state the exception in s. 239(2) relied on to justify closing the meeting to the public. However, in my view, if the legislative intent was to require no more than that, it would have been easy to say so in s. 239(4)(b). The notion of “the general nature of the matter to be considered” suggests more fidelity to transparent governance than that, while recognizing that a full description of the matter to be considered cannot be revealed to the public because of the very need to go into closed session.

…

Reading subsections (2) and (4)(b) together in the context of the desirability of

open municipal government, I think 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 the public… At the very least, “legal matters” is inadequate to state the general nature of the matter to be considered at the closed meetings.[[10]](#footnote-10)

In maximizing the information available, council, local boards, and its committees respect the principles of open and transparent government. These principles are at the core of the open meetings provision of the *Municipal Act*.

Had Council been discussing issues regarding Bruce Telecom that were matters which could properly be discussed in closed session (e.g. labour relations matters), it could have added the words “Bruce Telecom” in brackets after the specified exemption to the *Municipal Act* without being more specific about the particular discussion that it would be having. For example, if Council was discussing matters that are subject to solicitor/client privilege, it could say:

Moved by \_\_\_\_\_\_, Seconded by \_\_\_\_\_, THAT Council move into a closed meeting pursuant to section 239(2)(f) of the *Municipal Act, 2001*, as amended, to receive advice that is subject to solicitor-client privilege, including communications necessary for that purpose, (Bruce Telecom).

Council is aware of this standard of disclosure since it included explanatory terms to other items on closed session resolutions that were not the subject matter of this complaint (e.g. (wind turbines), (candidates for Heritage Kincardine Committee, Kincardine Trails and Accessibility Advisory Committee and a payment plan proposal)).

At a minimum Council must cite the applicable section of the *Municipal Act* when it resolves to go into closed session on a matter. In addition, Council must provide a general description of the issue to be discussed in closed session “in a way that maximizes the information available to the public while not undermining the reason for excluding the public”[[11]](#footnote-11).

1. **Closing All or Part of a Meeting**

There may have been some elements in the discussions relative to the sale of Bruce Telecom that might have properly been held in closed session. Those discussions, for example, might involve directing its agent on the price that Council was willing to accept in negotiations for the sale of Bruce Telecom, advice that was subject to solicitor/client privilege, or to employee or labour relations.

Section 239(2) of the *Municipal Act* provides that “all or part of a meeting” may be closed to the public if the subject matter under discussion relates to one of the listed exemptions to the open meetings rule. That does not mean that the whole meeting must be closed to the public. Only that portion of the meeting that is subject to the exemption can be closed. Best practice is for a council, committee, or local board to discuss as much as it can in an open meeting and go in-camera only on those portions of the subject matter that properly meet the exemptions criteria.

This best-practice approach will foster the aims of the *Municipal Act* requiring openness and transparency in municipal decision-making, including discussions that lead up to such decisions.

1. **Voting in Closed Session**

Section 239(6) of the *Municipal Act* prohibits the taking of a vote in a closed meeting unless:

1. the *Act* permits or requires the meeting to be closed to the public; and
2. 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.

On a number of occasions, Council made substantive decisions about Bruce Telecom while in closed session (July 29, 2013; August 7, 2013; August 14, 2013; October 2, 2013; and December 18, 2013). Those decisions were not procedural or directive in nature.

A council, a local board, or a committee of either of them is prohibited by the *Municipal Act* from making substantive decisions in closed session that are not procedural or directive in nature.

In our view, it does not matter that the substantive decision to sell Bruce Telecom was confirmed, by recorded vote, in open session of Council on January 22, 2014.

We have concluded that the decision to consider selling the operation at an acceptable price was made in closed session almost six months before it was confirmed in a public venue. The ultimate decision to sell the operation was made in closed session more than one month before it was confirmed in open session.

The *Municipal Act* does not permit either of these decisions to be made in closed session.

The confirmatory decision was not subject to any public input or disclosure and it was added as a last minute item to the January 22, 2014 Council meeting. A review of the recording of this meeting indicates that there was no substantive debate in open session about the item (the two motions were passed in just over four minutes, including the time for the Clerk to read out the motions).

Indeed, the Mayor indicated in open session on January 22, 2014 that the agreement to sell Bruce Telecom had already been executed by the Mayor and CAO prior to the Council meeting.

In our view, this situation is analogous to the situation in the Supreme Court of Canada case of *London (City) v. RSJ Holdings Inc.* which considered the open meetings rule of the *Municipal Act*[[12]](#footnote-12). In that case the Supreme Court upheld a decision of the Ontario Court of Appeal to quash an interim control by-law that was improperly decided in closed session of a meeting of the City of London Council. In addressing the perfunctory nature of the discussion in open session, the Supreme Court of Canada said:

The City’s conduct in closing the two meetings in question was neither inadvertent nor trivial. In fact its council meeting of January 19, 2004 was conducted in a manner that is rather reminiscent of the problems reported more than 20 years ago that led to the passing of the statutory open meeting requirement. It is worth repeating the words of the Working Committee quoted earlier: “some municipal councils employ lengthy, in-camera special and committee meetings to discuss matters under debate and then ratify their decision in full council in a few minutes, with minimal discussion”.

In my view, the eight-minute public session during the course of which the interim by-law was passed without debate or discussion along with 31 other by-laws did nothing to cure the defect.[[13]](#footnote-13)

1. **Rising and Reporting from Closed Session**

Although Council properly rose from all of its closed sessions back into the public portion of its meetings, Council did not report out from the closed sessions what had occurred in any of the closed sessions in relation to Bruce Telecom.

Although not required to do so by the *Municipal Act*, it is best practice to do so. Providing a brief summary of what happened in the closed session, without divulging the substance of the closed session discussions (which would undermine the reason for excluding the public), adds to transparency and openness in municipal government. This practice should be invoked even if there are no members of the public remaining in the gallery upon rising from the closed session; reporting out would still be recorded in the minutes of the meeting for later public consumption.

Council is aware of this standard of disclosure since it did report out on other items discussed in closed session that were not the subject matter of this complaint.

We recommend that Council always report out from its closed sessions, providing summary information about what transpired in closed session without divulging the substance of the closed session discussions.

**VII. CONCLUSION**

Amberley Gavel has concluded the Council for the Municipality of Kincardine intentionally breached the open meetings requirement of the *Municipal Act* in closing its meetings to the public between February 6, 2013 and January 20, 2014 during discussions of the proposed sale of Bruce Telecom.

**VIII. PUBLIC REPORT**

This report is forwarded to the Council of the Municipality of Kincardine. 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.

**AMBERLEY GAVEL LTD.**

**July 22, 2014**

**APPENDIX A TO THE REPORT TO**

**THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE**

**REGARDING ALLEGATIONS OF IMPROPERLY CLOSED MEETINGS OF THE COUNCIL FOR THE MUNICIPALITY OF KINCARDINE**

**BETWEEN FEBRUARY 6, 2013 AND JANUARY 20, 2014**

**1. Meeting of February 6, 2013**

1. **Agenda for the Council Meeting**

The Agenda for the February 6, 2013 Council Meeting contained two items to be dealt with in-camera listed as:

**14.1.** **Move into Closed Session**

**Motion #02/06/13 –**

Moved by:

Seconded by:

THAT Council move into closed session to consider advice that is subject to solicitor-client privilege, including communications necessary for that purpose (wind turbines) and a proposed or pending acquisition or disposition of land by the municipality or local board (parking lot);

AND FURTHER THAT Council return to regular open meeting upon completion.

1. **Minutes of the Council Meeting**

The Minutes of the Council Meeting on February 6, 2013 indicate that Council moved into closed session by Resolution #02/06/13-07, duly moved and seconded, as follows:

THAT Council move into closed session to consider advice that is subject to solicitor-client privilege, including communications necessary for that purpose (wind turbines) and a proposed or pending acquisition or disposition of land by the municipality or local board (parking lot);

AND FURTHER THAT Council return to regular open meeting upon completion.

The Minutes further indicate that there were no matters arising from the closed session. That is, nothing was reported in the open meeting respecting matters discussed in the closed session.

1. **Agenda for the Closed Session of Council**

The Agenda for the Closed Session of Council of February 6, 2013 did not list the item that is the subject of this complaint. It listed the two items specified in Resolution #02/05/13-07 (wind turbines and parking lot).

1. **Minutes of the Closed Session of the Council**

The Minutes for the Closed Session of Council on February 6, 2013 indicate that Council moved into closed session at 6:52 p.m. and rose out of closed session at 7:07 p.m. As part of the closed session, Council discussed the Bruce Telecom matter, despite the fact that the subject matter was not listed on the Agenda or included in the resolution to move into closed session. A direction was given to the Mayor to proceed on certain matters.

**2. Meeting of May 8, 2013**

1. **Agenda for the Council Meeting**

The Agenda for the May 8, 2013 Council Meeting did not list any closed session items for discussion as the item was added to the Agenda at the Council Meeting.

1. **Minutes of the Council Meeting**

The Minutes of the Council Meeting on May 8, 2013 indicate that Council added an item to be discussed in closed session, by Resolution #05/08/13-01 duly moved and seconded, as follows:

THAT Council approve the following addition to the agenda:

1. *10.1 Move into Closed Session* – THAT Council move into closed session to consider the security of the property of the municipality or local board (natural gas project).

The Minutes indicate that Council resolved to move into closed session by Resolution #05/08/13-14 to consider the “security of the property of the municipality or local board (natural gas project)” and to return to the regular open meeting upon completion.

The Minutes further indicate that there were no matters arising from the closed session.

1. **Agenda for the Closed Session of Council**

The Agenda for the Closed Session of Council of May 8, 2013 listed the item that is the subject of this complaint.

1. **Minutes of the Closed Session of the Council**

The Minutes for the Closed Session of Council on May 8, 2013 indicate that Council moved into closed session at 7:16 p.m. and rose out of closed session at 7:30 p.m. As part of the closed session, Council discussed the matter that is the subject of this complaint. No votes were taken or direction given.

**3. Meeting of June 13, 2013**

1. **Agenda for the Special Council Meeting**

The Clerk indicated that Notice of the Special Meeting was posted to the Municipality’s website on June 7, 2013. The Agenda for the Special Meeting of Council on June 13, 2013 contained an item to be dealt with in-camera listed as:

**4.1.** **Move into Closed Session**

**Motion #06/13/13 –**

Moved by:

Seconded by:

THAT Council move into closed session to consider the security of the property of the municipality or local board;

AND FURTHER THAT Council return to regular open meeting upon completion.

1. **Minutes of the Special Council Meeting**

The Minutes of the Special Meeting of Council on June 13, 2013 indicate that Resolution #06/13/13-01 was duly moved and seconded to move into closed session to “consider the security of the property of the municipality or local board” and to return to the regular open meeting upon completion.

The Minutes do not indicate if there were matters arising from the closed session.

1. **Agenda for the Closed Session of the Special Meeting of Council**

The Agenda for the Closed Session of the Special Meeting of Council of June 13, 2013 listed the item that is the subject of this complaint.

1. **Minutes of the Closed Session of the Special Meeting of Council**

The Minutes for the Closed Session of the Special Meeting of Council on June 13, 2013 indicate that Council moved into closed session at 5:00 p.m. and rose out of closed session at 6:57 p.m. Council received a report from consultants relating to the subject matter of this complaint. No votes were taken or direction given.

**4. Meeting of July 29, 2013**

1. **Agenda for the Special Council Meeting**

Notice was appropriately given by the Municipality for the calling of the Special Council Meeting.

The Agenda for the Special Meeting of Council on July 29, 2013 contained an item to be dealt with in-camera listed as:

**4.1.** **Move into Closed Session**

**Motion #07/29/13 –**

Moved by:

Seconded by:

THAT Council move into closed session to consider the security of the property of the municipality or local board;

AND FURTHER THAT Council return to regular open meeting upon completion.

1. **Minutes of the Special Meeting of Council**

The Minutes of the Special Meeting of Council on July 29, 2013 indicate that Resolution #07/29/13-01 was duly moved and seconded to move into closed session to “consider the security of the property of the municipality or local board” and to return to regular open meeting upon completion.

The Minutes did not indicate if there were matters arising from the closed session.

1. **Agenda for the Closed Session of Special Meeting of Council**

The Agenda for the Closed Session of the Special Meeting of Council of July 29, 2013 listed the item that is the subject of this complaint.

1. **Minutes of the Closed Session of the Special Meeting of Council**

The Minutes for the Closed Session of the Special Meeting of Council on July 29, 2013 indicate that Council moved into closed session at 5:02 p.m. and rose out of closed session at 8:15 p.m. A consultant’s report was presented to Council. A substantive decision was then made by Council, by recorded vote, in the closed session respecting the matter. That vote was not procedural in nature. In addition, a direction was given to the Chief Administrative Officer.

**5. Meeting of August 7, 2013**

1. **Agenda for the Council Meeting**

The Agenda for the Council Meeting on August 7, 2013 contained an item to be dealt with in-camera listed as:

**14.0 CLOSED SESSION IF REQUIRED**

**Motion #08/07/13 –**

Moved by:

Seconded by:

THAT Council move into closed session to consider the security of the property of the municipality or local board, a proposed or pending acquisition or disposition of land by the municipality or local board, personal matters about an identifiable individual, including municipal or local board employees (BIA Candidates and Human Resource matter), and advice that is subject to solicitor-client privilege, including communications necessary for that purpose (wind turbines);

AND FURTHER THAT Council return to regular open meeting upon completion.

1. **Minutes of the Council Meeting**

The Minutes of the Meeting of Council on August 7, 2013 indicate that Resolution #08/07/13-01 was duly moved and seconded to move into closed session to:

“consider the security of the property of the municipality or local board, a proposed or pending acquisition or disposition of land by the municipality or local board, personal matters about an identifiable individual, including municipal or local board employees (BIA Candidates and Human Resource matter), and advice that is subject to solicitor-client privilege, including communications necessary for that purpose (wind turbines)” and to return to regular open meeting upon completion.

There were two matters recorded as arising from the closed session. Those matters do not relate to the subject matter of this complaint.

1. **Agenda for the Closed Session of Council**

The Agenda for the Closed Session of Council of August 7, 2013 listed the item that is the subject of this complaint.

1. **Minutes of the Closed Session of Council**

The Minutes for the Closed Session of Council on August 7, 2013 indicate that Council moved into closed session at 8:28 p.m. and rose out of closed session at 9:34 p.m. A substantive decision was made, by recorded vote, in the closed session, by Council respecting the matter. That vote was not procedural in nature.

**6. Meeting of August 14, 2013**

1. **Agenda for the Council Meeting**

The Agenda for the Council Meeting on August 14, 2013 contained an item to be dealt with in-camera listed as:

**10.0 CLOSED SESSION IF REQUIRED**

**Motion #08/14/13 –**

Moved by:

Seconded by:

THAT Council move into closed session to consider the security of the property of the municipality or local board and advice that is subject to solicitor-client privilege, including communications necessary for that purpose (wind turbines);

AND FURTHER THAT Council return to regular open meeting upon completion.

1. **Minutes of the Council Meeting**

The Minutes of the Council Meeting on August 14, 2013 indicate that Resolution #08/14/13-19 was duly moved and seconded to move into closed session to:

“consider the security of the property of the municipality or local board and advice that is subject to solicitor-client privilege, including communications necessary for that purpose (wind turbines)” and to return to regular open meeting upon completion.

The Minutes indicate that Council resolved in closed session to extend the hour of automatic adjournment to complete the business on the agenda. No other matters were recorded as arising from the closed session.

1. **Agenda for the Closed Session of Council**

The Agenda for the Closed Session of Council of August 7, 2013 listed the item that is the subject of this complaint.

1. **Minutes of the Closed Session of Council**

The Minutes for the Closed Session of Council on August 14, 2013 indicate that Council moved into closed session at 7:25 p.m. and rose out of closed session at 8:25 p.m. A substantive decision was made in the closed session by Council respecting the matter. Although the resolution was listed as a “Direction to Staff”, it was not merely a direction; it was a substantive decision on a matter. That decision was not procedural in nature.

**7. Meeting of October 2, 2013**

1. **Agenda for the Council Meeting**

The Agenda for the Council Meeting of October 2, 2013 contained an item to be dealt with in-camera listed as:

**14.0 CLOSED SESSION IF REQUIRED**

**Motion #10/02/13 –**

Moved by:

Seconded by:

THAT Council move into closed session to consider personal matters about an identifiable individual, including municipal or local board employees (candidates for Heritage Kincardine Committee, Kincardine Trails and Accessibility Advisory Committee and a payment plan proposal);

AND FURTHER THAT Council return to regular open meeting upon completion.

1. **Minutes of the Council Meeting**

The Minutes of the Council Meeting on October 2, 2013 indicate that Resolution #10/02/13-11 was duly moved and seconded to move into closed session to:

consider personal matters about an identifiable individual, including municipal or local board employees (candidates for Heritage Kincardine Committee, Kincardine Trails and Accessibility Advisory Committee and a payment plan proposal);

AND FURTHER THAT Council return to regular open meeting upon completion.

There were two matters recorded as arising from the closed session. Those matters do not relate to the subject matter of this complaint.

1. **Agenda for the Closed Session of Council**

The Agenda for the Closed Session of Council of October 2, 2013 did not list the item that is the subject of this complaint.

1. **Minutes of the Closed Session of Council**

The Minutes for the Closed Session of Council on October 2, 2013 indicate that Council moved into closed session at 8:23 p.m. and rose out of closed session at 8:39 p.m. While in closed session, Council approved, by resolution, the addition to the Agenda of the item that is the subject matter of this complaint. A substantive decision was made in the closed session by Council respecting the matter. Although the resolution was listed as a “Direction to Staff”, it was not merely a direction; it was a substantive decision on a matter. That decision was not procedural in nature.

**8. Meeting of November 13, 2013**

1. **Agenda for the Council Meeting**

The Agenda for the Council Meeting of November 13, 2013 did not contain any items to be dealt with in closed session.

1. **Minutes of the Council Meeting**

The Minutes of the Council Meeting on November 13, 2013 indicate that Resolution #11/13/13-01 was duly moved and seconded:

THAT Council approve the following addition to the Agenda:

i) 10.1 Move into Closed Session – THAT Council moved into closed session to consider personal matters about an identifiable individual, including municipal or local board employees; AND FURTHER THAT Council return to regular open meeting upon completion.

By Resolution #11/13/13-08, duly moved and seconded, Council resolved to move into Closed Session “to consider personal matters about an identifiable individual, including municipal or local board employees” and to return to regular open meeting upon completion.

There were no matters reported as arising from the closed session.

1. **Agenda for the Closed Session of Council**

The Agenda for the Closed Session of Council of November 13, 2013 did not list the item that is the subject of this complaint.

1. **Minutes of the Closed Session of Council**

The Minutes for the Closed Session of Council on November 13, 2013 indicate that Council moved into closed session at 7:30 p.m. and rose out of closed session at 7:45 p.m. While in closed session, Council discussed the issue that is the subject matter of this complaint even though it was not listed on the Agenda and was not covered by the resolution to resolve into closed session. No substantive decisions were made by Council respecting this matter.

**9. Meeting of November 20, 2013**

1. **Agenda for the Council Meeting**

The Agenda for the Council Meeting of November 20, 2013 did not contain any items to be dealt with in Closed Session.

1. **Minutes of the Council Meeting**

The Minutes of the Council Meeting on November 20, 2013 indicate that Resolution #11/20/13-01 was duly moved and seconded:

THAT Council approve the following addition to the Agenda:

1. 10.1 Move into Closed Session – THAT Council moved into closed session to consider personal matters about an identifiable individual, including municipal or local board employees; AND FURTHER THAT Council return to regular open meeting upon completion.

By Resolution #11/13/13-19, duly moved and seconded, Council resolved to move into Closed Session “to consider personal matters about an identifiable individual, including municipal or local board employees” and to return to regular open meeting upon completion.

There were two matters recorded as arising from the closed session. Those matters do not relate to the subject matter of this complaint.

1. **Agenda for the Closed Session of Council**

The Agenda for the Closed Session of Council of November 20, 2013 did not list the item that is the subject of this complaint.

1. **Minutes of the Closed Session of Council**

The Minutes for the Closed Session of Council on November 20, 2013 indicate that Council moved into closed session at 7:48 p.m. and rose out of closed session at 8:35 p.m. While in closed session, Council discussed the issue that is the subject matter of this complaint even though it was not listed on the Agenda and was not covered by the resolution to resolve into closed session. No substantive decisions were made by Council respecting this matter.

**10. Meeting of December 18, 2013**

1. **Agenda for the Council Meeting**

The Agenda for the Council Meeting of December 18, 2013 did not contain any items to be dealt with in Closed Session.

1. **Minutes of the Council Meeting**

The Minutes of the Council Meeting on December 18, 2013 indicate that Resolution #12/18/13-01 was duly moved and seconded:

“THAT Council approve the following addition to the Agenda:

1. 14.1 Move into Closed Session – THAT Council moved into closed session to consider the security of the municipality or local board; AND FURTHER THAT Council return to regular open meeting upon completion.”

By Resolution #12/18/13-14, duly moved and seconded, Council resolved to move into Closed Session “to consider the security of the municipality or local board” and to return to regular open meeting upon completion.

The Minutes indicate that Council resolved in closed session to extend the hour of automatic adjournment to complete the business on the agenda. No other matters were recorded as arising from the closed session.

1. **Agenda for the Closed Session of Council**

The Agenda for the Closed Session of Council of December 18, 2013 listed the item that is the subject of this complaint.

1. **Minutes of the Closed Session of Council**

The Minutes for the Closed Session of Council on December 18, 2013 indicate that Council moved into closed session at 7:45 p.m. and rose out of closed session at 8:58 p.m. While in closed session, Council made a substantive decision, by recorded vote, respecting the subject matter of this complaint. That decision was not procedural in nature.

**11. Meeting of January 20, 2014**

1. **Agenda for the Special Meeting of Council**

The Agenda for the Special Meeting of Council of January 20, 2014 did not contain any items to be dealt with in Closed Session. The item was added to the Agenda at the Special Meeting.

1. **Minutes of the Special Meeting of Council**

The Minutes of the Special Meeting of Council on January 20, 2014 indicate that Resolution #01/20/14-01 was duly moved and seconded:

THAT Council approve the following addition to the Agenda:

1. 14.1 Move into Closed Session – (security of the property of the municipality or local board and labour relations or employee negotiations)

By Resolution #01/20/14-02, duly moved and seconded, Council resolved to move into Closed Session “to consider the security of the municipality or local board and employee negotiations” and to return to regular open meeting upon completion.

There were no matters recorded as arising from the closed session.

1. **Agenda for the Closed Session of Council**

There was no Agenda for the Closed Session of Council of January 20, 2014 as the item was added to the Agenda at the Special Meeting.

1. **Minutes of the Closed Session of Council**

The Minutes for the Closed Session of the Special Meeting of Council on January 20, 2014 indicate that Council moved into closed session at 5:02 p.m. and rose out of closed session at 5:16 p.m.

While in closed session, Council discussed the subject matter of this complaint. No substantive or procedural decisions were made by Council while in closed session.

**12. Meeting of January 22, 2014**

1. **Agenda for the Council Meeting**

The Agenda for the Council Meeting of January 22, 2014 does not list the matter that is the subject of this complaint.

1. **Minutes of the Council Meeting**

The Minutes of the Council Meeting on January 22, 2014 indicate that Resolution #01/22/14-01 was duly moved and seconded as follows to add the following items to the Agenda:

1. 8.4 – Bruce Telecom Motion
2. 9.1 – Bruce Telecom By-law

Under “Motions & Notices of Motion”, item 8.4 titled “Bruce Telecom”, Council resolved by recorded vote as follows:

WHEREAS on July 29, 2013 the Municipality of Kincardine convened a Closed Special Council meeting to discuss an Assessment Report regarding Bruce Telecom prepared by Accelerator Strategies Inc., partnering with TMT Analysis, which report reviewed Bruce Telecom’s past performance, operations, financial outlook, possible valuation range and strategic alternatives;

AND WHEREAS the Mayor and Members of Council discussed the aforementioned Assessment Report, together with verbal input received from Bruce Telecom Board members including the President & Chief Executive Officer as presented at the January 29, 2013 Council meeting;

AND WHEREAS at the end of the debate Council voted to support the sale of Bruce Telecom as an ongoing business at an acceptable negotiated price;

AND WHEREAS on December 18, 2013 the Municipality of Kincardine Council passed a Motion to accept an offer for the sale of Bruce Telecom for $24 million dollars which offer does not include the $3 million dollars in cash available to Bruce Telecom, which monies will remain with the Municipality of Kincardine;

AND WHEREAS one of the assets of Bruce Telecom includes land;

AND WHEREAS the sale of Bruce Telecom constitutes the sale of an ongoing business that includes every component of the business, including land, for certainty Council has had regard to By-law No. 2008 – 141, being a By-law to establish procedures regarding the sale and other disposition of land

AND WHEREAS Municipality of Kincardine By-law No. 2008 – 141 Section 2 states that prior to the disposal of any land, the Council shall by resolution declare the real property to be surplus;

AND WHEREAS Section 4 of the said by-law requires that public notice of the disposal of land shall be effected prior to the passage of the by-law approving the disposal of the land of the Municipality;

AND WHEREAS Section 6 of the said by-law sets out the marketing of properties shall be through local real estate;

NOW THEREFORE BE IT RESOLVED THAT the Council of The Corporation of the Municipality of Kincardine grants an exemption to the requirements of Section 2, 4 and 6 of By-law No. 2008 – 141 for the disposal of said lands as the lands are part of the ongoing business which is the subject of the sale of Bruce Telecom.

The recorded vote carried with seven Members of Council in favour, one Member of Council opposed, and one Member of Council recorded as “Absent from meeting”.

Under “Consideration of By-Laws”, item 9.1 titled “Bruce Telecom Sale By-law”, Council resolved by recorded vote:

THAT the “Bruce Telecom Sale By-law” be deemed to be read a first, second and third time, finally passed and numbered as By-law No. 2014 – 010.

The recorded vote carried with seven Members of Council in favour, one Member of Council opposed, and one Member of Council recorded as “Absent from meeting”.

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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. Information and Privacy Commission Order MO-2468-F; re: City of Toronto (October 27, 2009) at p.59. [↑](#footnote-ref-3)
4. We note that the Ontario Ombudsman’s Office has also cited this decision with approval in its letter to the City of Niagara Falls on April 23, 2012, available at http://www.ombudsman.on.ca/Files/sitemedia/Images/Reports/Niagara-Falls-Clerk-letter-April-23.pdf. [↑](#footnote-ref-4)
5. *supra,* note 3. [↑](#footnote-ref-5)
6. However, the council or local board can only execute the actual acquisition or disposal of land by a by-law enacted in open session. [↑](#footnote-ref-6)
7. We note that Council Resolution #01/22/14-05 indicates that Council was mindful that it was selling an “ongoing business that includes every component of the business, including land”. [↑](#footnote-ref-7)
8. We note that the Legislature has done so in the *Education Act* relating to the discretion for a school board to go into closed session if it is discussing the closure of a school site (RSO 1990 c E.2, section 207.(2)(c)) [↑](#footnote-ref-8)
9. *ibid.* s.A10.1. [↑](#footnote-ref-9)
10. *Farber v. Kingston (City)*, 2007 ONCA 173 (CanLII) at paras 19-21. [↑](#footnote-ref-10)
11. *ibid*. [↑](#footnote-ref-11)
12. *London (City) v. RSJ Holdings Inc*., [2007] 2 SCR 588, 2007 SCC 29 (CanLII) [↑](#footnote-ref-12)
13. *ibid.* at para. 41. [↑](#footnote-ref-13)