**REPORT TO**

**THE CITY OF GUELPH REGARDING AN ALLEGATION OF AN IMPROPERLY CLOSED MEETING OF COUNCIL FOR THE CITY OF GUELPH**

**ON JANUARY 25, 2016**

1. **COMPLAINT**

The City of Guelph (“City”) received a complaint about a closed session of Council for the City of Guelph (“Council”) held on January 25, 2016. The essence of the complaint is that five Members of Council left the closed session of Council on January 25, 2016 and conducted their own improperly held closed meeting in contravention of the open meetings requirements of the *Municipal Act, 2001*[[1]](#footnote-1),as amended by Bill 130[[2]](#footnote-2) (“Municipal Act” or “Act”).

1. **JURISDICTION**

The City appointed Local Authority Services (LAS) as its closed meeting investigator pursuant to section 239.2 of the *Municipal Act, 2001*. LAS has delegated its powers and duties to Amberley Gavel Ltd. (Amberley Gavel) to undertake the investigation and report to City 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 also 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).

The Act provides that a person may request an investigation of whether a municipality or local board has complied with section 239 or its procedure by-law in respect of a meeting or part of a meeting that was closed to the public.

1. **INVESTIGATION**

Documents provided by the City and reviewed during the course of the investigation included the Agenda and Minutes of the Open and Closed Sessions of Council on January 25, 2016, documents received during the Closed Session, and other relevant documentation.

**ANALYSIS AND FINDINGS**

1. **Timelines for the Meeting of Council on January 25, 2016**

The following is the timeline recorded for the Meetings of Council on January 25, 2016:

5:00 p.m. Call to Order in Open Session

5:02 p.m. Closed Meeting began following appropriate resolution

6:57 p.m. Council Rose from Closed Session

Brief Recess until start of Open Meeting

7:00 p.m. Call to Order in Open Session

7:13 p.m. Closed Meeting began following appropriate resolution

7:36 p.m. Closed Meeting ended when quorum was no longer present

Brief Recess

7:40 p.m. Open Meeting resumed with quorum

7:45 p.m. Adjournment

The Minutes list the presence of Members of Council as follows:

* Councillors Hofland and Wettstein were absent for the whole meeting.
* The Mayor and ten other Councillors were present during the period from 5:00 p.m. to 7:25 p.m.
* Councillor Salisbury left the Closed Session meeting at 7:25 p.m. and was absent from the Open Session at 7:40 p.m.
* Councillors Allt, Downer, Gordon, and Piper left the Closed Session meeting at 7:36 p.m.
* Councillor Gordon was present from 7:40 p.m. to 7:45 p.m. at the Open Session.
* Councillors Altt, Downer, Salisbury, and Piper were listed as absent from the Open Session that commenced at 7:40.

1. **The Complaint**

Communication from the complainant to Amberley Gavel alleged that five Members of Council left the meeting of Council on January 25 “while it was in progress” and “to the best of my [the complainant’s] knowledge, held their own (closed) meeting”. No evidence was provided to support the allegation that an improper closed meeting was held.

In fact, there was only 4 minutes (between 7:36 p.m. and 7:40 p.m.) in between the conclusion of the Closed Session and the resumption of the Open Meeting. Councillor Gordon was present at 7:40 p.m. Further, there is no evidence the other four Members of Council were meeting together after they left the Closed Session. In order to conduct an investigation, the investigator must be provided with some evidence, not just speculation.

Even if the four Members of Council did meet after the Closed Session, that meeting would not be considered a “meeting” of Council.

The term “meeting” is not defined in the *Municipal Act.* However, we have previously defined a meeting of a council as a gathering of a quorum of members of council who enter into discussions that materially advance the business of the municipality or that set the foundation for decisions that would materially advance the business of the municipality at a future date.

This “gathering” does not have to involve the physical presence of Members of Council in a meeting place. The defining factor, in our opinion, is that a *quorum* (usually a simple majority) of members of a council have *discussions* that either materially advance the business of the municipality or that set a *foundation* for decisions which will be made at a future date.

Four Members of Council does not constitute a quorum given that the City of Guelph Council is comprised of thirteen members. In order to have a quorum, there was must be at least seven Members of Council present.

The complainant also asked Amberley Gavel to investigate whether the five Members who left the closed session of Council “should be sanctioned”. It is our role solely to determine whether a council, committee, or local board has breached the open meetings provisions of the Municipal Act or has failed to comply with its own Procedure By-law. It is not our role to investigate the conduct of any member of council or local board, or committee of either of them, regardless of whether or not we determine if there is a breach of the Act or of the procedure bylaw

**VI. CONCLUSION**

Amberley Gavel has concluded that Council for the City of Guelph did not hold an improper closed meeting on January 25, 2016. Further, there is no evidence to support the allegation that either four or five Members of Council held an improperly closed meeting.

**VII. PUBLIC REPORT**

We received full co-operation from all parties that we contacted and we thank them.

This report is forwarded to the Council of the City of Guelph. 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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**for AMBERLEY GAVEL LTD.**

**March 2016**

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)