**REPORT TO**

**THE CORPORATION OF THE TOWNSHIP OF WAINFLEET**

**REGARDING THE INVESTIGATION OF THE CLOSED MEETINGS OF COUNCIL ON JUNE 28, 2011 AND JULY 19, 2011 AND OF THE CLOSED MEETING OF THE TOWNSHIP’S OPERATIONS SUB-COMMITTEE ON AUGUST 16, 2011**

1. **COMPLAINTS**

The Corporation of the Township of Wainfleet (“Municipality” or “Township”) received three complaints on November 22, 2011 about two in-camera (“closed”) meetings of Township Council, held on June 28, 2011 and on July 19, 2011, and about a closed meeting of the Municipality’s Operations Sub-Committee held on August 16, 2011.

The essence of the complaints is that the meetings should not have been closed to members of the public, including the complainant in contravention of the *Municipal Act, 2001*[[1]](#footnote-1),as amended by Bill 130[[2]](#footnote-2) (“Municipal Act”).

This request was sent to the offices of Amberley Gavel Ltd. for investigation.

1. **JURISDICTION**

The Municipality of Wainfleet 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 Ltd. to undertake the investigation and report to the Council of the Municipality of Wainfleet.

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 key 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.

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 also requires that before a council, local board or committee move into a closed meeting, it shall pass a resolution at a public meeting indicating that there is to be a closed meeting. The resolution also must include the general nature of the matter(s) to be deliberated at the closed meeting.

Subsections 239 (5) & (6) limit the actions that may be taken by the council, local board or committee at the closed session. Votes may only be taken at a closed meeting for procedural matters, giving direction or instructions to staff or persons retained by the municipality such as a lawyer or planner. It provides as follows:

Open meeting

[(5)](http://www.e-laws.gov.on.ca/html/statutes/french/elaws_statutes_01m25_f.htm" \l "s239s5)  Subject to subsection (6), a meeting shall not be closed to the public during the taking of a vote. 2001, c. 25, s. 239 (5).

Exception

[(6)](http://www.e-laws.gov.on.ca/html/statutes/french/elaws_statutes_01m25_f.htm" \l "s239s6)  Despite section 244, a meeting may be closed to the public during a vote if,

(a) subsection (2) or (3) permits or requires the meeting to be closed to the public; and

(b) 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. 2001, c. 25, s. 239 (6).

1. **INVESTIGATION**

The investigation into the complaint began on January 10, 2012.

The complainant, the Township Clerk, and the Township’s Director of Operations were interviewed during the course of the investigation.

Documents provided by the Township and reviewed during the course of the investigation included the Township’s Procedure and Notice By-laws, the Agendas and Minutes of the subject Council meetings, and letters and e-mails to the complainant. The Operations Sub-Committee does not produce agendas and not keep minutes of its meetings.

1. **Position of the Complainant**

With respect to the complaints about the June 28, 2011 and July 19, 2011 Council meetings, the complainant takes the position that (1) Alderman Dykstra should not have been in attendance at the closed meetings as he had a conflict of interest in the matter under discussion; and (2) that a closed meeting “must not be held to decide how the Township can disobey the law”.

With respect to the complaint about the August 16, 2011 meeting of the Operations Sub-Committee, the complainant takes the position that the Sub-Committee does not “have the right to decide if the Township must obey Ontario law”.

1. **Position of the Municipality on the Complaints**

With respect to the complaints about the June 28, 2011 and July 19, 2011 Council meetings, the Municipal officials interviewed take the position that the closed meetings were properly held in accordance with the provisions of the Municipal Act. The municipal officials noted that the subject matter under consideration at the June 28, 2011 meeting was exempted by the open meetings provision of the Municipal Act in that it related to litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board (section 239.(2)(e)). Further, that the subject matter under consideration at the July 19, 2011 meeting was exempted by the open meetings provision of the Municipal Act in that the Municipality was receiving advice that is subject to solicitor-client privilege, including communications necessary for that purpose (section 239.(2)(f)).

With respect to the complaint about the August 16, 2011 Operations Sub-Committee meeting, the Municipal officials interviewed take the position that the Operations Sub-Committee is not a committee of council and, as such, does not fall under the provisions of the Municipal Act.

1. **Ambit of the Investigation**

The complainant was advised by the investigator that Amberley Gavel’s role is confined to reviewing whether or not the Council meetings ought to have been closed to the public, given the subject matter under consideration, and whether or not the Operations Sub-Committee is a committee of council such that it must abide by the open meetings provisions of the Municipal Act. Amberley Gavel’s role is notto comment on the substantive decision(s) made by Council relative to the matter under consideration.

Having conducted its investigation, if Amberley Gavel concludes that a municipal council has breached the open meetings provisions of the Municipal Act, 2001, and that breach is more than just procedural in nature, the substantive decision reached at the closed meeting may be void or voidable. However, the Municipal Act does not confer the authority on a closed meeting investigator to determine whether a decision reached by a council is void or voidable.

It is of course open to any elector to seek independent legal advice if he or she feels that a municipal council has made a decision that is void or voidable as a result of its decision-making process. It is not the closed meeting investigator’s role to provide such legal advice. Again, Amberley Gavel’s role and authority as the closed meeting investigator is limited to that conferred by the Municipal Act; that is, to determine whether a meeting was properly closed to the public and to make appropriate recommendations.

Further, Amberley Gavel’s role is notto determine whether or not a particular member of council has breached the terms of the *Municipal Conflict of Interest Act*[[3]](#footnote-3) (“MCIA”).

Amberley Gavel only could assess whether, having declared a pecuniary interest, the member of council was present at a closed meeting wherein the subject matter attracting the conflict of interest was discussed. However, Amberley Gavel does not have the authority to determine whether or not a member of council has breached the Act.[[4]](#footnote-4)

1. **PRELIMINARY MATTER RE JURISDICTION OF AMBERLEY GAVEL**

Amberley Gavel has jurisdiction to investigate complaints only if the body complained of is subject to the provisions of s.239 of the Municipal Act. As such, with respect to the complaint regarding the Operations Sub-Committee, as a preliminary matter Amberley Gavel must first determine whether or not the Operations Sub-Committee is a committee of Council.

1. **The Municipality’s Procedure By-Law**

Section 238 of the Municipal Act requires that every municipality and local board pass a procedure by-law. Section 238 reads in part as follows:

* 1. Every municipality and local board shall pass a procedure by-law for governing the calling, place and proceedings of meetings.
  2. The procedure by-law shall provide for public notice of meetings. 2006, c. 32, Sched. A, s. 102 (3).

The Township has a Procedure By-law that governs the calling, place and proceedings of meetings, including provisions for public notice of meetings.

The Procedure By-law[[5]](#footnote-5) provides for closed sessions of Council if the subject matter being considered is set out in Section 239 of the Municipal Act.[[6]](#footnote-6)

The By-Law defines a “Committee” as “any advisory or other committee, subcommittee or similar entity created by Council” and defines a “Meeting” as “any regular or special meeting of Council”.[[7]](#footnote-7) The By-Law does not specifically set out the mandate, duties, or composition of Council’s committees or sub-committees.

1. **The Municipal Act**

Section 238 of the Municipal Act defines a “committee” for the purposes of section 239 as “any advisory or other committee, subcommittee or similar entity of which at least 50 per cent of the members are also members of one or more councils or local boards”.[[8]](#footnote-8) A meeting is also defined in section 238 as “any regular, special or other meeting of a council, of a local board or of a committee of either of them”.[[9]](#footnote-9)

1. **The Role of Council Committees**

The Municipal Act confers the authority on councils to set up committees and other similar entities to assist council in carrying out its responsibilities under the Act.[[10]](#footnote-10) The mandate and composition of council committees is not stipulated in the Act but, generally, committees exist to hear deputations from the public, to consider staff reports and recommendations, and to make recommendations to council within the ambit of the committee’s mandate. Committees do not make final decisions unless the responsibility to do so has been specifically delegated by by-law from the council and such delegation is permitted by the Municipal Act.[[11]](#footnote-11)

Cooncil may authorize committees to set up sub-committees in order to deal with specific matters within the mandate of the committee. Those sub-committees operate much like committees of council except that the recommendations of sub-committees would generally be presented first to the parent committee and then to council.

Committees and sub-committees of council, and advisory committees or other like entities where at least 50% of the membership of the entity are members of council, are subject to similar legislative requirements that council is subject to under the Municipal Act, including open meetings.

Except to the extent that they may participate as a member of an advisory committee, it is neither typical nor is it recommended that staff sit as members of council committees or sub-committees. Staff should act solely as professional advisors to council and its committees, and not as counterpart decision-makers with members of council. The Municipal Act specifically sets out this advisory role for staff as follows:

It is the role of the officers and employees of the municipality,

1. (a) to implement council’s decisions and establish administrative practices and procedures to carry out council’s decisions;
2. **(b) to undertake research and provide advice to council on the policies and programs of the municipality**; and
3. (c) to carry out other duties required under this or any act and other duties assigned by the municipality.” [[12]](#footnote-12)

It is important, therefore, to consider the mandate, composition, and processes of the Township’s Operations Sub-Committee in light of the provisions of the Municipal Act and of the purpose, role, and authority of council committees and similar entities.

1. **The Operations Sub-Committee**

The Operations Sub-Committee consists of Alderman Hessels, Chair of the Public Works Committee, Mayor Jeffs (as ex-officio member), Scott Luey, the Township’s CEO, and Greg Wuisman, the Township’s Director of Operations. As Chair of the Public Works Committee, Alderman Hessels chairs the Sub-Committee meetings.

The Director of Operations advised the investigator that the purpose of the Sub-Committee is to have informal, informative discussions about matters within the purview of the Operations Department. It discusses “issues or problems” and determines which issues should be placed before Council for consideration and which issues are within the authority of staff to decide. It does not produce agenda or minutes for its meetings. The Director of Operations keeps personal notes of items discussed and decisions made.

1. **Is the Operations Sub-Committee a Committee of Council?**

The Municipality takes the position that the Operations Sub-Committee is not a committee of council since less than 50% of the members of council sit on the Operations Sub-Committee. Further, the Municipality’s Clerk and its Solicitor are of the opinion that section 239 of the Municipal Act regarding open meetings does not apply to the Operations Sub-Committee as it “does not make binding decisions”[[13]](#footnote-13). There is nothing in section 239 to suggest that the test to determine whether an entity is a committee of council is whether it makes binding decisions. In addition, the Municipality notes that “the meeting is created to keep the Chair apprised of occurrences within the Operations department. There are no minutes, reports, or committee meeting procedures adopted for this committee. The Chair may, [sic] on occasion convey complaints received from the public at this meeting”.[[14]](#footnote-14)

It is not unusual for the chair of a council standing committee, like the Township’s Public Works Committee, to meet informally with staff prior to a committee meeting to review possible agenda items and to discuss how best to structure the committee agenda and meeting to ensure efficient and effective decision making. Indeed, it is a common and useful practice in municipalities throughout Ontario.

However, it is not customary - nor is it recommended - that these meetings are called “sub-committee meetings” and that staff are deemed to be “members” of the sub-committee. To do so detracts from the legislated role of staff as professional advisors to council and not decision makers alongside council.

Further, although it might be common practice for the Mayor to participate in such agenda briefings, it is not customary – nor is it recommended – that the Mayor be called an “ex-officio member” of the meeting, particularly if the meetings are held as a “sub-committee”.

It would appear that the Municipality did not intend to establish the Sub-Committee as a committee of council; rather, it likely intended to structure its process similar to the agenda briefing practice outlined above.

However, because of its current structure, it is more like a sub-committee of the Operations Committee than an agenda briefing process. Hence, it is Amberley Gavel’s opinion that it does meet the definition of a committee under the Municipal Act. It is called a “sub-committee” and at least 50% of the members are also members of Township Council (Alderman Hessels and Mayor Jeffs). Moreover, although the Clerk and Township Solicitor indicate that the Sub-Committee does not make binding decisions, it is clear that it does. For example, if the Sub-Committee decides that a matter does not have to be considered by Council, it is not forwarded to Council. That decision “binds” the staff to taking action without going to Council. It is conceivable that the Sub-Committee could determine that an issue, problem, or complaint brought to its attention does not merit discussion at Council and, hence, it is not forwarded by staff to Council for consideration.

Moreover, by calling it the Operations Sub-Committee, it is likely that members of the public would understand it to be a sub-committee of Council’s Public Works Committee.

Hence, for the purposes of the current complaints, the Operations Sub-Committee is considered by Amberley Gavel to be a committee of council as that is defined under the Municipal Act. As such, it must abide by the provisions of the Municipal Act and the Township’s Procedure By-law that set out the requirements and limitations for open meetings, production of agendas and minutes, and delegation of authority.

1. **ANALYSIS AND FINDINGS**

Having considered the preliminary issues as to Amberley Gavel’s jurisdiction and the ambit of its investigation, the next step is to determine whether the meetings that are the subject of the complaints were properly closed to the public under the Municipal Act.

1. **Agenda for the Township Council Meeting of June 28, 2011**

The June 28, 2011 Agenda for the Regular Meeting of Council contained a Closed Meeting item listed as:

“17.a) Item under Section 239 (2) of the *Municipal Act, 2011* litigation or pending litigation, including matters before administrative tribunals, affecting the municipality or local board – application under the *Line Fences Act* (1 item)”

The complainant advised the investigator that neither she nor her husband had engaged in or, at all relevant times, had contemplated litigation over their application under the *Line Fences Act*. The Director of Operations indicated to the investigator that he thought the Clerk was aware there was possible pending litigation and that is why the item was in closed session.[[15]](#footnote-15) When the investigator asked the Clerk why the item was scheduled for a closed session, she indicated that, given the nature of a potential dispute under the *Line Fences Act*, and the fact that she was aware that staff were seeking authority from Council to secure a legal opinion on the matter[[16]](#footnote-16), the subject matter under consideration met the exception under the Municipal Act providing for a closed meeting in circumstances of litigation or pending litigation.

The purpose of section 239(2)(e) of the Municipal Act, dealing with litigation or potential litigation, is to ensure that all documents and discussions before Council on a given matter are protected by litigation privilege.

*(i) The Nature of Litigation Privilege*

Litigation privilege seeks to ensure the efficacy of the adversarial litigation process. While solicitor-client privilege protects communications between solicitor and client, this is not the focus or rationale of litigation privilege. As the Supreme Court of Canada recently explained:

Litigation privilege, on the other hand, is not directed at, still less, restricted to, communications between solicitor and client. It contemplates, as well, communications between a solicitor and third parties or, in the case of an unrepresented litigant, between the litigant and third parties. Its object is to ensure the efficacy of the adversarial process and not to promote the solicitor- client relationship. And to achieve this purpose, parties to litigation, represented

or not, must be left to prepare their contending positions in private, without adversarial interference and without fear of premature disclosure.[[17]](#footnote-17)

The purpose of litigation privilege is to create a “zone of privacy”, based upon the need for a protected area to facilitate investigation and preparation of a case for trial by the adversarial advocate.[[18]](#footnote-18) That zone of privacy extends to meetings of municipal councils wherein the actual or potential litigation is considered.

However, in order to invoke litigation privilege, litigation must be pending or contemplated, in a realistic sense, before a discussion or a document can attract litigation privilege. It is not enough to speculate that an adversarial party may contemplate litigation if a decision is not made in their favour.

The Ontario Court of Appeal specifically considered when a matter would be covered by litigation privilege in *RSJ Holdings Ltd. v. London (City)*[[19]](#footnote-19). In that case the municipality was arguing that a draft interim control by-law discussed in closed session by London City Council was covered by litigation privilege, and thus could be discussed in closed session under section 239(2)(e) of the Municipal Act. The Court of Appeal rejected this argument, stating:

“We observe that where the subject matter under consideration is an interim control by-law, it cannot be said that the subject matter under consideration is potential litigation simply because there is a statutory right of appeal by a person affected by the interim control by-law or because the interim control by-law may be subject to a motion to quash.  The fact that there might be, or even inevitably would be, litigation arising from the interim control by-law does not make the “subject matter under consideration” potential litigation.[[20]](#footnote-20)

*(ii) Application to the Complaint*

It is Amberley Gavel’s opinion that the item should not have been dealt with in a closed meeting on June 28, 2011. No litigation was pending and the applicants under the *Line Fences Act* (one of which was the complainant) had not threatened or were not contemplating litigation. Analogous to the RSJ Holdings rationale, the fact that the applicants might have statutory rights of appeal of Council’s decision on the *Line Fences Act* application does not engage the protection of litigation privilege.

1. **Minutes of the Township Council Meeting of June 28, 2011**

The Minutes for the Township Council Meeting of June 28, 2011 indicated that “Alderman Dysktra noted that he may have a conflict of interest depending on the nature of the discussion involving the closed meeting”.

As the last item of business on June 28, 2011 prior to adjournment, Council moved into closed session to discuss the item. Council then reconvened “without report”.

1. **Minutes of the Closed Meeting of the Township Council Meeting of June 28, 2011**

No declarations of pecuniary interest were made in the closed session.[[21]](#footnote-21)

Council discussed the application under the *Line Fences Act* after having been provided with a brief overview by the Director of Operations about the application. Appropriately, Council directed staff, by resolution, to contact the Township’s solicitor to further investigate the matter.

1. **Agenda for the Township Council Meeting of July 19, 2011**

The Agenda for the Regular Meeting of Township Council on July 19, 2011 contained a Closed Meeting item listed as:

“17.c) Item under Section 239 (2)(f) of the *Municipal Act, 2011* advice that is subject to solicitor-client privilege, including communications necessary for that purpose – follow-up to staff direction regarding an application under the *Line Fences Act* (1 item)”[[22]](#footnote-22)

1. **Minutes for the Township Council Meeting of July 19, 2011**

The Minutes for the Township Council Meeting of July 19, 2011 indicate that no declarations of pecuniary interest were made.

As the last item of business on July 19, 2011 prior to adjournment, Council moved into closed session to discuss the closed meeting items. Council then reconvened “without report”.

1. **Minutes of the Closed Meeting of the Township Council Meeting of July 19, 2011**

No declarations of pecuniary interest were made in the closed session.[[23]](#footnote-23)

During the closed meeting, Council received advice from the Township Solicitor, conveyed to Council orally by the Director of Operations. That advice is subject to solicitor-client privilege.

It is Amberley Gavel’s opinion that the advice received by Council through its Township Solicitor was protected by solicitor-client privilege. As such, it was proper that Council considered the matter in closed session on July 19, 2011.

1. **Decision at the Operations Sub-Committee Meeting of August 16, 2011**

The investigator was advised by the Director of Operations that the issue of the *Line Fences Act* application was discussed by the Operations Sub-Committee at its meetings on June 27, 2011 and August 16, 2011.

In accordance with the direction given to him by Council on July 19, 2011, the Director of Operations sent the complainant a letter on July 25, 2011 seeking further information underlying their application. Having received no response to the letter from the complainant by August 16, 2011, the issue was discussed by the Sub-Committee on August 16, 2011 wherein it concluded that the matter was “closed”. The Director of Operations subsequently sent an e-mail to the complainant stating:

Further to my e-mail below [indicating that he would bring their request for an update on the matter to the attention of the Operations Sub-Committee at its next meeting], we discussed this matter at our last Operations Sub-committee meeting and it is the Township’s position that a fence is currently in place, in compliance with the Line Fences Act.

The Township now considers this matter closed.

Amberley Gavel has already concluded that the Operations Sub-Committee meets the definition of a “committee” under the Municipal Act. A decision was made at this meeting that the matter was “closed”. It is clear that the Operations Sub-Committee does make binding decisions. The applicants were not given information as to what avenue of appeal lay open to them, or indeed if there was an avenue of appeal. They were given no information as to why the Township considered the matter closed and they were not privy to the discussions at the Operations Sub-Committee level.

It is Amberley Gavel’s opinion that the issue should not have been decided at a closed meeting.

**VII. CONCLUSION**

Amberley Gavel has concluded that the subject matter under consideration at the June 28, 2011 Closed Meeting of the Township of Wainfleet Council was not one in which the meeting could be closed to the public under the Municipal Act. Amberley Gavel has also concluded that subject matter under consideration at the July 11, 2011 Closed Meeting of the Township of Wainfleet Council was one in which the meeting could be closed to the public under the Municipal Act. Further, Amberley Gavel has concluded that the Operations Sub-Committee is a committee of council for the purposes of the Municipal Act. Moreover, relative to the subject matter under consideration, it should not have made decisions in closed session contrary to the Municipal Act.

Amberley Gavel makes the following recommendations.

**VIII. RECOMMENDATIONS**

1. **Review of “Committees”**
2. **Name**

Township Council should review the nature and composition of its committees and sub-committees to ensure that it complies with the proper provisions of the Municipal Act. It should be especially diligent in the naming of its committee-like entities. If one calls an entity a “sub-committee”, the reasonable person would expect that it is “sub” or subordinate to some other entity. For example, in the instant complaints, it is reasonable that the complainant would have concluded that the decision of the Operations Sub-Committee is final and binding and that, in the absence of other information, the complainant had no avenue of recourse before Council.

1. **Composition**

In conducting this review, Township Council should be mindful that any time a meeting-like forum is convened where Council participants number at least 50% of the total composition of such forum, and where the business of the Municipality is advanced, the provisions of the Municipal Act will apply. If at least 50% of the members of a committee or like entity are members of council, the committee or like entity must follow the provisions of the Municipal Act and the Township’s Procedure by-law for the calling of meetings, the publication of agendas and minutes, and openness and transparency of decision making (including restrictions on closed meetings). Unfortunately, the Municipality is under the mistaken impression that more than 50% of council members have to be present in a forum in order for it to be deemed a meeting under the Municipal Act. That is not the correct interpretation of the Municipal Act.

1. **Staff**

Further, unless they are in an advisory capacity, staff should not be appointed as members of a council committee or other similar entity. The Township Council should specifically consider the legislated roles and responsibilities of staff when determining what functions staff undertake when appointed to committees or involved in meetings which include elected members of council.

1. **The Operations Sub-Committee**

It is recommended that the Municipality re-structure the Operations Sub-Committee such that it is an agenda briefing process as was described earlier in this report. More specifically, it should not be called a “sub-committee”; staff should not be designated as “members” of the meeting but as “advisors” to the meeting; and the Mayor should not be present as “ex-officio” but rather as a standard “participant” in the discussions. Until the Municipality restructures the process as recommended, the Operations Sub-Committee should abide by the provisions of the Municipal Act and the Township’s Procedure By-law as outlined in Recommendation #1 above.

1. **Exceptions to Open Meetings under the Municipal Act**

It is recommended that Council further educate itself about when the exceptions to the open meetings provision in the Municipal Act can be properly applied. For example, a municipal council cannot apply the exception dealing with litigation or potential litigation unless litigation is underway, is realistically contemplated, or has been threatened. As another example, a municipal council cannot automatically shield itself from open discussion on a matter merely because it is asking advice from its solicitor. Not all matters require the protection of solicitor/client privilege and often solicitors are asked to provide opinions in open sessions of Council.

1. **Reporting Out the Results of Closed Meetings**

As a matter of procedure, if a municipal council, committee, or local board takes a vote on a matter providing direction to staff in closed session, it should report out in public session that it gave direction to staff on the subject matter under consideration. It does not have to report out what direction that it gave to staff, just that it gave direction.

This recommendation would not undermine or change the Township’s Procedure By-law since the by-law already provides that “[u]pon completion of the closed meeting, the Members shall immediately reconvene in open session and the Chair of the closed meeting shall report the results thereof”[[24]](#footnote-24)

**IX. PUBLIC REPORT**

We received full co-operation from all those interviewed and we thank them.

This report is forwarded to the Council of the Township of Wainfleet. 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.**

**February 20, 2012**

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. R.S.O. 1990, CHAPTER M.50. [↑](#footnote-ref-3)
4. Individual members of council are required to determine, with independent legal advice if appropriate, if they have a conflict of interest on a matter before council, its committees, or its local boards (MCIA, section 5.(1)). In accordance with the MCIA (section 8), an application to determine whether a member of council was in contravention of the MCIA must be made to the Ontario Superior Court of Justice. [↑](#footnote-ref-4)
5. *The Corporation of the Township of Wainfleet,* By-Law No. 021-2010, passed the 13th day of April, 2010, *Being a bylaw to govern the proceedings of the Township of Wainfleet Council, the conduct of its Members and the calling of meetings* (“Procedure By-law”). [↑](#footnote-ref-5)
6. Appendix “A” to By-Law No. 021-2010 sets out sections 239.(1) to 239.(9) of the Municipal Act. [↑](#footnote-ref-6)
7. Procedure By-law, *supra* note 5, at section 1. [↑](#footnote-ref-7)
8. Municipal Act, *supra* note 1, s.238(1). [↑](#footnote-ref-8)
9. *ibid.* [↑](#footnote-ref-9)
10. *ibid.* at s.23. [↑](#footnote-ref-10)
11. Further information about the mandate and composition of council committees, and the limits imposed on councils to delegate authority to committees, can be found in the “Municipal Councillor’s Guide” published by the Ontario Ministry of Municipal Affairs and Housing, which can be accessed on the Ministry’s website at <http://www.mah.gov.on.ca/Page5030.aspxhttp://www.mah.gov.on.ca/Page5030.aspx>. [↑](#footnote-ref-11)
12. Municipal Act, *supra* note 1, s.227 [emphasis added]. [↑](#footnote-ref-12)
13. Letter to Amberley Gavel dated December 7, 2011 from the Clerk of the Township of Wainfleet entitled “Closed Meeting Investigation – Operations Sub-Committee August 16, 2011. [↑](#footnote-ref-13)
14. *ibid.* [↑](#footnote-ref-14)
15. Although the written record reflects that it was the Director of Operations who asked the Clerk to put the item on the closed session agenda. [↑](#footnote-ref-15)
16. The Director of Operations advised that the decision to seek authority to secure a legal opinion was made at the Operations Sub-Committee meeting on June 27, 2011. [↑](#footnote-ref-16)
17. *Blank v. Canada (Minister of Justice)*, 2006 SCC 39 at para. 27 (“Blank”). [↑](#footnote-ref-17)
18. *ibid.* at para. 34. [↑](#footnote-ref-18)
19. 2005 CanLII 43895 (ON CA) (“RSJ Holdings”). [↑](#footnote-ref-19)
20. *ibid.* at para. 23. [↑](#footnote-ref-20)
21. Since no conflicts of interest were declared, Amberley Gavel cannot comment on whether or not any individual member of Council ought to have been in the closed meeting. [↑](#footnote-ref-21)
22. The complainant indicated in the complaint that there were two items discussed in closed session that may relate to her complaint. The record shows that the other items discussed in the closed session were not in relation to the complainant’s matter. [↑](#footnote-ref-22)
23. Since no declarations of pecuniary interest were made, Amberley Gavel cannot comment on whether or not any individual member of Council ought to have been in the closed meeting. [↑](#footnote-ref-23)
24. Procedure By-law, *supra* note 5, at section 6.7. [↑](#footnote-ref-24)