**REPORT TO**

**THE CORPORATION OF THE TOWNSHIP OF CARLING**

**REGARDING ALLEGATIONS OF AN IMPROPERLY CLOSED MEETING OF THE COUNCIL FOR THE TOWNSHIP OF CARLING**

**IN NOVEMBER 2014**

**I. COMPLAINT**

Amberley Gavel Ltd. (“Amberley Gavel”) received a complaint about a closed (in-camera) meeting of the Corporation of the Township of Carling (“Township”) Council (“Council”) allegedly held in late November 2014. The essence of the complaint is that Council discussed several matters during a gathering at the residence of Mayor-elect Konoval, as he was then. There was no public notice, no agenda, and no official record of this meeting. The complaint alleges that this was a closed meeting “of the new Council” and was, therefore, 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*”).

The complaint alleges that Council at that meeting discussed an issue related to potential termination of the Inter-Municipal Agreement (the “Agreement”) between the Township of Carling and the Township of The Archipelago (“The Archipelago”), consequent termination of employment of staff that served under the Agreement, and the employment of a new CAO for the Township. The complaint also indicates some additional concerns related to the actual decisions that were made about the Agreement, the termination of staff’s employment, and the appointment of the new CAO for the Township (“additional concerns”).

**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.

We advised the complainant that it was outside our jurisdiction to deal with the “additional concerns” as outlined in the complaint. Our role is confined to reviewing the processes that Council used to make decisions that materially advance the business of the municipality, not the substantive merits of the decisions. We are limited to reviewing whether or not a council followed the dictates of the *Municipal Act* or its own Procedure By-law, as they relate to open meetings, in coming to a decision. We have no authority to decide whether or not a council made the right decision, for the right reasons, at the right time. Those are matters for a council to determine as representatives of the taxpayers. Hence, this review dealt with the following matters:

1. Whether or not Township Council held a closed meeting in late November at the residence of Mayor-elect Konoval, as he was then;
2. If a closed meeting of Township Council was held on that date:
	1. Whether or not the Agreement, the consequences of possible termination of the Agreement, and the hiring of the new CAO for the Township were discussed at the alleged meeting; and,
	2. Whether or not Township Council conformed to the *Act* or its own Procedure By-law in the processes leading to the termination of employment of staff operating under the Agreement and the appointment of a new CAO for the Township.

**III. BACKGROUND**

Section 238 of the *Municipal Act* provides that all municipalities must have a procedure by-law governing the calling, place, and proceedings of meetings, including a provision for public notice of meetings.

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%22%20%5Cl%20%22s239s1)**[(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%22%20%5Cl%20%22s239s2)  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.

In addition, section 239 provides for an investigation about whether or not a municipality properly closed a meeting or part of a meeting to the public:

239.1 A person may request that an investigation of whether a municipality or local board has complied with section 239 or a procedure by-law under subsection 238 (2) in respect of a meeting or part of a meeting that was closed to the public be undertaken,

 (a) by an investigator referred to in subsection 239.2 (1); or

 (b) by the Ombudsman appointed under the Ombudsman Act, if the municipality has not appointed an investigator referred to in subsection

 239.2 (1).

239.2 (1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to appoint an investigator who has the function to investigate in an independent manner, on a complaint made to him or her by any person, whether the municipality or a local board has complied with section 239 or a procedure by-law under subsection 238 (2) in respect of a meeting or part of a meeting that was closed to the public, and to report on the investigation.

**IV. INVESTIGATION**

The investigation into the complaint began on February 18, 2015 with a review of background documents provided by the complainants. Additional documents reviewed during the course of the investigation included the Township’s Procedure By-law, letters and e-mails regarding the Agreement, and other relevant documentation.

The Mayor, the former Mayor, the Reeve for The Archipelago, and the former joint CAO under the Agreement (now CAO of The Archipelago) were consulted during the course of the investigation. As a result of these interviews, we deemed that it was not necessary to interview others who were in attendance at the subject gathering.

**V. BACKGROUND**

1. **The Inter-Municipal Agreement**

The Township and The Archipelago signed an Inter-Municipal Agreement on April 7, 2009 for a one-year period which provided for certain cost shared services. This Agreement was informally amended by adding other cost shared services, but the Agreement itself was never renewed or amended. As a result, the two townships shared costs for, among other things, a CAO, a Treasurer and a Public Works Manager who were employed to provide services to both townships under the Agreement. Since the original Agreement was never officially renewed, and the new cost shared services were not reduced to writing, The Archipelago took the position that the Agreement continued on an “at will” basis, subject to termination upon notice by one of the parties.

We were told that the Agreement was an election issue in the Township of Carling during the 2014 Municipal Election and that some candidates for Township Council took a position during the election that the Agreement should be terminated. As a result, the Archipelago sent a letter to the Township on November 17, 2014 suggesting a meeting between the two townships to discuss the termination of the Agreement. The letter suggested that the meeting occur on December 4, 2014 at 4:30 p.m., or at some otherwise convenient time for the parties.

A letter was sent a letter on November 24, 2014 by Mayor Harrison and the Mayor-elect Konoval, as they were then, to The Archipelago indicating that the December 4, 2014 meeting date was inconvenient in that the Township of Carling Council would not have enough time to discuss the issue given that their Inaugural Meeting was scheduled for December 1, 2014. The authors suggested that a meeting could occur in the New Year. The letter further stated that, “It would not be [Carling Council’s] intention to terminate the Agreement prior to December 31, 2014”.

On December 5, 2014, The Archipelago advised the Township by letter that it was giving formal notice to terminate the Agreement, and any formal or informal arrangements for the cost shared services as between the two townships, effective December 31, 2014.

1. **The Timing of Events**

The Municipal Election was held on October 27, 2014. Prior to the election, the following were the Members of Council for the Township of Carling for the 2010 to 2014 term (“the outgoing Council”):

1. Mayor Gord Harrison
2. Councillors Michael Gordon, Mike Konoval, Sid Larson, and Susan Murphy

The 2010 to 2014 Township Council held its last official Council meeting on November 10, 2014. The term of the outgoing Council ended on November 30, 2014.

As a result of the Municipal Election, the following are the Members of Council for the Township for the 2014 to 2018 term (“the incoming Council” or “the new Council”):

1. Mayor Mike Konoval
2. Councillors Steven Crookshank, Terry Gilbert, Gord Harrison, and Susan Murphy.

The term of office for the new Council began on December 1, 2014. The Inaugural Meeting of the new Council was held on December 1, 2014. This meeting was the “swearing-in” ceremony for the incoming Council. The first regular business meeting of the new Council was held on December 18, 2014.

For the purposes of this report, we will refer to Mr. Gord Harrison as “Mayor Harrison” for events that occurred during the period of October 27, 2014 to November 30, 2014, and as “Councillor Harrison” for events after December 1, 2014. We will refer to Mr. Mike Konoval as Mayor-elect Konoval for events that occurred during the period of October 27, 2014 to November 30, 2014, and as “Mayor Konoval” or “the Mayor” for events after December 1, 2014

1. **The Definition of a Meeting**

The definition of a “meeting” is not contained in the *Municipal Act.* However, we have previously defined it 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.

**VI. ANALYSIS AND FINDINGS**

1. **The Gathering at the Mayor-elect’s Residence**

Mayor-elect Konoval invited the incoming Council to meet at his residence on November 24, 2014 as an informal gathering to “get to know each other better”.

Of the five incoming Members of Council, only Councillor Crookshank was unable to attend, being out of town.

During our investigation, Mayor Konoval indicated that the incoming Members of Council in attendance at this gathering discussed the November 18th letter from The Archipelago with respect to potential termination of the Agreement, and that Council would have to discuss this matter with The Archipelago early in the new term. The Mayor indicated that they did not discuss the consequences of any potential termination of the Agreement, including the termination of staff employed under the Agreement, or the hiring of a new CAO.

According to Mayor Konoval, the Members of Council present at the gathering also discussed the appointment of various Members of Council to the Township’s boards and agencies.

Councillor Harrison was the Mayor at the time of this subject gathering. He recalls the discussion about the Agreement and the appointment to boards and agencies. He indicated that, with respect to the Agreement, it was agreed that he, as then Mayor, and Mayor-elect Konoval would send a letter to The Archipelago asking them to defer any decision making on the matter to the New Year. According to Councillor Harrison, no discussion occurred about the impact of the termination of the Agreement, or about the possibility of terminating the employment of staff who were employed by virtue of the Agreement, or about whether or not the Township would need to hire a new CAO if the Agreement were indeed terminated.

According to the testimony, appointments of Members of Council were made to boards and agencies at this gathering/meeting.

We have concluded that this was a meeting of the outgoing Council as we have defined the term “meeting”. A quorum of the outgoing Council was in attendance, being Mayor Harrison and Councillors Konovol and Murray. There was no public notice of the meeting, no agenda, and no record of proceedings from the meeting. It was clear a decision was made by the Council to ask The Archipelago to defer any decision on the Agreement.

Even if we accept that it was not the intention of those who met to keep the public “in the dark”, a meeting was held without public notice or public discussion. Although it would appear to have been a mere procedural issue – to seek a delay from The Archipelago regarding substantive discussion on the matter – subsequent events, which we will discuss later in this report, meant that the ultimate termination of the Agreement was not decided by Township Council in an open, accountable, and transparent manner.

Further, although not an issue in the complaint before us, the decisions to appoint individuals to boards and agencies should not have been made in this type of forum. The decisions should have been made in an open and transparent meeting, not at a “by invite only” gathering at the Mayor-elect’s residence. Indeed, given the timing of the gathering, the outgoing Council was still in office and, arguably, making these decisions for the incoming Council. That would be improper under the Township’s Procedure By-law.[[3]](#footnote-3)

We also note that an incoming Councillor was not present at the gathering and, hence, he was not afforded an opportunity to participate in key decisions of the new Council.

Although we are not questioning the intentions of Mayor-elect Konoval in having this gathering at his residence, it is not a practice that should be sanctioned by Township Council in the future. Not all informal gatherings of individuals who are members of a council for a municipality will be deemed to be a meeting for the purposes of the *Municipal Act*. However, it is important to consider the perception by the public that decisions might be made during such gatherings, “behind closed doors”, rather than in an open, accountable, and transparent forum. Members of Council must be especially vigilant when it is gathering as a quorum in a forum where the public is not invited, even if that gathering is merely social in nature.

However, the gathering at the residence of Mayor-elect Konoval on November 24, 2014 was clearly not simply of a social nature. The meeting involved discussion of future council business (the Agreement) and appointments to agencies and boards, items that may require open discussion by Council under the *Municipal Act*.

Hence, the gathering, which is deemed to have been a meeting by virtue of the business discussed, was in violation of section 239 of the *Municipal Act*.

1. **The Committee Meeting at the Township of The Archipelago on December 4, 2014**

Mayor Konoval indicated that he attended, in his “personal capacity”, at a meeting of The Archipelago’s Steering Committees (“SC”) on December 4, 2014. He did not tell Members of Council for the Township of Carling that he would be attending. He indicated that he was providing his “personal opinion” to The Archipelago’s SC about the termination of the Agreement, and the consequences of such termination.

The CAO of The Archipelago indicated that all Members of Council for the Township of The Archipelago meet in a combined meeting format called a “Steering Committees Meeting”. These meetings deal informally with the ongoing or current business of all committees of The Archipelago Council. Staff further indicated that no minutes are taken at the meetings of SC since no decisions are made at those meetings. Hence, there is no official record of what Mayor Konoval said at The Archipelago SC meeting on December 4, 2014.[[4]](#footnote-4) The Reeve of The Archipelago confirmed that now Mayor Konoval attended the December 4, 2014 SC meeting. He indicated that the original plan was that he and Mayor Konoval would meet informally on December 3, 2014 about the Agreement. However, weather conditions interfered with this plan and the Reeve was unable to attend the meeting. Mayor Konoval advised him on the evening of December 3, 2014 that he was prepared to address The Archipelago SC meeting the following day.

The Reeve recalled that the Mayor began to speak at the SC meeting by expressing his personal opinion about the Agreement and whether or not, and when, it should be terminated. However, throughout the ensuing discussions, Mayor Konoval continued to refer to his expressed opinion about the termination of the Agreement in the manner of ‘this is what Carling wants’, ‘Carling is planning to have its own staff’, and ‘it is no problem for Carling if the Agreement is terminated effective December 31, 2014’. Hence, the Reeve concluded that the Mayor was, in fact, speaking on behalf of Township Council. The Reeve further indicated that it was his impression that other Members of The Archipelago Council who were at the SC meeting had the same understanding.

The CAO of The Archipelago was at SC Meeting on December 4, 2014. He recalls that Mayor Konoval was specifically asked three, if not four, times if the position that he was expressing about termination of the Agreement was the position of Township Council. The CAO recalls that Mayor Konoval was very clear and firm that his views were the positions of Township Council.

We have concluded that it was not proper that Mayor Konoval purported to speak to The Archipelago SC meeting in any “personal capacity”. We accept that The Archipelago Council truly believed that he was speaking on behalf of the whole of the Township of Carling Council, despite the fact that Township Council did not have a discussion in an open, transparent, and accountable forum.

More importantly, Township Council was not even aware that Mayor Konoval was addressing the matter with The Archipelago Council before they had an opportunity, as Township Council, to address it in a formal business meeting of Council.

We appreciate that time was of the essence in addressing this matter, given the timeframes suggested by The Archipelago Council. However, there is nothing in the *Act* or the Township’s Procedural By-law that would have precluded the Mayor from placing the exigent item as a matter for discussion during the Inaugural Meeting on December 1, 2014, after the new Members of Council had made their Declarations to Office (“swearing in”). We note that many councils have a business meeting, to address immediate items requiring attention, at the same meeting as the Inaugural Meeting following the Declarations to Office.

1. **The Termination of the Inter-Municipal Agreement**

As a result of the presentation by Mayor Konoval on December 4, 2014, The Archipelago Council passed the following resolution on December 5, 2014:

**WHEREAS** the Mayor for Carling, Mike Konoval, addressed Council at Committee meetings regarding the future of the Inter-Municipal Agreement;

**AND WHEREAS** Mayor Konoval informed Council that Carling wished to thank The Archipelago for its assistance over the last five-years [sic];

**AND WHEREAS** Mayor Konoval stated that Carling wishes to hire its own full-time senior staff and is satisfied with the termination date of the Agreement being December 31, 2014;

**AND WHEREAS** Carling no longer requires the services of the Manager of Public Works who is an employee of Carling under the Joint Agreement and informed The Archipelago if they so wish they can hire said individual;

**NOW THEREFORE BE IT RESOLVED** that The Township of The Archipelago after receiving the position of Carling Township and its Council as clearly expressed by its Mayor regarding the dissolution of the Inter-Municipal Agreement and the dismissal of the Joint Public Works Manager, Council therefore mutually agrees with the termination date for the Agreement being December 31, 2014;

**AND FURTHER BE IT RESOLVED** that Council give direction to the CAO to proceed with the hiring of the dismissed Joint Public Works Manager.

This resolution terminated the Agreement and, as a consequence, the employment of the shared Public Works Manager.[[5]](#footnote-5)

On December 5, 2014, the Reeve of The Archipelago sent a letter to Council for the Township of Carling terminating the Agreement effective December 31, 2014. This letter was received by Township Council at its Committee of the Whole Meeting on December 12, 2014.

1. **The Committee of the Whole Meeting for the Township of Carling on December 12, 2014**

The Mayor indicated that, as a result of the termination of the Agreement by The Archipelago, he needed to find a new CAO/Clerk for the Township. He indicated that the CAO under the Agreement, who had been shared on a “part-time basis” with The Archipelago would be staying in the employment of The Archipelago as its CAO.

The Mayor said that he knew of an individual in the Township, Donna Besman, who had formerly been a CAO for another municipality and was now retired. She had expressed to the Mayor that she was “willing to come in to help” the Township as its CAO. He decided to introduce her to Members of Council at a Committee of the Whole Meeting of Council called for December 12, 2014. He indicated that he had not discussed this with Members of Council prior to December 12. He noted that it was an acting position until such time as Township Council can appoint a more permanent CAO/Clerk. Ms. Besman would also temporarily take on the duties as the Township’s Treasurer.

The Minutes for the Committee of the Whole Meeting for the Township of Carling on December 12, 2014 indicate that Committee of the Whole received the December 5, 2014 letter from the Reeve of The Archipelago:

As a result of Mayor Konovals [sic] deputation to The Archipelago December Committee meeting and as a result of statements made, Reeve Ketchum on behalf of Archipelago Council sent a letter terminating the agreement as of December 31, 2014, which was provided to Council.

At that meeting, the Mayor introduced Ms. Besman to Council as “the new Acting CAO beginning January 1st” and said that the Township’s Chief Building Official would be “her assistant”. There was no evidence that other Members of Council made any decisions with respect to these matters prior to or at the December 15, 2014 meeting.

1. **The Special Meeting of Council for the Township of Carling on December 18, 2014**

On December 18, 2014 Township Council held a Special Meeting of Council. A resolution was passed to move into closed session, as follows:

**NOW THEREFORE BE IT RESOLVED** that Council move into a Closed Meeting at 10:05 a.m. pursuant to Section 239(2) of the Municipal Act, 2001, as amended, to deal with the Inter-Municipal Agreement, legal and personnel issues.

For greater clarity, we would suggest that Council cite the applicable sub-section(s) of the *Municipal Act* in resolving to move into closed session. In addition, the specific words of the legislation should be used, rather than truncated the exemption to phrases like “legal matters” or “personnel matters”. Not all legal or personnel matters can, or must, be discussed in closed session.

For example, best practice would suggest the subject resolution be worded as follows:

**NOW THEREFORE BE IT RESOLVED** that Council moved into closed session under 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; and, under section 239(2)(b) of the *Municipal Act, 2001*, as amended,to discuss personal matters about an identifiable individual, including municipal or local board employees, all with respect to the Inter-Municipal Agreement between the Corporation of the Township of Carling and the Corporation of the Township of The Archipelago.

The published Minutes of the Special Meeting of Council show that Council discussed the following items during the closed session:

* advice from the Township Solicitor with respect to the legal implications of the termination of the Agreement;
* replacement of the Township Treasurer should the Agreement be terminated;
* replacement of the CAO/Clerk should the Agreement be terminated;
* the possible salary for a new CAO/Clerk should the Agreement be terminated;
* the status of the Public Works Manager should the Agreement be terminated;

In closed session, Council also had a discussion with:

* Ms. Besman, as the Acting CAO/Clerk/Treasurer, regarding her appointment, including transition arrangements; and,
* It’s Chief Building Official about job duties and compensation during the transition period to a new CAO.

Council then moved into open session and passed resolutions to enact the following with respect to the Agreement and the consequences of its termination:

1. A By-Law to Confirm the termination of the Inter-Municipal Agreement and Staff Sharing Arrangements with the Corporation of the Township of the [sic] Archipelago;
2. That a letter be sent by the Mayor to the Township of the [sic] Archipelago expressing the regret of this Council that it did not have an opportunity to discuss the termination of the Inter-Municipal Agreement and Staff Sharing Arrangements as a Council prior to the notice of termination received from the Reeve of the Township of the [sic] Archipelago;
3. A By-law to Appoint a Chief Administrative Officer/Clerk;
4. A By-law to authorize the appointment of an Operations Manager/Deputy Clerk and terminating the appointment of the current Chief Administrative Officer/Clerk;
5. A By-law to authorize a Termination Agreement between the Corporation of the Township of Carling and Michael Kearns [the Public Works Manager]; and
6. A By-law to Terminate the Appointment of the Treasurer and to Appoint a Deputy Treasurer/Treasurer; and,
7. A By-law to confirm the proceedings of the Special Meeting of Council held on the 18th day of December 2014, [as] read and finally passed in Open Council this 18th day of December, 2014.

We did not find any evidence that Members of Council discussed these matters at the meeting on November 24, 2014. The Mayor seems to have acted on his own volition in addressing Council for The Archipelago respecting the termination of the Agreement. His presentation to The Archipelago Steering Committees meeting on December 4, 2014 gave the impression that he was speaking on behalf of Township Council in advancing the termination of the Agreement, with its attendant consequences.

This is supported by the wording of the resolution which was passed on December 5, 2014 by The Archipelago Council wherein The Archipelago Council resolved to terminate the Agreement “after receiving the position of Carling Township and its Council as clearly expressed by its Mayor regarding the dissolution of the Inter-Municipal Agreement and the dismissal of the Joint Public Works Manager”.

Apart from the discussion at the November 24, 2014 gathering, we did not find any evidence that Members of Council met to discuss these matters, including the termination of staff under the Agreement or the appointment of a new CAO/Clerk/Treasurer, either in open or closed session, prior to December 12, 2014.

1. **The By-laws Passed at the Special Meeting of Council for the Township of Carling on December 18, 2014**

With respect to the by-laws passed by Township Council on December 18, 2014, the complaint queried whether a council by-law can receive first, second, and third reading and be passed at the one Council meeting.

The *Municipal Act* is silent on this question. However, the Township’s Procedure By-law provides that bylaws may be given three readings on the same day except as requested otherwise by motion of the majority of the members present at the meeting, or as otherwise provided by law.[[6]](#footnote-6) No motion was put forward by a majority of the Members of Council present at the December 18 meeting to have separate readings of the by-laws and the subject matters of the by-laws are not ones in which separate readings must be given “by law”.

Hence, we have concluded that it was neither a breach of the *Municipal Act* nor of the Township’s Procedure By-law to give these by-laws three readings on December 18, 2014.

**VII. CONCLUSION**

Amberley Gavel has concluded that the gathering at the residence of Mayor-elect Konoval on November 24, 2014 was, for the purposes of the *Municipal Act*, a meeting.

Further, the meeting involved discussion of council business (the Agreement) and appointments to agencies and boards, items that may have required open discussion by Council under the *Municipal Act*, unless the matters under consideration could be discussed in closed session under one of the applicable sections in section 239(2) of the *Municipal Act*.

However, even if the discussions engaged an exception to the open meetings rule under the *Municipal Act*, Council was still required to (a) give notice of the meeting and (b) state by resolution the fact of the holding of the closed meeting and the general nature of the matters to be considered at the closed meeting and (c) record the proceedings of the meeting. It did not do so. Hence, the gathering, which we have deemed to have been a meeting by virtue of the business discussed, was in violation of section 239 of the *Municipal Act*.

It should be noted that the violation of the *Municipal Act* was actually a breach by the outgoing Council given that three of the four individuals at the meeting were Members of the outgoing Council and, as such, still in office on November 24, 2014.

There is no evidence to support an allegation that the Members of Council discussed the termination of staff under the Agreement or the appointment of a new CAO at that November 24th meeting. Amberley Gavel concluded that the first time that the Council discussed those matters was at its Committee of the Whole Meeting on December 12, 2014 in open session. Council then discussed the consequences of the termination of the Agreement, including the termination of staff under the Agreement and the appointment of an Acting CAO/Clerk/Treasurer, properly in closed session on December 18, 2014.

We have concluded that Council did not breach the provisions of the *Municipal Act* or its Procedure By-law when it gave the by-laws respecting the termination of the Agreement, and its consequences, three readings at the same meeting on December 18, 2014.

**VII. RECOMMENDATIONS**

As a result of our review, we offer the following recommendations:

1. Members of Council must be especially vigilant when they are gathering as a quorum in any forum, even if that gathering is merely social in nature. Not all informal gatherings of individuals who are members of a council for a municipality will be deemed to be a meeting for the purposes of the *Municipal Act*. However, it is important to consider the perception by the public that decisions might be made during such gatherings, “behind closed doors”, rather than in an open, accountable, and transparent forum. Moreover, Members of Council should not discuss any business at such gatherings which materially advances the business of the municipality or which sets the foundation for decisions that would materially advance the business of the municipality at a future date.
2. Mayor Konoval should be careful to ensure that he does not leave the impression with others that he is speaking on behalf of Council on any substantive matters without having direction or resolution by Council on such matters. He should make it explicit and unequivocal that, absent any formal decision or direction by Council to speak on their behalf, he is speaking as only one voice on Council.
3. When convening into closed session, it is useful for council, its committees, and local boards to formally resolve to move into closed session by citing the general nature of the matter to be considered, including the applicable, specific exemption in section 239(2) of the *Municipal Act* allowing the closed session, and providing enough information to the public without undermining the reason for excluding the public. The wording for the specific exemption allowing the closed session should mirror the wording in section 239(2) the *Municipal Act, 2001,* as amended.
4. Had the meeting not involved a quorum of the outgoing Council, and instead involved a quorum of the yet-to-take-office Council, we would not have concluded that it was an improper meeting under the Act.

However, although we recognize that the period between Election Day and the first day to take office is a lengthy period, we would strongly discourage members of such an incoming Council from meeting to materially advance the business or decision-making of the Council. To do so would defeat the spirit of the transparency provisions of the Municipal Act and the public’s right to observe. And in fact, when new councillors meet prior to taking office, even for training and orientation purposes, we recommend that it be done in a public forum.

**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 Township of Carling. 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.

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**AMBERLEY GAVEL LTD.**

**March 2015**

1. S.O. 2001, c. 25. [↑](#footnote-ref-1)
2. *Bill 130: An Act to amend various Acts in relation to municipalities*, S.O. 2006, c. 32 (“Bill 130”). [↑](#footnote-ref-2)
3. The Township’s Procedure By-law, By-law #95-9 as amended, requires these appointments to be made by Council at its first meeting of the new term of Council or as soon as practical thereafter (section 65). As such, the decisions should have been made by the new Council and not Members of Council for the ongoing Council. Although we appreciate that three of the five members are Members of both the outgoing and incoming Council, it was the outgoing Council that remained in Office on the date these decisions were made. [↑](#footnote-ref-3)
4. Whether or not this type of meeting conforms to the provisions of the *Municipal Act* is not part of this investigation into the proceedings at Carling Township. [↑](#footnote-ref-4)
5. We note in the ensuing documents which effected the termination that the termination is characterized as a “resignation”. [↑](#footnote-ref-5)
6. By-law #95-9, as amended, section 55. [↑](#footnote-ref-6)