**REPORT TO**

**COUNCIL OF THE REGIONAL MUNICIPALITY OF DURHAM**

**REGARDING A COMPLAINT THAT THE INAUGURAL MEETING**

**HELD ON DECEMBER 8, 2010 WAS A CLOSED MEETING**

**Complaint**

The Clerk of the Regional Municipality of Durham received a closed meeting complaint on February 2, 2011. The complainant requested an investigation of the inaugural meeting of Regional Council held on December 8, 2010. This inaugural meeting was the first meeting of the Regional Council for the term of office December 1, 2010 to November 30, 2014.

The essence of the complaint was that certain members of the public were barred entry to the actual Council Chambers where the Regional Council was meeting and that this amounted to a closed door meeting contrary to the open meeting provisions of the Municipal Act.

**Legal Note**

All references to the Municipal Act in this report are references to the Statutes of Ontario 2001, chapter 25, as amended.

**Jurisdiction**

In Ontario, section 239.2 of the Municipal Act requires municipalities to have a closed meeting investigator. The Regional Municipality of Durham has appointed Local Authority Services (LAS) for this purpose. LAS has delegated its powers and duties to Amberley Gavel Ltd. to undertake this particular investigation and to report to Council of the Regional Municipality of Durham.

**Investigation**

On February 9, 2011 the Regional Clerk forwarded the closed meeting complaint and investigation request to Amberley Gavel Ltd. Accompanying it were certain materials requested by Amberley Gavel. Included were copies of the Region’s Procedure and Notice Bylaws (Procedural Bylaw Number 47-2010 and Notice Bylaw Number 82-2007) as well as copies of the agenda and minutes for the meeting in question.

The above materials were reviewed in advance of interviews conducted on April 12, 2011. Individual interviews were held on that date with the Regional Clerk, Deputy Clerk, Inspector Bruce Townley of Durham Regional Police Service and the complainant.

**Background**

1. Open Meeting Requirements

Section 239 of the Municipal Act provides that all meetings of a municipal council shall be open to the public. This is one of the elements of a transparent government. Section 239 sets forth exceptions to this open meeting rule. It does not, however, speak to situations where attendance may exceed physical limitations.

1. Notice Requirements

Section 230 of the Municipal Act provides that the first meeting of a Regional Council after a regular election shall be held at the time set out in the municipality’s procedure bylaw but in any case not later than 31 days after its term commences. It is noted that there was a regular election on October 25, 2010 and a new term of Council commenced on December 1, 2010.

As for the Region’s Procedure Bylaw, it provides that the first meeting of Durham Regional Council shall be held after the councils of the area municipalities in Durham have held their first meeting on such date and at such time and place as may be fixed by bylaw of the Regional Council. Having surveyed the area municipalities as to the time and date of their first meetings, Regional Council passed Bylaw 19-2010 on April 21, 2010. It provided for the first meeting of Regional Council to be held on December 8, 2010 at 10:00 a.m. in the Council Chambers, Regional Headquarters Building, 605 Rossland Road East, Whitby, Ontario. This provision and is in keeping with the Municipal Act as well as Durham Region Procedure and Notice Bylaw requirements.

The Region’s Procedure Bylaw sets out the order of business for the first meeting of Council. (See section 8.2 of Bylaw 47-2010). In this regard, an agenda was published on the Friday prior to the meeting. This was done in keeping with the provisions for giving the public notice of Regional Council meetings.

While it is noted that notice and the sufficiency of such notice are not the subject of this complaint it is necessary to establish as part of any investigation that the municipality adhered to notice requirements.

**Facts and Evidence**

1. Inaugural Meetings

It can be said with certainty that inaugural meetings are significant events for those elected to office. There is a certain amount of ceremony and honour associated with attending one’s first meeting of Council in a new term. A Councillor will be taking the declaration of office and it is natural to want to have family and friends present to witness the occasion. In the case of the Durham Regional Inaugural held on December 8, 2010, every member of Council plus those known to be seeking the office of Regional Chair were permitted to invite up to seven persons.

1. Preferred List

Efforts were made to accommodate these invited persons with seating inside the actual Council Chambers. In this regard a preferred seating list was prepared based on the names supplied. The Council Chambers was filled based on this listing on a first-come-first-served basis.

(Also on the preferred list were the names of Regional Councillors and Department Heads, Clerk’s staff and certain other regional staff necessary to run the meeting plus members of the media. The list also included the names of the Clerks of the area municipalities who, as part of the proceedings, presented for Regional Council those members from their municipality along with their certificates of office. The above mentioned were not only on the preferred list but given assigned seating.)

In total, the preferred seating list included some 290 names.

1. Council Chambers and Overflow Rooms

Whitby Fire and Emergency Services directs that the fire safety occupancy load in the public gallery of the Durham Region Council Chambers is 116 persons. Given the number of guests each member of council plus the three persons who were known to be seeking the office of Regional Chair were permitted to invite it was obvious this seating would easily be exceeded. As a result, preparations were made for three overflow rooms where the inaugural meeting could be broadcast “live” via an audio and video feed. These overflow rooms were meant to accommodate those members of the public on the preferred seating list who could not be provided for inside the actual Council Chambers plus all other attendees.

1. Rationale for the Complaint

All the public seating inside the actual Council Chambers was taken by persons on the preferred seating list. This was anticipated and meant that members of the public who showed up (some an hour or more in advance of the 10:00 a.m. start) and whose names were not on the preferred seating list were refused entry to the Chambers and directed immediately and from the outset to the overflow rooms.

 It was expressed that this was not fair and all public seating inside a Council Chambers should be on a first-come-first-served basis only. Questions were also raised about a municipality’s lawful right to reserve public seating or reserve it without an approved policy and how the use of reserved seating might be abused on occasions involving controversial issues before Council. These differences of opinion and points are worthy of debate and consideration.

There is also evidence that some members of the public were told the Council meeting was “closed”, “private”, by “invitation only” and the public gallery inside the Council Chambers “designated a private area”. These were poor choices of words meant to convey that attendance within the actual Council Chambers was based on a preferred seating list.

It has been suggested that watching a Council meeting on television outside the actual meeting room is “one dimensional” and does not allow you to witness what is going on all around and as a whole. It was also said that TV gives only one view or perspective and does not allow you to focus your attention on any one member of council.

1. Police Presence

Based on rumours and social media monitoring it appeared that as many as three groups would be attending the Inaugural Meeting in order to make their views known on certain issues. As a result, the Regional Clerk requested a police presence for purposes of keeping the peace. This the Police did and by all accounts their presence alone achieved this goal.

**Findings**

From all reports, the meeting was well attended and there is no evidence that members of council met at any time to conduct business not televised in the overflow rooms (the proceedings were, in fact, televised live on Rogers Cable 10 without interruption), in a formal closed session, or to the exclusion of non-members of council.

There are physical size and safety considerations that limit the number of people that can be accommodated within any public space, including a Council Chambers. The Region believes it made reasonable efforts in this situation to accommodate for these limitations and various interests, including the public interest. For comparative purposes it is noted that the first meeting marking a new session of the Ontario Legislature, where the Throne Speech is read, is not open to the public except by invitation.

Some members of the public were excluded due to limitations of the room size. This could happen at any municipal council meeting where interest exceeded the physical capacity of the room.

It could be argued that a Council might pack the audience with invitees such that parties on one side of a particular issue might be excluded. That was clearly not the case with this meeting. Equal treatment was given to all candidates for Chair, and their guests, and the media was specifically included.

**Conclusion**

The meeting of Durham Regional Council held on December 8, 2010 was an open meeting in compliance with the open meeting requirements of the Municipal Act.

**Recommendations**

Durham Regional Council should review the appropriateness of the number of guests each member of council is permitted to invite to an inaugural meeting as well as the appropriateness of all the seating inside the Council Chambers being taken up solely by these invited guests and designated personnel.

 Consideration should also be given to a policy limiting the use of preferred seating to inaugural meetings only as well as a possible change of venue for meetings where large numbers of attendees are anticipated.

As discussed with the Regional Clerk, safeguards also need to be taken to ensure the anonymity of the person seeking a closed door investigation.

**Public Report**

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

This report is forwarded to the Council of the Regional Municipality of Durham. The Municipal Act provides for this report to 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 where receipt of the report is listed as a public agenda item.

**Closed Meeting Investigator**

**AMBERLEY GAVEL LTD.**

 June, 2011

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**