**REPORT TO**

**THE CORPORATION OF THE TOWNSHIP OF HURON-KINLOSS WITH RESPECT TO AN ALLEGED IMPROPERLY HELD CLOSED MEETING OF THE MULTI-MUNICIPAL WIND TURBINE WORKING GROUP IN THE MUNICIPALITY OF HURON-KINLOSS JUNE 21, 2013**

**COMPLAINT**

The Municipality of Huron –Kinloss received a complaint from an individual alleging that the Multi-Municipal Wind Turbine Working Group (MMWTWG) had held a meeting improperly closed to the public on June 21, 2013 in the Township Community Centre in Ripley, part of Huron-Kinloss.

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

**JURISDICTION**

The MMWTWG is a joint advisory committee to which approximately a dozen municipalities (the number can vary over time) send representatives for the purpose of sharing information to be made available to each local council. Substantially more than a majority of the members are elected officials, according to Committee minutes, clearly making it subject to the closed meeting investigation process.

The MMWTWG is an advisory committee to the Township of Huron-Kinloss.

The Municipality appointed Local Authority Services (LAS) as its closed meeting Investigator pursuant to section 239.2 of the Municipal Act. LAS delegated its powers and duties to Amberley Gavel Ltd. to undertake the investigation and report to the Municipality.

**LEGISLATIVE BACKGROUND**

 **The Municipal Act and Closed Meetings**

Section 238(2) of the Municipal Actprovides that every municipality and local board shall pass a procedure by-law for governing the calling, place and proceedings of meetings. Section 239 of the 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 meeting rule. It lists the reasons for which a meeting, or a portion of a meeting, may be closed to the public (“open meeting exceptions”).

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 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).

(3.1) A meeting of a council or local board or of a committee of either of them may be closed to the public if the following conditions are both satisfied:

1. The meeting is held for the purpose of educating or training the members.

2. At the meeting, no member discusses or otherwise deals with any matter in a way that materially advances the business or decision-making of the council, local board or committee.

 …

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%22%20%5Cl%20%22s239s5)  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%22%20%5Cl%20%22s239s6)  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).

**INVESTIGATION BACKROUND AND FINDINGS**

The Township Clerk and Chief Administrative Officer were interviewed, as was the complainant and two of the municipal members of the committee in attendance at the June 21 event. Two Clerks from other municipalities that send representatives to the MMWTWG were also consulted.

There were no minutes available for the June 21st event as it was alleged by the municipality that it was not a meeting of the MMWTWG. The Committee Secretary did not attend, for that reason. We were advised that a majority of the MMWTWG members were not in attendance.

The minutes of the MMWTWG between March 14, 2013 and June 13, 2013 indicated that the meeting was being organized, with the knowledge of the Committee, by persons who were a regular attendees, and apparently active participants/delegations at the MMWTWG meetings, but not members of the Committee.

Proper minutes of the MMWTWG were not kept before March 14, 2013.

Invitations were apparently sent by the organizers, in May to municipalities beyond the membership of the MMWTWG.

But, had we been presented with the invitation to the June 21st event that was distributed to these municipalities, and we presume others, we would certainly have concluded that it was.

The invitation was headed:

MULTI-MUNICIPAL WIND TURBINE WORKING GROUP
COMPRISED OF ELECTED OFFICIAL AND APPOINTED CITIZENS FROM THE
MUNICIPALITIES OF BRUCE, GREY, DUFFERIN, HURON & PERTH COUNTIES

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INVITATION TO DISCUSS THE MUNICIPAL REGULATION OF NOISE

And signed by:

Rachel Thompson and William MacKenzie

Organizers on behalf of the Multi Municipal Wind Turbine Working Group

The MMWTWG Secretary was not the party to whom RSVPs were directed, further confirming to our conclusion that the event was not intended to be a meeting of the MMWTWG or a subcommittee of it, but a different broader based event. However, that would not have been evident to someone who saw the invitation.

We were told that the organizers did not have permission to describe this event as they did, to make it clearly look like a MMWTWG event.

But, we could determine no broad action by any of the Committee’s municipality members to counter that impression even though the invitation was in circulation for a month.

Thus, we are not surprised that the complainant believed that it was possible to attend the meeting as a member of the public.

The complainant forwarded the invitation to Ministry of Municipal Affairs’ staff before the meeting who also apparently concluded in reading it that it would be a meeting open to the public.

**CONCLUSIONS AND RECOMMENDATIONS**

It is our opinion that this meeting was not a meeting of the MMWTWG despite clear appearances to the contrary in the circulated invitation.

However, we believe that MMWTWG members and the constituent municipalities should have acted to dispel the conclusion that it was, or might be, a meeting open to the public as soon as they became aware of the misinformation in circulation.

When it first became apparent that there was some confusion about who could attend, there should have been an immediate distribution to invitees that attendance was intended to be by invitation only, and that it was not being sponsored by, or held in conjunction with a meeting of, the MMWTWG.

There are a number of other issues related to this Committee that also contribute to confusion and lack of transparency.

Ready access to the minutes of the MMWTWG appears only to be available through the minutes/agenda packages of constituent municipalities, and only if they are reproduced therein.

The approved membership of the MMWTWG is difficult, if not impossible to determine, except when attending members are listed in the Working Group’s Minutes.

The terms of reference seem to exist in draft form only. And assuming they are the basis of what the Committee was appointed to do, the Committee appears to be exceeding its mandate. A review should be undertaken.

The MMWTWG situation raises a number of broad issues with respect to joint local boards or joint advisory committees that municipalities should consider when establishing and/or making appointments to them, including:

1. What are the approved terms of reference as established by the initiating municipality or municipalities?
2. Appointments should only be made by bylaw and clearly cite these terms of reference.
3. How frequently will the terms of reference and mandate be reviewed and how might they be amended by all parties?
4. What public notice will be given of meetings to be held?
5. What procedural by-law will be followed?
6. Who will take minutes?
7. Is this person eligible to take the minutes?
8. Will the minute taker be properly trained?
9. Where and when will these minutes be distributed and be publicly available?
10. Where is the record of membership and members publicly available?
11. The open meetings provisions of the Municipal Act will apply.

The public’s expectation and a key requirement of the Municipal Act is that a municipality and its committees and local boards will conduct themselves in an open and transparent manner. Municipalities should consider not only how they might meet that test, but also strive to exceed it in order to maintain a high level of public trust.

**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 Huron-Kinloss. The Municipal Act provides that this report be made public. We recommend be included on the agenda of the next regular meeting of Council, and forwarded to the Multi-Municipal Wind Turbine Working Committee and its constituent municipalities for their attention.

January 2014

**Closed Meeting Investigator**

**AMBERLEY GAVEL LTD.**

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**Per:**