**REPORT TO**

**THE COUNCIL OF THE TOWNSHIP OF THE ARCHIPELAGO**

**REGARDING THE INVESTIGATION OF MEETINGS OF THE COUNCIL OF THE TOWNSHIP AND ITS COMMITTEES**

**INTRODUCTION**

Amberley Gavel Ltd. received a complaint dated January 6, 2016 about the procedures for meetings of the Council for The Township of The Archipelago (“Council”) held on November 20, 2015 and December 11, 2015 and its Steering Committees (“Committees”) meeting on November 19, 2015.

The complainant questioned whether the Township had complied with the *Municipal Act, 2001*[[1]](#footnote-1),as amended by Bill 130[[2]](#footnote-2) (“Municipal Act”), or its own Procedure By-Law in setting the agenda for these meetings, in distributing agenda materials to the public, and in recording the proceedings of its meetings. The complainant is not alleging that Council or its Committees closed these meetings to the public for an improper purpose. However, he alleged the fact that agenda materials and records for the meeting are not available to the public makes it unclear as to what Council will be or was discussing in both the open and closed sessions of its Committees and, hence, Council.

**JURISDICTION**

The Town 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 Township of The Archipelago.

**BACKGROUND**

1. The Municipal Act

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 meeting 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 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 or for 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).

Section 238.(8) of the Act requires that a municipality or local board or a committee of either of them shall record without note or comment all resolutions, decisions and other proceedings at a meeting of the body, whether the proceedings are closed to the public or not. In accordance with Section 239.(9), the record is to be made by the Clerk for meetings of a council or by an appropriate officer for meetings of a committee or a local board.

**INVESTIGATION**

The CAO and the Clerk were interviewed during the course of the investigation. Documents provided by the Township and reviewed during the course of the investigation included agendas, minutes, the Township’s Procedure and Notice By-laws, and applicable legislation.

**FACTS AND EVIDENCE**

1. The Township’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, as well as public notice of meetings.[[3]](#footnote-3) The Procedure By-Law provides for closed meetings of Council only if the subject matter relates to one or more listed items in the Procedure By-law.[[4]](#footnote-4) Those listed items mirror the exemptions in the Municipal Act under section 239.(2).

The Procedure By-Law and the Township’s Notice By-Law do not contain any reference to distribution of Council material (e.g. reports, correspondence, etc.) to the general public. The CAO advised Amberley Gavel that materials are provided to any member of the public upon request.[[5]](#footnote-5)

The Procedure By-Law provides that no minutes be kept of closed meetings and no motions can be made “other than to move out of a Closed Meeting, unless Council decides that in the best interest of the Municipality, a motion be made and minutes kept as permitted by legislation”.[[6]](#footnote-6) We will comment on this later in the report.

Council’s Committees meet in a “Steering Committees” format where each standing committee meets for approximately one hour or more, as necessary, on the same day. These Steering Committees usually meet the day before Council and recommendations, if any, from the Steering Committees are placed before Council for consideration. The CAO advised that no minutes were recorded of the meetings of the Steering Committees, except for decisions which are taken in closed session.

1. Agenda for the Steering Committees Meeting of November 19, 2015

The initial Agenda for the Steering Committees Meeting of November 19, 2015 indicated that the Human Resources Committee would meet that day although the Agenda does not reference any items for discussion. A revised Agenda was produced for the Steering Committees which included two matters for discussion by the Human Resources Committee. The original agenda was still posted to the Township’s website at the time of our investigation. Hence, the public would not have been made aware in advance that these two items were to be discussed.

The public should have sufficient notice about the items to be considered by Council and its committees so that it can make an informed decision as to whether or not to attend the meeting or to seek a deputation on an item. Although not automatically a breach of either the Municipal Act or the Township’s Procedure By-Law, adding items for consideration at the last minute does not foster the principles of openness and transparency. Best practice is that only items of an emergency or time sensitive nature, where a by-law or statutory public notice requirement doesn’t exist, should be added to an agenda once the agenda has been published.

1. Minutes for the Steering Committees of November 19, 2015

There are no minutes for the meeting of the Steering Committees on November 19, 2015.

1. The Council Meeting (Open Session) of November 20, 2015

The Agenda for the Council Meeting of November 20, 2015 was revised on November 20, 2015, although only the initial agenda was posted on the Township’s website. The initial agenda did not list any items to come forth from the Steering Committees but did contain the title “Reports of Task Forces/Committees”.

The Minutes of the Council Meeting in Open Session of November 20, 2015 indicate that a number of recommendations from the Steering Committees meeting of November 19, 2015 were brought forward to Council for consideration. Because the agenda was revised to include these items at the last minute (i.e. only after the November 19 Steering Committees meeting), the public would not have been aware that the matters were to be discussed by Council unless they were in attendance at the Steering Committees meeting on November 19.

As indicated earlier, adding items to an agenda for consideration at the last minute does not support the principles of openness and transparency under the Municipal Act.

1. The Council Meeting (Open Session) of December 11, 2015

The complaint indicated that an item was discussed titled “Island A25 Bollards”. The complainant asked for background material from Township staff and experienced a delay in getting that information. The delay in the release of information by the Township to the public is beyond the scope of a closed meeting investigation. However, the CAO did advise that business was hectic in November and December with the departure of a key staff member and the consequent appointment of a new Clerk. Nevertheless, the provision of reports and other information presented to Council in open session should be a priority for staff.

1. Publication of Council and Committee Material

Neither the Municipal Act nor the Township’s By-Laws provide for the distribution of Council and Committee material to the public. The CAO advised that in the past any requests that have been made by the public for copies of the material are honoured as soon as possible. Although not required, best practice is for material to be distributed or made available to the public in advance so that the public can made an informed decision whether or not to attend a meeting and to make a deputation on an item. In addition, if the public has a copy of the material, they can more easily following the discussions and deliberations of the particular body during the meeting. As it stood in 2015, the public might not even be aware of the contents of a particular report if Council did not discuss it (e.g. reports from the Chief Administrative Officer).

The principles of openness, transparency, and accountability are advanced when the public is fully informed of how Council and its committees consider municipal matters and make decisions as representatives of the taxpayers.

## FINDINGS

As indicated earlier in our report, Council’s Procedure By-law provides that no minutes be kept of its closed meetings and no motions made “other than to move out of a Closed Meeting, unless Council decides that in the best interest of the Municipality, a motion be made and minutes kept as permitted by legislation”.[[7]](#footnote-7) Further, no minutes were recorded for the proceedings of the Steering Committees, except for closed session decisions, although recommendations from the Steering Committees were presented to Council on the following day.

In not keeping a written record of what is discussed during its meetings, Council and its Committees and the Municipal Clerk were in breach of the Municipal Act.

Section 239.(8) of the Act requires a municipality or local board, **or a committee of either of them**, to record without note or comment all resolutions, decisions **and other proceeding**s at a meeting of the body, **whether the proceedings are closed to the public or not** [emphasis added].

Section 228.(1) of the Act states that is it is the Clerk’s **duty** to…record, without note or comment all resolutions, decisions or other proceedings of Council. Also minutes are required of all meetings of Council Committees, recorded by an appropriate person, usually the Clerk or someone under the direction of the Clerk.

A council cannot pass a provision in its procedure by-law that is in contravention of the Municipal Act. Hence, section 88 of the Township’s Procedure By-law is unlawful.

## CONCLUSIONS

Based on the evidence, background documents, and the interviews, it is our conclusion that Council and its committees were in breach of Section 239.(8) the Municipal Act because there was no written record of what was discussed during its open and closed sessions of Steering Committees. Not only decisions are to be recorded; all proceedings are to be recorded, in accordance with the Act.

We were advised during the investigation that, effective January 2016, the Clerk would be recording all proceedings of the meeting of the Steering Committees and producing minutes from those meetings, both in open and closed session.

We were also advised that, effective January 2016, all Council and Committee materials would be available to the public in advance of the meetings through the Township’s website. Revised agendas, if any, would also be posted to the website.

A review of the Township’s website indicates that the new practices were in place for the February and March meetings.

From that review, it is not clear to a reader what items will be dealt with at Committee meetings and what would go directly to Council. In addition, since the Procedure By-law is not available on the Township website it is not clear what the timeline is for posting an amended agenda.

In addition, a member of the public still cannot determine what the Steering Committees’ recommendation(s) to the Council is (are) unless they actually attend because of the less than 24 hour gap between the meetings.

**RECOMMENDATIONS**

We have been advised that the Township is currently reviewing its Procedure By-Law and meetings processes. We would recommend that more direction be provided within the revised By-Law about the process and timeline for adding last minute items to Council and Committee agendas, with the aim of fostering appropriate public notice, openness, and transparency.

In addition, the Procedure By-law is the document that outlines for Council, staff and the public what issues are to be dealt with in Committee with recommendations then coming forward to Council. It should be readily available to the public on the website.

Given the back to back nature of Committees and Council, and the fact that all members are likely to attend both as currently structured, it is recommended that the Council consider in its Procedure By-law review holding only a Council meeting with one agenda package and supporting documents being posted in the interest of greater transparency and accountability. That meeting can still take place over two days.

**PUBLIC REPORT**

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

This report is forwarded to the Council of the Township of The Archipelago. The Municipal Act provides that this report be made public. It is suggested that the report be included on the agenda of the next regular meeting of Council or at a special meeting called for the purpose of receiving this report prior to the next regular meeting.

Nigel Bellchamber

for

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**AMBERLEY GAVEL LTD.**

**March 2016**

1. S.O. 2001, c. 25. [↑](#footnote-ref-1)
2. *Bill 130: An Act To Amend Various Acts In Relation To Municipalities*, s.o. 2006, c. 32 (“Bill 130”). [↑](#footnote-ref-2)
3. *The Corporation of the Township of The Archipelago, By-Law No. 99-66, To govern the proceedings of Council and Task Forces/Committees.* (“Procedure By-law”). The Procedure By-Law applies to Council’s committees and task forces. [↑](#footnote-ref-3)
4. *ibid*., section 7(a). [↑](#footnote-ref-4)
5. The complaint alleges that there can be significant delays between the time of the request and receipt of the material. This part of the complaint is outside of the scope of a closed meeting investigation. [↑](#footnote-ref-5)
6. *ibid.,* section 88. We have previously advised the Township that this provision is a breach of the Municipal Act. [↑](#footnote-ref-6)
7. *supra,* note 5. [↑](#footnote-ref-7)