**REPORT TO**

**THE CORPORATION OF THE TOWN OF WHITBY**

**REGARDING THE INVESTIGATION OF**

**THE MEETING OF COUNCIL ON FEBRUARY 8, 2010**

1. **COMPLAINT**

The Corporation of the Town of Whitby (“Town”) received a complaint on or about February 3, 2012 about a meeting of Council on February 8, 2010.[[1]](#footnote-1)

The essence of the complaint is that, given the haste of Council’s deliberations on the particular matter underlying the complaint, Council must have met in closed session to deal with the substance or outcome of its deliberations and, had it done so, it would have been in contravention of the *Municipal Act, 2001*[[2]](#footnote-2),as amended by Bill 130[[3]](#footnote-3) (“Municipal Act”).

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

1. **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 the Town.

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 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%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).

1. **INVESTIGATION**

The investigation into the complaint began on May 1, 2012.

The complainant, the Town Clerk, and the Town Solicitor (who was acting CAO on February 8, 2010 and hereinafter called the “Town Solicitor”) were consulted during the course of the investigation.

Documents provided by the Town and reviewed during the course of the investigation included the Town’s Procedure and Notice By-laws, the Agendas and Minutes of the subject Council meeting, and a report dealing with the subject matter that was submitted by staff as part of Council’s consideration of the matter on February 8, 2010.

1. **Ambit of the Investigation**

The complainant was advised by the investigator that Amberley Gavel’s role is confined to reviewing whether or not Council or committee meetings were or ought to have been closed to the public, given the subject matter under consideration. Amberley Gavel’s role is notto comment on the substantive decision made by Council relative to the matter under consideration.

1. **ANALYSIS AND FINDINGS**

Having considered the preliminary issue as to the ambit of its investigation, the next step is to determine whether the issue was the subject of a closed meeting of Council and, if so, if the subject matter under consideration was one for which Council could invoke an exception to the open meetings provisions under the Municipal Act.

1. **Agenda for the Council Meeting of February 8, 2010**

The February 8, 2010 Agenda for the Regular Council Meeting contained an item to be dealt with in open session under “New and Unfinished Business” that was listed as:

 “7.1 Re: Corporate Services Report, CS 04-10 Relocation Application for the Hideaway Bingo Hall”. (“Corporate Services Report”)

Staff provided a twelve-page report with more than one hundred pages of attachments as part of the Corporate Services Report. Staff recommended the relocation of the Hideaway Bingo Hall.

In our interview with the Town Clerk and the Town Solicitor they both advised that they had diligently attempted -- while preparing and presenting this report and process to Council – to ensure that all parties had due process to be heard on the matter and to have their points of view considered before Council reached a decision. From the evidence before us, we believe this to be true.

1. **Minutes of the Regular Meeting of Council on February 8, 2010**

The Minutes for the Council Meeting of February 8, 2010 indicate that the meeting commenced at or around 7:00 p.m. After having concluded a number of items under consideration, Council took a short recess at 9:35 p.m. for five minutes before moving into Committee of the Whole at 9:40 p.m. to hear deputations with respect to the Relocation Application for the Hideaway Bingo Hall. Committee of the Whole heard twelve deputations on the matter. It then considered the staff report and had a discussion in open session. Following that discussion, Committee of the Whole resolved to recommend that Council deny the application for the relocation of the subject bingo hall. The decision was then ratified by Council in open session.

When asked, neither the Town Solicitor nor the Town Clerk perceived that Council had pre-determined the outcome of the application for relocation prior to considering the content of the deputations or of the staff report. The Town Solicitor indicated that Council was “attentive and open”; that “everyone had their full say”; and that, in her opinion, Council had considered all points of view prior to making their decision. These conclusions were supported by the Town Clerk.

Moreover, given that staff were attentive to ensuring a fair and open process in dealing with this potentially contentious issue, the Town Solicitor indicated that she would have advised Council or Committee of the Whole against moving into a closed session to deal with its deliberations, should it have wanted to do so (the record shows that they didn’t). Staff and Council appear to have been aware of the need for openness and transparency in the decision-making process particularly since this matter engaged considerations under Alcohol and Gaming legislation. The Town Solicitor said during the investigation that had Council discussed moving into closed session, she would have indicated to Council that they had “no reason for a closed session”. From our interview, we found that the Town Solicitor is well aware of the limitations on closed meetings in the Municipal Act as they might have been engaged on this issue. We accept that she would have communicated those limitations had Council wanted to go in closed session on the matter.

We have concluded based on our investigation that Committee of the Whole and Council dealt with the matter in open session, using the appropriate processes.

There is no evidence to support an allegation that Council moved into closed session to make a decision during the five minutes that it took a break before moving into Committee of the Whole to hear the deputations and to consider the staff report. The record and the evidence of the Town Clerk and Town Solicitor was that this was simply a “biological break” given that Council had been meeting for some two and a half hours prior to resolving into Committee of the Whole. That is a reasonable proposition and there is no evidence to the contrary that either Council or Committee of the Whole did otherwise.

1. **Agenda of the Closed Meeting of the Council on February 8, 2010**

The Agenda for the In Camera (Closed) Session of Council does not include an item dealing with the relocation of the subject bingo hall.

**(d) Minutes of the Closed Meeting of Council on February 8, 2010**

The Minutes for the Closed Meeting of Council on February 8, 2010 do not reflect that Council considered the item dealing with the relocation of the subject bingo hall in closed session. Both the Town Solicitor and the Town Clerk were in attendance at the closed meeting and they indicated during the investigation that the Minutes reflect accurately what was discussed. We found their statements to be trustworthy and credible and in accordance with the written record. Hence, it cannot be concluded on the basis of any evidence before us that Council members discussed this particular subject matter in closed session.

**VII. CONCLUSION**

Amberley Gavel has concluded that the issue of the Relocation of the Hideaway Bingo Hall was not the subject of a closed meeting of Council on February 8, 2010. Hence, it is concluded that Council was not in breach of the open meetings provisions of the Municipal Act.

**IX. 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 Town of Whitby. 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.**

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**Per:**

1. The complainant did not realize that he or she had the right to complain under the provision of the *Municipal Act, 2001*, *infra,* regarding allegations about closed meetings until some years after the impugned events. [↑](#footnote-ref-1)
2. S.O. 2001, c. 25. [↑](#footnote-ref-2)
3. *Bill 130: An Act to amend various Acts in relation to municipalities*, S.O. 2006, c. 32 (“Bill 130”). [↑](#footnote-ref-3)