

**REPORT TO
THE CORPORATION OF THE TOWN OF NEWMARKET REGARDING THE
INVESTIGATION OF THE MEETING OF SPECIAL COMMITTEE OF THE
WHOLE COUNCIL FOR THE TOWN OF NEWMARKET IN CLOSED SESSION
ON APRIL 22, 2015**

I. COMPLAINT

The Corporation of the Town of Newmarket (“Town”) received a complaint about a Special Meeting of the Committee of the Whole for Town Council (“Committee of the Whole”) in Closed Session held on April 22, 2015. The essence of the complaint is that the Town of Newmarket Procedure By-law was not followed in that the summary of the discussion from the Closed Session, which was provided at the Council Meeting on May 11, 2015, did not include information about any vote(s) taken by Committee of the Whole while in Closed Session.

This request was sent to the offices of Amberley Gavel Ltd. (“Amberley Gavel”) for investigation.

II. JURISDICTION

The Town appointed Local Authority Services (LAS) as its closed meeting investigator pursuant to section 239.2 of the *Municipal Act*¹, as amended by Bill 130² (“*Municipal Act*” or “*Act*”).

LAS has delegated its powers and duties to Amberley Gavel to undertake the investigation and report to Town Council.

III. 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.

¹ S.O. 2001, c. 25.

² *Bill 130: An Act to amend various Acts in relation to municipalities*, S.O. 2006, c. 32 (“Bill 130”).

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. (1) Except as provided in this section, all meetings shall be open to the public.
2001, c. 25, s. 239 (1).

Exceptions

(2) 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).

The *Act*, under subsections 239(5) and 239(6), does not permit a council, committee, or local board to vote while in closed session unless the *Act* requires or permits the meeting to be closed by virtue of one of its exceptions and 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.

The *Act* is silent about what must be reported out from a closed session to an open session of the council, board, committee, or other body. All that the *Act* requires is that a record, without note or comment, be kept of all resolutions, decisions, and other proceedings, whether closed to the public or not (section 239(7)).

IV. INVESTIGATION

Documents provided by the Town and reviewed during the course of the investigation included the Agenda and Minutes of the Open and Closed Sessions of Special Committee of the Whole on April 22, 2015 and the Minutes of the Council Meeting on May 11, 2015, confidential documents regarding the matter under discussion, and other relevant documentation.

The Town Clerk (“Clerk”) and the Director of Legal Services/ Municipal Solicitor (“Director of Legal Services”) were consulted during the course of the investigation.

BACKGROUND

(a) The Town’s Procedure By-Law

The Town has a Procedure By-law which governs its meetings.³ The By-law provides for special meetings of Committee of the Whole or Council, called by either the Mayor or by a majority of Members of Council, including notices for such meetings.⁴ It further provides for closed sessions of Committees or Council, with the provisions mirroring those contained in the *Municipal Act*.⁵

Although the *Municipal Act* is silent about reporting out from a closed session of a council or committee, the Town’s Procedure By-law provides that:

- i) A summary of any discussion held in closed session and any required vote will occur following the closed session discussion of Council or a Committee meeting. In the case of Committee of the Whole Meetings, communication of closed session discussions will occur at Council Meetings.
- ii) The summary of closed session discussion and vote will provide sufficient detail without detrimentally affecting the confidentiality of the matter(s) discussed in closed session and the position of the Municipality.⁶

³ *A By-law to Govern the Proceedings of Council and Committee Meetings*, Corporation of the Town of Newmarket, enacted September 30th, 2013 (“Procedure By-law” or “By-law”).

⁴ *ibid.* at section 8.(d) and 8.(e).

⁵ *ibid.* at section 9.

⁶ *ibid.* at section 9.f).

The Clerk advised that the summary of the discussion held in closed session by Committee of the Whole would normally occur at the next regularly scheduled meeting of Council.

(b) **Notice and Agenda for the Special Meeting of Committee of the Whole on April 22, 2015**

In accordance with the Procedure By-law, the Mayor called a Special Meeting of Committee of the Whole for April 22, 2015. The notice of the meeting was duly published in accordance with the provisions of the By-law.

The Agenda for the April 22, 2015 indicates that Committee of the Whole would be considering:

Section 239 (2) (e) and 239 (2) (f) of the Municipal Act, 2001.

Litigation including matters before administrative tribunals affecting the municipality;

Advice that is subject to solicitor-client privilege, including communications necessary for that purpose.

(c) **Minutes for the Meeting of Special Committee of the Whole on April 22, 2015 in Open Session**

The Minutes for the Open Session of Special Committee of the Whole show that Committee of the Whole properly went into Closed Session at 1:34 p.m., reconvened in Open Session at 3:06 p.m., and adjourned at 3:07 p.m.

(d) **Minutes of the Meeting of Special Committee of the Whole on April 22, 2015 in Closed Session**

The Minutes for the Meeting of Special Committee of the Whole in Closed Session on April 22, 2015 confirm that a matter was discussed which involved litigation before an administrative tribunal and advice that was subject to solicitor-client privilege. There were no votes taken while in Closed Session and no direction was provided to staff, other officials, or agents. No other business was discussed.

(e) **Minutes of the Meeting of Council on May 11, 2015**

The next regularly scheduled meeting of Council was on May 11, 2015. The Minutes indicate that:

Mayor Van Bynen advised that Special Committee of the Whole met on April 22, 2015 to receive legal advice in reference to a matter before an administrative tribunal.

V. ANALYSIS AND FINDINGS

(a) The Closed Session of Special Committee of the Whole on April 22, 2015

Having reviewed the relevant material and having discussed the matter with the Clerk and Director of Legal Services, we have concluded that Committee of the Whole complied with the provisions of the *Municipal Act* and the Town's Procedure By-law in all respects in its Special Closed Session on April 22, 2015.

(b) The Council Meeting on May 11, 2015

Council reported out from its Closed Session of Special Committee of the Whole in accordance with its Procedure By-law at its next regularly scheduled meeting of May 11, 2015.

No votes were taken in Closed Session of the Special Committee of the Whole on April 22, 2015. The summary of the discussion at Council on May 11, 2015 could not include information about a vote that did not occur.

The *Municipal Act* does not require any specific form or content for reporting out from closed sessions of a council, committee, or local board. Hence, the body can choose which level of specificity it will use when reporting out discussions of closed session matters. While it may choose to include more information for some matters that goes beyond the "general nature of the matter" discussed, it does not have to, especially if to do so would be to disclose what is otherwise confidential information or legal advice, or would compromise the position of the municipality on the matter. We are satisfied that Council disclosed what was appropriate and sufficient, as required by its Procedure By-law, given the nature of the matter discussed.

VI. CONCLUSION

Amberley Gavel has concluded that Committee of the Whole and Council did not breach the requirements of the *Municipal Act* or the Town's Procedure By-law in conducting and reporting out from the Closed Session of Special Committee of the Whole held on April 22, 2015.

VII. PUBLIC REPORT

We received full and prompt co-operation from all parties that we contacted and we thank them.

This report is forwarded to the Council of the Town of Newmarket. 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

AMBERLEY GAVEL LTD.

November 2015