

**REPORT TO  
THE COUNCIL OF THE COUNTY OF BRUCE  
REGARDING THE INVESTIGATION OF CLOSED SESSIONS OF THE BRUCE  
COUNTY MUSEUM COMMITTEE MEETINGS OF MAY 17, 2018; JULY 5,  
2018; JULY 12, 2018; OCTOBER 4, 2018; AND JANUARY 3, 2019.**

**Complaint**

The County of Bruce (“County”) received a complaint about in-camera portions (“closed sessions”) of Museum Committee meetings held in 2018 and 2019.

The essence of the complaint is the subject matters discussed in closed session were not eligible to be discussed in the absence of the public under the exceptions cited in the resolutions authorizing the closed sessions of Committee.

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

**Jurisdiction**

The County of Bruce appointed Local Authority Services (LAS) as its closed meeting Investigator pursuant to section 239.2 of the *Municipal Act, 2001*, as amended (“Municipal Act”). LAS has delegated its powers and duties to Amberley Gavel Ltd. to undertake the investigation and report to the Council of the County of Bruce.

**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 or shall be closed to the public:

...

*(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;*
- (h) information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any of them;*
- (i) a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;*
- (j) a trade secret or scientific, technical, commercial or financial information that belongs to the municipality or local board and has monetary value or potential monetary value; or*
- (k) a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board. 2001, c. 25, s. 239 (2); 2017, c. 10, Sched. 1, s. 26*

*(3) A meeting or part of a meeting shall be closed to the public if the subject matter being considered is,*

- (a) a request under the Municipal Freedom of Information and Protection of Privacy Act, if the council, board, commission or other body is the head of an institution for the purposes of that Act; or*
- (b) an ongoing investigation respecting the municipality, a local board or a municipally controlled corporation by the Ombudsman appointed under the Ombudsman Act, an Ombudsman referred to in subsection 223.13 (1) of this Act, or the investigator referred to in subsection 239.2 (1). 2014, c. 13, Sched. 9, s. 22.*

*(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 moves 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 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) 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) 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 239.1 provides that any person can ask for an investigation into whether a council, local board or committee of either of them has breached the open meeting requirements of the Municipal Act or its own procedural by-law.

**Investigation**

The complaint was presented in substantial detail. The senior staff member leading the matters under review before the Committee was on sick leave when the complaint was filed and is no longer in the County's employ. Documents provided by the County and reviewed included agendas, reports, minutes, the County's Procedure and Notice By-laws, and applicable legislation.

An investigation under Section 239.1 of the Municipal Act is confined to assessing whether the council, local board or committee of either complied with the open meetings provision of the Municipal Act and/or its own procedural by-law.

In addition, an investigator is bound by the rules of confidentiality as stipulated in Section 239.2(5).

Once the investigation is completed, if the investigator “is of the opinion that the meeting(s) or part of the meeting that was the subject-matter of the investigation appears to have been closed to the public contrary to Section 239 or to a procedure by-law under Section 238(2), the investigator shall report his or her opinion and the reasons for it to the municipality or local board, as the case may be, and may make such recommendations as he or she thinks fit” (section 239.2(10)).

## **Facts and Evidence**

### **(1) The County’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:

- (2) Every municipality and local board shall pass a procedure by-law for governing the calling, place and proceedings of meetings.
- (2.1) The procedure by-law shall provide for public notice of meetings.

The County of Bruce has a Procedure By-law that governs the calling, place, and proceedings of meetings, as well as public notice of meetings.

The Procedure By-law provides for closed meetings of Council and its Committees, and requires that, prior to moving in-camera, Council or Committees of Council pass a motion in public session stating:

- i. the fact of the holding of the closed meeting and the specific subsection authorizing closure;
- ii. a description of the general nature of the matter to be considered at the closed meeting.

A review of the Procedure By-law and Notice Policy determined that both comply with the Municipal Act.

The Bruce County Museum Committee is covered by the rules regarding procedures, complaints and investigations because all Committees are referenced in its Procedure By-law. Even if they were not, the Municipal Act requires adherence to the open meeting provisions and investigation procedures where fifty percent or more of the members are elected officials. In this case, elected membership appears to be one hundred percent.

**(2) The Sections cited for excluding the public by resolution in the meetings subject of this investigation included:**

Section 239(2)

- (a) the security of the property of the municipality or local board,
- (c) a proposed or pending acquisition or disposition of land by the municipality or local board,
- (k) a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board, and

Section 239 (3.1)

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

In summary, resolutions excluding the public with respect to the meetings subject of this complaint cited the sections above:

- May 17, 2018 (c) above
- July 5, 2018 (a), (k) and indirectly (c) above
- July 12, 2018 (a), (k) and indirectly (c) above
- Oct 4, 2018 (a), (k) and indirectly (c) above
- Jan 3, 2019 (a), (k) and 3.1(1)

**(3) Interpretations**

Before considering whether the cited exceptions (or other exceptions available under the Municipal Act) were applicable it is important to explore what each exception means in our opinion.

- (1) (a) Security of property in our opinion has a plain meaning that deals with threats to the physical or financial aspects of the property from some outside source. For example, it might include a terrorist threat, a probable risk of diminution of value, or susceptibility to vandalism or theft. At the heart of security is protection from an outside source.
- (2) (c) Acquisition or disposition of land includes the land and structures appurtenant thereto and deals with sale, purchase, lease, rental or gifting of property involving another party. It does not include change of use by the owner.
- (3) (k) This subsection has broad applicability if negotiations are occurring or contemplated
- (4) (3.1) (1) Education in our opinion is not intended to mean simply “briefing” or “informing”. We consider that in this context it means acquisition of knowledge or skills that are transferable and or useful in other situations.

**(4) The meetings:**

### **May 17, 2018**

Reviewing the staff report provided to Committee, the minutes of the Committee meeting and in the absence of any resolutions passed in Committee providing direction, or considered when the open portion of the meeting resumed, we find no evidence that the discussion involved the acquisition or disposition of land in accordance with S 239(c). The County already owned the properties discussed at this meeting

### **July 5, 2018**

The focus of the report to the closed session and the discussion reflected in the minutes was not the security of the property, instructions regarding negotiations, or acquisition or disposition of land. It apparently dealt with the use of property owned by the county. There was no indication from the minutes of the closed session that any specific or formal direction was given to staff by committee, since there was no record of a motion considered in accordance with the Municipal Act.

However, the minutes of the open portion of the Museum Committee meeting cited the Chair as indicating that direction had been provided to staff in closed session. If it was, it appears not to have been done in accordance with the Municipal Act requirements.

### **July 12, 2018**

A review of the July 12 closed and open minutes, and the confidential report provided to the closed session, does not indicate to us that the subject matter discussed was security of property, acquisition or disposition of property, or actual or contemplated negotiations.

The resolution that emerged in the open session following the closed session dealt with a recommendation applicable to future County budgets only regarding archival expansion.

### **October 4, 2018**

Again, we conclude that the sections cited do not apply to what the closed meeting discussions apparently entailed.

The subject property had been acquired by the County, there were no security issues cited, and while negotiations might have ensued in future, at best the subject matter involved circumstances that might ultimately need to negotiations with a potential tenant.

### **January 3, 2019**

Again, we saw no evidence that the security of the property was discussed, or that any negotiations were contemplated nor was there any attempt to provide members with “education” on any matter.

Even if education took place, it appears that there was discussion that would materially advance the business or decision making of Council in contravention of Section 239 (3.1) (2) as the committee rose from closed session and passed a resolution in open session to deal with “...Option 2, sale and removal of the house located at 254 High Street in Southampton through and RFP.....”.

Again, it is impossible to ascertain how or if direction was provided to staff in closed session, but it appears that it was for the motion to come forward in open session.

However, this resolution, that arises from a confidential staff recommendation delivered to the closed session, confirms that the closed session dealt with the “disposition of property” a permitted exception even if it was not cited in the resolution authorizing the closed session.

### **Conclusions and Recommendations**

The closed sessions of the County of Bruce Museum Committee meetings of May 17, July 5, July 12, and October 4, 2018 were not closed in compliance with Section 239 and any of the permitted exceptions to its open meetings provisions.

The January 3, 2019 closed session of the Museum Committee meeting was not closed in accordance with any of the exceptions included in the resolution that authorized the closed session. It could have been closed with respect to the disposition of property provision, since it dealt with the possible sale of a structure on County property.

None of the sessions that are the subject of this report proceeded properly with respect to the provision of direction to staff in closed session. There were no records of any resolutions dealt with in closed session providing such direction, although the ensuing open minutes referred to direction having been given.

The Municipal Act only contemplates providing direction in closed session by way of resolution.

County staff should familiarize themselves, and members of Council and Committees with the proper application of the requirements of Section 239 of the Municipal Act and reaffirm their commitment to open and transparent local government as cited in their procedure bylaw.

### **Public Report**

We thank the complainant and the County Clerk for their assistance.

This report is forwarded to the Council of the County of Bruce. 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.

**Closed Meeting Investigator**

**AMBERLEY GAVEL LTD.**

---

Per: *Nigel Bellechamber*

December 2 2019