

**REPORT TO
THE CORPORATION OF THE REGION OF PEEL
REGARDING THE INVESTIGATION OF THE CLOSED MEETING
OF PEEL REGIONAL COUNCIL HELD ON JANUARY 21, 2016**

I. Complaint

The Corporation of the Region of Peel ("Region") received a complaint on January 22, 2016 about a special in-camera ("closed") meeting held by the Council for the Regional of Peel ("Council") on January 21, 2016. The complainant requested an investigation into the validity of the closed meeting.

The complainant complains that the subject of the closed meeting was not a matter for which the meeting could be closed to the public under the *Municipal Act*.

This request was sent to the offices of Amberley Gavel Ltd. on February 22, 2016 for investigation.

II. Jurisdiction

The Region appointed Local Authority Services (LAS) as its closed meeting Investigator pursuant to section 239.2 of the *Municipal Act, 2001*¹. LAS has delegated its powers and duties to Amberley Gavel Ltd. to undertake the investigation and report to the Region.

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.

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 must be closed to the public.

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).

¹ S.O. 2001, c. 25 (hereinafter "*Municipal Act*" or "*Act*").

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).

Other criteria

[\(3\)](#) A meeting shall be closed to the public if the subject matter relates to the consideration of 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. 2001, c. 25, s. 239 (3), 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.

Educational or training sessions

[\(3.1\)](#) 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. 2006, c. 32, Sched. A, s. 103 (1).

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) 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).

IV. Investigation

The Manager of Legislative Services (Acting Regional Clerk on January 21, 2016) and the Legislative Specialist were interviewed as part of the investigation process.

Documents provided by the Region and reviewed during the course of the investigation included Agendas and Minutes of Meetings of Council, all background documentation provided at the subject meeting, the Region's Procedure By-law, and applicable legislation. The audio recording of the closed session was also reviewed.

(a) The 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.

(2.1) The procedure by-law shall provide for public notice of meetings. 2006, c. 32, Sched. A, s. 102 (3).

The Region has a Procedure By-law that governs the calling, place and proceedings of meetings, including provisions for public notice of meetings.

The Procedure By-law² provides for closed sessions of Council or its Committees

² A by-law to govern the calling, place, and proceedings of the meetings of Council and its

if the subject matter being considered falls within those matters set out in Section 239(2) or Section 239(3) of the *Municipal Act*.³

(b) Notice and Agenda for the Special Meeting of Council, January 21, 2016

A Special Meeting of Council was held on January 21, 2016 for a "Water Fluoridation Council Education Session". Notice of the date, time and location of the Special Meeting was provided to the public in accordance with the Region's Procedure By-law.

The Agenda for the Special Meeting indicated that the majority of the meeting would be held in closed session to deal with delegations from five individuals regarding community water fluoridation and an oral report on the matter.

(c) Minutes of the Special Meeting (Open Session) of Council, January 21, 2016

The Minutes of the Special Meeting ("Minutes") indicate that Council moved into Closed Session at 9:39 a.m. and out of closed session at 3:00 p.m. At the open session, it voted to receive five delegations and one oral report about Community Water Fluoridation considered at the Closed Session. Council also voted in open session to approve a direction that was given to the Chief Administrative Officer ("CAO") and the Medical Officer of Health ("MOH") while it was in Closed Session.

(d) Minutes of the Special Meeting (Closed Session) of Council, January 21, 2016

At the in-camera session, Council heard delegations from five experts in the field of water fluoridation and an oral report, accompanied by a written memorandum, from its own Medical Officer of Health regarding Regional statistics. The presenters answered questions from Members of Council. Council voted to give direction to the CAO and MOH to bring forward an additional expert's report to a future meeting for further discussion.

committees and the conduct of their members and to repeal By-laws 57-2006, 122-2007 and 61-2008, By-Law Number 100-2012, passed 22nd day of November, 2012 ("Procedure By-law").

³ *ibid*, s.4(c).

V. ANALYSIS AND FINDINGS

(a) The Educational or Training Exception

The *Municipal Act* permits a municipal council to have a closed session for the purpose of educating or training the members. This is a discretionary exemption to the open meetings rule of the *Act* and may be invoked at the option of the council or committee (but does not have to be). However, at the meeting, no member can discuss or otherwise deal with any matter that materially advances the business or decision-making of the council. This exception covers meetings where the sole purpose is to provide education or training but where no transactional business, decision-making, or advancement of municipal business or decision-making occurs during the session.

“Education” and “training” are not defined in the *Act*. The dictionary definition⁴ for education is:

the process of educating, teaching, or training; the process of imparting or acquiring skills

And for “training”:

to give the discipline and instruction, drill, or practice designed to impart proficiency

This discretionary exemption to the open meetings rule allows members of council to receive the benefit of education or training in an environment where they might feel more comfortable openly asking questions of the educators or trainers and when discussing their perceptions about their own personal level of knowledge or ability relating to a proficiency or skill. Examples of these types of sessions including training on communication skills, use of software and hardware, governance skills, team building, or leadership skills. The purpose of such training or education is not to discuss council business, either in terms of past business or decisions or potential future business or decisions.

In its 2013 publication entitled “What you need to know about: Closed Meetings”⁵, prepared by Amberley Gavel and published by LAS explains the purpose of this discretionary provision as follows [emphasis added]:

⁴ *The Canadian Living Webster Encyclopedic Dictionary of the English Language*, The English Language Institute of America, Chicago, Illinois, U.S.A. (1974).

⁵ Available at: <http://www.las.on.ca/PDFs/Services/Closed-Meeting-Investigator/Resources/2013ClosedMeetingBooklet-FINAL.aspx>.

Ongoing training of members of council, local boards or committees is a necessity. There is discretion whether the training is done in public or at a closed meeting. If the council, local board or committee chooses to receive training at a closed meeting then the restrictions found in subsection (3.1) apply. **When utilizing this reason for a closed meeting there can be no debate on an issue, and no member may encourage other members to support a particular position. This restriction includes merely discussing a matter in a manner that is intended to assist in understanding the business of the municipality or local board.**⁶

Both Amberley Gavel and the Ontario Ombudsman have considered the application of this section of the *Municipal Act* in prior reviews of municipal meetings. Significantly, the Ombudsman has cautioned councils and their committees about using closed education sessions as “opportunities to consider information that will form the basis for their future decision-making”⁷. Similarly, Amberley Gavel has said that updating council or its committees on the status or progress of various initiatives or plans does not amount to education and training. It stated that “[t]o conclude otherwise is would allow Council to go into closed session any time a member wanted merely to provide information”⁸.

In general, a council or a committee should not use this discretionary exemption under the *Municipal Act* to receive, either passively or with questions of clarification, information that directly impacts on the business of the municipal and/or which may be used to formulate future decisions on municipal matters. In our opinion, one of the primary aims of the openness and transparency principles of the *Act* is to allow members of the public to understand and appreciate why council and its committees make certain decisions that may affect their property, municipal services, or their day-to-day lives. The public may agree or disagree with the decisions made by their elected representatives, and that is the nature and essence of democracy. Nevertheless, maximizing the information available to the public, in order for them to make those informed opinions about municipal decisions, should be a priority for municipal councils and their committees.

(b) Application to the Complaint

Council’s purpose in receiving the deputations and oral report was to hear the latest available data and studies on the current scientific and opinion-based information on the advantages and disadvantages of fluoridating the municipal

⁶ *Ibid.* at p. 11.

⁷ “The ABCs of Education and Training”: Investigation into City of Oshawa Development Services Committee Special Meeting of May 22, 2008, Ontario Ombudsman, 23 March 2009.

⁸ Amberley Gavel Ltd., Report to the Corporation of the County of Essex Regarding the Investigation of the Closed Meeting of Essex County Council Held On July 2, 2009, at p 13.

water supply. The Region previously considered its position on the matter in 2011; however, the pros and cons of water fluoridation remains a passionate and divisive topic of debate and scientific discourse. It would appear that the Region continues to consider its position on the matter, having struck a Water Fluoridation Committee to develop this “workshop”.⁹ In designing the workshop, the Committee decided to only allow outside, invited “experts” to present information in addition to receiving information from its own MOH.

Given the purpose of the exception under the *Municipal Act*, it is clear that the meeting was not held for the purpose of “educating” or “training” the members of Council. An exchange of information, whether it advances the business of the municipality or not, cannot be said to be “educating” or “training” as those words are commonly defined. To conclude otherwise would allow Council to go into closed session any time a member of council, staff, the public, or other stakeholders wanted merely to impart information.¹⁰ Obviously, that notion goes against openness and transparency in municipal government.

Moreover, it is also clear that the deputants were not merely imparting information to Council in the form of generalities. Each of them, including the MOH, took a position in favour of or against water fluoridation and were advocating for support of their position. These experts were using studies, statistics, and specific recommendations not only to impart knowledge but also to promote their position. This goes beyond facilitating knowledge into the realm of advocacy.

The Chair of the Closed Meeting did attempt to keep Members of Council away from discussion of their particular position on the matter and specifically did not allow the Members to debate the issue with either the experts or each other. However, Members of Council were permitted to ask “questions of clarification” about the presentations and background documents. It would appear from our review of the audio tapes that several Members of Council phrased their words, in the form of a question, either to advocate for their own view of the matter, to convince others of the correctness of their own position, to challenge the

⁹ See for example: (1) <http://www.bramptonguardian.com/news-story/6254241-debate-on-water-fluoridation-back-on-tap-for-peel-council/> and (2) <http://www.bramptonguardian.com/news-story/6309903-peel-councillors-begin-reexamination-of-water-fluoridation-benefits/>

¹⁰ This conclusion could appear to be contrary to the findings in *3714683 Canada Inc. v. Parry Sound (Town)*, 2004 CanLII 47775 (ON S.C.) (“*33714683*”). Without concluding that the Court erred in its finding, in *3714683*, the Court explicitly commented on the fact that the in-camera discussion with the developer did not advance the business of the municipality. Unlike the complaint at issue here, Parry Sound Council was said to be talking “in generalities” and not in specifics during the closed meeting. Moreover, the Court was not discussing the “education or training” exemption and was not called upon to decide which exception to the open meetings provision was at issue.

expert's opinions or conclusions, or to provide Council with their own independently-sourced research information.

Given the nature of the presentations and of the question and answer period, we believe that Council strayed away from the strict criteria for "education" or "training" and into dealing with municipal business by receiving information that could be the subject of a future decision (i.e. to continue or not continue with water fluoridation for the Region) and by receiving updates about a municipal service (i.e. water fluoridation). This is an inappropriate use of the section 239.(3.1) exception to open meetings under the *Municipal Act*. Much of the presentations could have been held in front of the public, even if the public (or other non-invited experts) attended the session but were not permitted to make a delegation about the matter.¹¹

Conclusion

Amberley Gavel has concluded that Council for the Region of Peel breached the open meetings requirement of the *Municipal Act* when meeting in closed session under section 239.(3.1) of the *Municipal Act* on January 21, 2016.

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 Corporation of the Region of Peel. 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.

July 2016

Nigel Bellchamber

for

AMBERLEY GAVEL LTD.

Closed Meeting Investigator

¹¹ We appreciate that this approach might require Council to temporarily suspend the operation of its Procedure By-law permitting delegations at Council meetings.