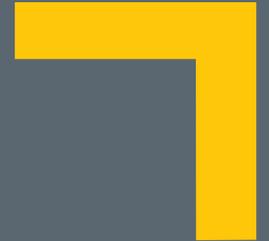


Cybersecurity & Closed Meetings



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Come in, WE'RE
OPEN

Sorry! WE'RE
CLOSED

Meetings

Open Meeting Rule

- municipal councils and local boards (and committees) must conduct their meetings in an open public forum pursuant to s. 239 of the *Municipal Act, 2001*

Meetings open to the public

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

- the open meeting rule is a requirement for *all* meetings of council and local boards (including committees of either of them)

Meetings

London (City) v. RSJ Holdings Inc.,
[2007] 2 S.C.R. 588, 36 M.P.L.R. (4th) 1

The open meeting requirement reflects a clear legislative choice for increased transparency and accountability in the decision-making process of local governments ... The democratic legitimacy of municipal decisions does not spring solely from periodic elections, but also from a decision-making process that is transparent, accessible to the public, and mandated by law. When a municipal government improperly acts with secrecy, this undermines the democratic legitimacy of its decision, and such decisions, even when *intra vires*, are less worth of deference.

Closed Meetings

Exceptions

- a meeting can be closed to the public if an **exception** to the open meeting rule applies
- the *Municipal Act, 2001* recognizes *limited* exceptions to the open meeting rule depending upon the **subject matter** that the council, local board or a committee of either of them is considering
- **fourteen (14)** specific exceptions are set out in ss. 239(2), (3) and (3.1) of the *Municipal Act, 2001*
- the exceptions in ss. 239(2) and (3.1) are *discretionary*; exceptions in 239(3) are *mandatory*
- in general, the exceptions have been interpreted *narrowly and restrictively* by the IPC/Ont and the courts

Closed Meetings – General

Exceptions

239 (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...;
- (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;

Closed Meetings – General

New Exceptions

- Bill 68 instituted new closed meetings exceptions in s. 239(2) – all relating to complementary exemptions under *Municipal Freedom of Information and Protection of Privacy Act*.
 - (h) information explicitly supplied in confidence to the municipality... by Canada, a province or territory or a Crown agency; **[s. 9 of MFIPPA]**
 - (i) a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality..., 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; **[s. 10 of MFIPPA]**

Closed Meetings – General

New Exceptions (cont.):

- (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; **[s. 11(a) of MFIPPA]**

- (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. **[s. 11(e) of MFIPPA]**

Closed Meetings – Security of Property

s. 239(2)(a) – security of the property of the municipality

Modern Rule of Interpretation

Elmer Driedger, *Construction of Statutes* (2nd ed. 1983) at 89:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of parliament.

Closed Meetings – Security of Property

s. 239(2)(a) – security of the property of the municipality

- “security” is not defined but relates to “protection”
- exception applies to discussions about:
 - protection of municipally-owned property from loss, theft or damage (i.e. a threat); and/or
 - protection of public safety in relation thereto
- “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 threat. At the heart of security is protection from an outside source.”

Closed Meetings – Security of Property

s. 239(2)(a) – security of the property of the municipality

- **cybersecurity** - the practice of protecting systems, networks and programs from digital attacks that seek to access, change or destroy sensitive information
- “property” is not only real property – term means both corporeal and incorporeal property
 - includes insurance coverage, policies, etc.
 - discussions re cybersecurity insurance would be inextricably connected to matters of the cybersecurity itself, if publicly disclosed, could prejudice the security of the municipality’s scope and extent of protection:
St. Catharines (City) v. Ontario (Information & Privacy Commissioner) (2011), 81 M.P.L.R. (4th) 243 (Div. Ct.)

Procedural Requirements

Authorizing Resolution

- *before* going into closed session, s. 239(4) makes it mandatory for the council, local board or committee to state by **resolution** at the open public session:
 - that the meeting is being closed and the general nature of the topic to be considered
 - *Farber v. Kingston (City)*, (2007) 31 M.P.L.R. (4th) 31 (Ont. C.A.):

...[T]he resolution to go into closed session should provide a general description of the issue to be discussed in a way that maximizes the information available to the public while not undermining the reason for excluding the public.

Conclusions

Closed Meeting Authority for Cybersecurity & Insurance

- council or committee is entitled to convene in a closed meeting to consider matters related to cybersecurity as well as cybersecurity insurance
- the discretionary exception in s. 239(2)(a) of *Municipal Act, 2001* is **applicable**
 - subject matter – cybersecurity expressly relates to the protection of municipal systems, networks and programs (i.e. municipal property)
 - cybersecurity insurance – inextricably connected to the same subject matter

~ *fin* ~

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