

Open and Closed Meetings: Why Should You Care?

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Today's Presentation

- What is a Meeting?
- Open Meetings
- Closing the meeting
- Breaches

What Constitutes a Meeting?

- “Any gathering to which all members of the committee are invited to discuss matters within their jurisdiction” – Rogers
- Key factors:
 - Council members invited
 - Most council members attend
 - Council business discussed
 - Matters agreed upon or moved toward decisions

What Constitutes a Meeting?

- Briefings

- City of Yellowknife Property Owners Assn. v. City of Yellowknife

- Briefings were closed to the public
 - Council discussed and debated matters and gave administration direction
 - Matters discussed included matters that would be discussed in closed meeting
 - Briefings were meetings that should have been open to the public

What Constitutes a Meeting?

- Dinner Meetings

- Vanderkloet v. Leeds & Grenville County Board of Education

- Dinner meeting alleged to be procedurally unfair
 - Dinner meeting was a meeting of the board
 - Subsequent open meetings of the board held to remedy any procedural unfairness

What Constitutes a Meeting?

- In-Camera Workshops
 - Southam Inc. v. Hamilton-Wentworth (Regional Municipality)
 - Council committee met at an in-camera workshop
 - Reporters and public refused entrance
 - All members requested to attend
 - Discussed committee business
 - Workshop held to constitute a meeting

What Constitutes a Meeting?

- Working Retreats
 - Southam Inc. v. Ottawa
 - All members of council invited to retreat, all but one attend
 - Council business discussed
 - Matters discussed in a manner that moved it toward a decision

What Constitutes a Meeting?

- “Sidebars”
 - 3L Developments Inc. v. Comox Valley (Regional District)
 - Recess to confer with staff on a procedural matter
 - No quorum during sidebar
 - No motion to vote on, nothing passed or adopted

The General Rule – Open Meetings

- *Community Charter* section 89 - all meetings must be open to the public except as provided
- Rationale - open and transparent governance
- Foundation for judicial deference to council decisions
- When breached, even decisions within the jurisdiction of council will be afforded less deference

Closing the Meeting

- *Community Charter* section 90
 - Must close a meeting when discussing:
 - FOI requests
 - Confidential information related to negotiations between municipality and the provincial or federal government
 - Matters being investigated under the *Ombudsperson Act*
 - Performance audits related to reports made under the Auditor General for Local Government Act

Closing the Meeting

- *Community Charter* section 90
 - May close a meeting when discussing:
 - Labour relations or other employee relations
 - Acquisition, disposition or expropriation of land or improvements
 - Litigation or potential litigation affecting the municipality
 - Receipt of legal advice that is subject to solicitor-client privilege
 - Negotiations and discussions related to a proposed municipal service

Closing the Meeting

- Litigation or Potential Litigation – section 90(1)(g)
 - *London (City) v. RSJ Holdings Inc.*
 - After a lengthy closed meeting, council passed 32 bylaws in 8 minutes without discussion or debate
 - Meeting closed to consider litigation or potential litigation
 - Must be something more than a belief that litigation is likely

Closing the Meeting

- *London (City) v. RSJ Holdings Inc.*
 - Meeting closed pursuant to another Act
 - Open meeting theory:

“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 worthy of deference.”

Closing the Meeting

- Advice Subject to Solicitor-Client Privilege – section 90(1)(i)
 - *London (City) v. RSJ Holdings Inc.*
 - Reports appended to solicitor's opinion do not benefit from solicitor-client privilege
 - Such reports to be considered in an open meeting

Closing the Meeting

- Advice Subject to Solicitor-Client Privilege – section 90(1)(i)
 - *Detlor v. Brantford (City)*
 - Subject matter of bylaw required legal advice
 - Differences from RSJ Holdings:
 - Meeting properly closed to the public
 - Justification for closing reasonable
 - Appellant unable to demonstrate the claim of solicitor-client privilege was specious

Closing the Meeting

- Negotiations related to a service if disclosure could harm the municipality – section 90(1)(k)
 - Kits Point Residents Association v. Vancouver
 - Resolution authorizing execution of services agreement passed during a closed meeting
 - “preliminary” - something coming before execution of the agreement
 - Significant parts of the agreement still to be negotiated at time of resolution

Closing the Meeting

- Procedure
 - Community Charter section 92
 - *Farber v. Kingston (City)*
 - 2 closed meetings
 - Bylaw adopted in open meeting after significant debate
 - Deficient resolutions to close meeting were merely a procedural irregularity

Closing the Meeting

- Procedure

- *Barnett v. Cariboo (Regional District)*

- Meeting closed to discuss property of the Regional District
 - Negative behavior of elected official discussed
 - No express requirement to cite all reasons to close meeting

Breaches

- Failure to Observe Procedure
 - Starting presumption – that council proceeded in accordance with the law
 - Usually not fatal unless bad faith, fraudulent intent
 - *Rella v. Montrose (Village)*
 - No prejudice arising from procedural error
 - *3714683 Canada Inc. v. Parry Sound (Town)*
 - “information exchange” not fatal to zoning bylaw

Breaches

- Failure to Hold Open meeting
 - *RSJ Holdings v. London (City)*
 - Less deference to substantive decision
 - Quashing of decision
 - *TimberWest Forest Corp. v. Campbell River (City)*
 - City improperly considered taxation bylaws in closed meeting
 - Company successfully argued court should afford little deference to decision
 - Bylaws remitted back to City for reconsideration

Questions?