

# WEST ELGIN COUNCIL

SEPTEMBER 10, 2020

## ADVICE ON CLOSED MEETINGS

Acceptable Practices and Current  
Legislative Considerations

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# CLOSED MEETING INVESTIGATOR (CMI)

- Section 239.2(1) of Municipal Act authorizes a municipality to appoint a CMI who has the function of investigating in an independent manner upon a complaint made to him or her by any person, whether a municipality or local Board has complied with the Act, Notice by-law and procedural by-law in respect of a meeting or part of a meeting that was closed to the public and to report on such investigation.

# GENERAL OVERVIEW

- In short, did Council follow the rules and conduct a closed meeting in keeping with legislation and its own by-laws? Did Council conduct an illegal meeting?
- Designed to ensure transparency and openness in local government.

- Councils and Boards can hold in-camera meetings for very legitimate reasons such as to consider legal advice, to discuss human resource matters about identifiable individuals and to sell or acquire property among many other reasons (at least 13 exemptions).
- Education and training sessions can be closed to the public so long as 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”.

- When in closed session, all votes are to be made public except for specific instances such as voting for the Head of Council (secret ballot) or a presiding officer (Section 238).
- In addition, you can vote (in-camera) on a procedural matter or for giving direction or instruction to officers, employees or agents of the municipality, local board or committee (Section 239(6)).

# DEFINITION OF A MEETING

- SECTION 238: “Meeting means any regular, special or other meeting of Council, of a local board or of a committee of either of them where:
    - a quorum is present,
- AND
- Members discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of the Council, local board or committee.”

# ILLEGAL MEETINGS

- An “illegal” meeting is one that occurs when a quorum is present and the business of Council is advanced in a material way.
- For example, email correspondence can be a violation of the Act if it satisfies the criteria.
- Meetings are supposed to be advertised in advance (Public Notice); resolutions to close a meeting must be made and minutes must be taken.

# ONTARIO OMBUDSMAN

- Councils cannot use emails to advance Council business or to lay groundwork to exercise the power or authority of Council.
- Emails violate the principle of “open local government” by not allowing the Public to watch the process in action.

- Likewise, serial phone calls can be considered as an illegal meeting.
- That is, a meeting of Council is “not limited to a physical gathering of its Members.” Instead a meeting may occur “whenever” Council exercises its authority, including by telephone or email.
- Serial telephone calls are, by their nature, closed to the Public.

# CAN COUNCIL TALK OUTSIDE OF A MEETING?

- YES!
- “The Municipal Act does not prevent Council Members from ever discussing business outside of a formal meeting...it is expected that some casual conversations about municipal business will take place amongst individual members.”

# SO WHAT'S THE TEST FOR LEGITIMATE "CASUAL" CONVERSATION?

- When assessing a complaint regarding an allegation of an illegal meeting, the Ontario Ombudsman uses "the balance of probability":
  1. Did the discussion/email go beyond informing Councillors?
  2. Was the pulse of Council taken?
  3. Did it further the municipality's activity?
  4. Did it rise to the level of exercising Council's authority or laying the groundwork for it?

# THE ONTARIO OMBUDSMAN'S COMMENTS

- “It is healthy in a democracy for government officials to share information informally before making policy decisions.
- To expect Councillors never to talk to one another outside of a public meeting is unrealistic and would have the effect of unnecessarily curtailing speech.”

# CLOSED MEETING TEST - LEGAL / ILLEGAL?

## EXAMPLE #1:

- A Councillor sends an email to the majority of Council Members asking them if they are in favour of the proposed new Group Home.

## EXAMPLE #2:

- The Mayor calls individual Members to apprise them of a new commercial development and seeks their support for it.

### EXAMPLE #3:

- The Clerk issues an email to all Members of Council announcing important dates in the Municipal Election Calendar.

## EXAMPLE #4:

- The Treasurer develops an insert for the next tax instalment billing cycle that explains what went into the calculation of the levy and sends it to Council by email in advance of the billing.

## EXAMPLE #5:

- The Recreation Director issues an email to all of Council requesting permission to open the Community pool with proper COVID precautions.

# HELPFUL HINTS

- Follow the advice of your Clerk
  - he/she knows the exemptions.
- Develop a philosophy of openness and transparency
  - only go in-camera if and when you have to.
- Provide detail in your description of the in-camera agenda.
- Be careful not to assemble a quorum of Members while advancing the business or decision-making of Council unless advertised and held in a location permitted by law.

- Watch your emails - an email to a quorum of Members may be considered as a meeting if the content advances the business or decision-making of Council/Board.
- Standing in the parking lot after a meeting while discussing a municipal issue with a quorum of Councillors may be considered a meeting.
- **\*\*BE CAREFUL!\*\***

# QUESTIONS?

- Thank you!

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