



Ombudsman's new open meeting case digest



Paul Dubé is the Ombudsman of Ontario, an independent, impartial officer of the Legislature who oversees the administration of provincial government and broader public sector bodies and recommends solutions to individual and systemic problems.

Imagine you are an Ontario municipal councillor, perusing the agenda for your next meeting, and you see that a new report by the municipality's integrity commissioner is scheduled to be discussed behind closed doors. You wonder: "Is this appropriate?"

Or, let's say you are a township clerk, and your council is in the midst of a public debate when one member comments, "We could get sued over this. Let's continue in private." You are asked for your advice – can council hold the discussion in closed session?

What if you are an interested resident who wants to watch your local council debate a controversial issue and you arrive 20 minutes after the meeting starts only to find the town hall doors locked? What recourse do you have?

In all three cases, you're aware that Ontario's *Municipal Act, 2001* sets out the general rules for when closed meetings are permitted. But, what you really want to know is: How is your municipality supposed to act in very specific situations to comply with the law?

As the closed meeting investigator for hundreds of municipalities in Ontario, the office for the Ombudsman of Ontario recognized it would be extremely helpful for you to know if the situation has arisen before in other municipalities, whether it led to complaints, and how the Ombudsman interpreted the law to determine the legality of the meeting.

So, early this year, the office launched a digital digest of open meeting cases to make it easy for municipal officials and the public to search hundreds of reports by topic, keyword, and municipality – in English or French. For the first time since 2008 (when Ontario's system of complaints-driven investigations was created to enforce the open meeting rules), there

is now a free, comprehensive online resource to help answer these kinds of questions.

The "Open Meetings: Case Digest" is available at <https://www.ombudsman.on.ca/digest/home> and you'll see how the thousands of pages of reports, letters, and legal analysis produced over a decade of investigating closed meeting complaints have been made easily accessible to anyone interested in this area of law.

Education is as Important as Enforcement

Because the role of Ombudsman is to promote transparency, accountability, and fairness, I believe it's important we not only enforce the open meeting rules, but educate officials and the public about them to promote compliance with the law and reduce the number of complaints.

A fundamental tenet of democracy is that governments should transact as much business as possible in public – and a key part of that process at the municipal level is ensuring the public can attend and observe meetings where important decisions are made. That is why Ontario law has always required municipal councils to meet in public, except in certain narrow circumstances – for instance, to receive legal advice or to discuss sensitive personal matters or negotiations.

The office of the Ombudsman of Ontario frequently receives requests for advice about the open meeting rules from elected officials, clerks, municipal staff, and interested members of the public. These questions can come before, after, or even during meetings. Often, the rules are not clear-cut and depend on an interpretation of the law, taking into consideration the circumstances of each case. The digest is intended to be a helpful guide to how the rules are interpreted in investigations and provide recommended best

practices in the interest of improving transparency.

In the vast majority of cases, violations of the law are the result of a lack of understanding, not an intentional or nefarious desire for secrecy. When a municipality is found to have failed to follow the open meeting rules, these recommendations for improvement have been overwhelmingly accepted. Municipalities often thank the Ombudsman and staff for clarifying the law and showing them ways to do better.

In this way, promoting awareness of the rules benefits both the public and municipalities. Local residents are assured of their right to observe local government in action (and to complain if they believe they were wrongly shut out), while municipalities that are found to have followed the law correctly will have their actions validated by impartial, independent review.

Greater Transparency, Fewer Complaints

In recent years, the overall number of complaints about closed meetings is declining, but those complaints are more likely to be well-founded – that is, more likely to result in a finding that the meeting was closed in violation of the rules.

This is a positive trend. It indicates that as more Ontarians become aware of their right to complain about closed meetings, they are also less likely to make irrelevant complaints. It also helps that, since 2016, the office of the Ombudsman of Ontario has been able to accept complaints about virtually any aspect of municipal government administration, not just closed meetings. This has resulted in greater awareness of this role in improving governance.

The hope is that this open meeting case digest will prevent complaints, because municipal staff and council members will be able to research specific topics and issues before going into closed session and educate themselves on how the rules might apply in their circumstances. This is what I call proactive ombudsmanship: When we promote greater understanding

of the rules and how they should be applied, everyone benefits.

The release of this digest also coincides with changes to the *Municipal Act*. As of January 1, 2019, four new “exceptions” were added to the open meeting rules and refined the definition of “meeting” under the Act. There are now 14 “exceptions” – that is, 14 narrow types of matters that can or must be discussed in closed meetings. Members of the public expect their municipal representatives, many of whom were elected just this past October, will understand these new exceptions and use them correctly. The digest already includes some information about these new rules, and will be updated as more relevant decisions are released.

The digest allows searches for more than 200 topics or keywords, which highlight key points from each report or letter. The full decisions can also be accessed for more information. And of course, it is updated when new reports are released. In this way, it is a living tool that is always improving and expanding.

As an example, the council member who is concerned about the integrity commissioner’s report being slated for discussion in a closed session could search for “integrity commissioner” or simply click on the “integrity commissioner” keyword. The digest will instantly return summaries of cases where we investigated closed meetings where integrity commissioner reports were considered, and whether or not we determined these meetings complied with the rules. Although we aren’t able to give legal advice or an opinion on a case we haven’t investigated, the digest will provide the council member with useful information on the findings in similar situations.

(And yes, the digest also includes real cases that have been investigated where councillors discussed the prospect of litigation and others where town hall doors were inadvertently locked.)

Reference Tools Built with Officials in Mind

It is hoped municipal staff in particular will find the digest useful. In any

given municipality, the knowledge and advice of the clerk is typically the most effective way to ensure that the open meeting rules are followed. Although council ultimately decides whether to discuss a particular item in closed session, it is not uncommon to hear from clerks seeking guidance about whether items should be on the agenda for the open or closed portion of a meeting.

The digest was built especially with clerks and their role as guide and advisor to council in mind. In addition to information about the open meeting exceptions, it contains numerous summaries related to procedural requirements, including resolutions, voting, keeping records, and giving public notice of meetings.

Long-time municipal officials and observers will know the office of the Ombudsman of Ontario has also published an educational guidebook, which has evolved along with the legislation since 2008. The latest edition is called *Open Meetings: Guide for Municipalities* (formerly known as the *Sunshine Law Handbook*). As with the digest, this bilingual, pocket-sized guide was created to assist municipal officials and the public in navigating open meeting rules and procedures. It also provides quick tips, legal references, and explanations of how the rules are interpreted. Every municipal clerk and council member across the province – whether they use the office as their closed meeting investigator or not – has been provided with a copy, and anyone can download it from our website.

I encourage municipal officials to consult both the digest and the guide as they navigate the open meeting exceptions – new and old. The advice of our office has always been: “When in doubt, open the meeting.” To this, I can now add: When in doubt, look it up in the digest. And, for all Ontarians, when still in doubt – whether it involves a municipal meeting or any other concern about provincial or local administration – feel free to call the Ombudsman. **MW**

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