

Council Meetings

Legislative Requirements for *In Camera* Discussion

Town of Mulgrave
February 20, 2024

Agenda

- Open Meetings of Council
- Limited and Specific Exemptions
- In Camera in Practice
- Closing Remarks



Open Meetings of Council

Open and Transparent

- Councils are elected to serve the public good
- Obligation and responsibility to conduct business in an open and transparent manner
- Not just a moral obligation, the *Municipal Government Act* (MGA) ensures that this is a legal obligation as well

Municipal Government Act

MGA, Section 22 (1) says:

“Except as otherwise provided in this Section, council meetings and meetings of committees appointed by council are open to the public.”

Every meeting involving councilors, mayors/wardens and committee members are to be held in public unless covered by one of the specific and limited exceptions in the MGA.

What is a meeting of Council?

Content and Context is important

- Any gathering of councillors or committee members where council business is discussed.
- Even if those meetings are not in council chambers, don't include all members of council and no decisions are made.
- Does the discussion move council toward a decision? – do it in public.

Limited and Specific Exceptions

Exceptions are limited and specific

- An **In Camera** meeting is a closed, or private, session in which the public are excluded from witnessing proceedings.
- In Camera sessions are portions of public meetings
 - You hold a public meeting during which a portion of it may be held in private
- The *MGA* provides very limited and specific items for which the council **may** meet in a session which is closed to the public.
- The *MGA* also clearly states “No decision shall be made at a private council meeting except a decision concerning procedural matters or to give direction to staff of, or solicitors for, the municipality.” (Section 22 (3))

What are the exceptions?

The council or any committee appointed by the council may meet in closed session to discuss matters relating to:

MGA 22(2)

(a) acquisition, sale, lease and security of municipal property

(e) contract negotiations

(b) setting a minimum price to be accepted by the municipality at a tax sale

(f) litigation or potential litigation

(c) personnel matters

(g) legal advice eligible for solicitor-client privilege

(d) labour relations

(h) public security

Limits on decision-making

- Decisions must be made in open council
 - Except for decisions concerning procedural matters or direction to staff or solicitors.
- How does this work?
 - Discussions may take place in private but anything that would be binding would then need to be a decision taken in open Council.
 - Any motion adopted in private must be adopted in open session.
 - Wording of motion for open session can be general to maintain confidence of debate – important to work with solicitor on drafting.
- In Camera discussion cannot replace public decision-making.

In Camera in Practice

Who attends?

For All Meetings of Council

- Chief Administrative Officer
 - MGA 31(2) states that the CAO may attend all meetings of the council ... and make observations and suggestions on any subject under discussion

For Legal Advice

- Solicitor
 - Present for legal advice in general
 - legal advice eligible for solicitor-client privilege is specifically referenced

By invitation

- Clerk
 - MGA 33(2) states the Clerk shall record attendance and minutes of all the proceedings of the council
- Other staff Members
 - Only as appropriate

What is on record?

- Minutes

- Requirement to have a limited record but no requirement for verbatim transcript.
- Best practices: err on the side of detail.
- AMANS Research Bulletin (May 2017) references BC Ombudsperson and ONT Ombudsman recommendations that In Camera minutes mirror those for regular meetings.
- Minutes have evidential values and should be treated as archival documents, this includes in camera minutes – “Shall not be destroyed.” MGA 34(2).

- Public Record

- A record which is open to the public shall be made, noting the fact
 - that council met in private,
 - the type of matter that was discussed [must comply with Section 22 (2)],
 - the date.
- but no other information is required [MGA 22(4)].

Disclosure

Any councillor or employee of a municipality who discloses any report submitted to, or details of matters discussed at, a private meeting of the council or committee, as a result of which the municipality has lost financially or the councillor or employee of a municipality has gained financially, is liable in damages to the municipality for the amount of the loss or gain. (Section 22(6))

- That which is discussed In Camera stays in confidence
- Except:
 - Information disclosed as part of the public record

Procedure

Some suggestions...

- Try grouping In Camera items together for discussion.
- Place on agenda where more convenient for public gallery.
- Be as formal in closed session as needed to retain order, civility and effective discharge of business.
- Maintain confidentiality of materials.

Procedure

In Camera meetings are not mandatory, but if you find you need to discuss an issue in closed session:

- Does it comply with limited and specific exceptions.
- Discussion not decision.
- Limit to only what needs to be held private.
- Keep an appropriate record.

Closing Remarks and Discussion



Disclaimer

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- This presentation, and the related discussions, is **not legal advice nor is it a substitute for same.**

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