

 *Today's Meetings  
Tomorrow's Headlines*

Eastern Ontario Municipal Conference  
Kingston, Ontario  
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*Secrecy darkens  
corridors of power*

“Ask any smart politician whether Canadians have a right to know what lawmaker and bureaucrats are up to behind closed doors, and the air grows chewy with soothing reassurances. Who doesn't endorse *access, openness, transparency, freedom of information, accountability?*”

Toronto Star Editorial  
September 12, 2005

## *Toronto Inquiry*

“Council should take steps to enhance the  
openness of council meetings”

(Recommendation #75)

Hon. Madame Justice Denise E. Bellamy,  
Commissioner  
Toronto Computer Leasing Inquiry  
September 12, 2005

## *Today's Meetings Tomorrow's Headlines*

- The Past
- Open Local Government: Then [1995]  
and Now [2003]
- What's Next?

## *The Past: Common Law*

“In a municipal borough, neither the public, nor the burgesses, nor reporters for newspapers, have the right to attend the meetings of the borough council without the consent of the council expressed or implied.”



*Tenby Corp. v. Mason*  
English Court of Appeal (1908)

## *The Past: Provincial Reports*



- Commission on Freedom of Information and Individual Privacy [1980]
- Provincial-Municipal Working Committee on Open Meetings & Access to Information [1984]
- Municipal Conflict of Interest Consultation Committee [1991]

## *The Past: Caselaw*

- *Southam Inc. v. Economic Development Committee (Hamilton-Wentworth)*

Ontario Court of Appeal (1988)

- *Southam Inc. v. Ottawa (City)*

Ontario Divisional Court (1991)



## *The Past: Legislation*

- *Municipal Act* [1980]

- *Bill 152* [1990]

- *Open Local Government – White Paper* [1991]



## *Open Local Government - Then [1995]*

- Bill 163 [1995]:
  - Planning Reforms;
  - *Local Government Disclosure of Interest Act*, and
  - Open Meetings' Provisions.

## *Open Meetings*

- Except as otherwise provided in this section, all meetings shall be open to the public;
- One mandatory closure re meetings; and
- Seven discretionary closings.

Bill 163 (January 1<sup>st</sup>, 1995)

## *Open Local Government – Now [2003]*

- *Municipal Act, 2001:*
  - Effective January 1<sup>st</sup>, 2003;
  - Meetings' provisions
  - Section 239 ... and many more

## *Open Meetings Provisions*

*Municipal Act, 2001*, sets out the rules for meetings, including:

- Which bodies are covered;
- What topics may, or shall, be considered in a session closed to the public;
- The procedures to be followed to close a meeting – including the need for a procedure by-law; and
- Voting and minutes.

## *Open Meetings: Bodies Covered*

- “meeting” means any regular, special committee or other meeting of a council or local board;
- “local board” does not include police services boards or public library boards.

*Municipal Act, 2001, s. 238*

## *1 Topic that shall be considered...*

- Meeting shall be closed to the public to consider a request under the *Municipal Freedom of Information and Protection of Privacy Act*, IF the council is the head of the institution for that Act.

*Municipal Act, 2001, s. 239 (3)*

## *7 Topics that may be considered...*

A meeting, or part of a meeting, may be closed to the public if the subject matter being considered is,

- (a) security of the property of the municipality;
- (b) personal matters about an identifiable individual, including municipal employees;
- (c) a proposed or pending acquisition or disposition of land;

*Municipal Act, 2001 s. 239*

## *7 Topics – cont'd*

- (d) labour relations or employee negotiations;
- (e) litigation or potential litigation
- (f) advice subject to solicitor-client privilege; and
- (g) a matter by which council may hold a closed meeting under another *Act*.

## *Procedure to close a meeting*

- A council shall state by resolution:
  - The fact of the holding of the closed meeting; and
  - The general nature of the matter to be considered at the closed meeting.

*Municipal Act, 2001, S. 239(4)*

## *Voting in Open Session?*

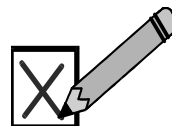
- In most situations, “every member of council shall have one vote” [Section 243].
- Aside from Section 233, there is a general prohibition against “secret voting, and every vote so taken is of no effect” [Section 244].
- A tie vote “shall be deemed to be lost, except where otherwise provided by any *Act*” [Section 245].

## *Voting...cont'd*

- Any member of council may request a “recorded vote” and “each member present” (and not disqualified from voting by virtue of any statute) shall announce his or her vote openly and the clerk shall record each vote [Subsection 246(1)].
- A “failure to vote” by a member of council who is present (i.e. an abstention?) “is deemed to be a negative vote” [Subsection 246(2)].

## *Voting in Closed Session?*

- In general, a meeting shall not be closed to the public during the taking of a vote [Subsection 244 and Subsection 239(2)].
- Three exceptions:
  - A procedural matter or
  - For giving directions/ instructions to staff or persons under contract [Subsection 239(6)]; or
  - Annual appointment of upper-tier “head of council” by “secret ballot” [Subsection 233(5)].



## *Open Meeting: Caselaw (2004)*

- *Uukkivi v. Lake of Bays (Township);*
- *3714683 Canada Inc. v. Parry Sound (Town);*
- *RSJ Holdings Inc. v. London (City).*

## *Minutes*

- Clerk's statutory duty to "record without note or comment, all resolutions, decisions and other proceedings of council" [Section 228].
- If required by any member present at a vote, the Clerk must "record the name and vote of every member voting on any matter or question".

## *Minutes...cont'd*

- No distinction is made for minutes between council proceedings at an open vs. closed meeting.
- *Municipal Conflict of Interest Act* – Section 6 refers to Clerk's minutes in both open and closed meetings.
- *MFIPPA* Section 6 provides limited protection for minutes of closed meeting.

## *What's Next?*

- Legislative Proposals
- IPC Initiative
- *Municipal Act, 2001* - Review



## *What's Next: Legislative Proposals*

- Bill 95 – *Ethics and Transparency in Public Matters Act, 2001*
- Bill 206 – *Transparency in Public Matters Act, 2002*
- Bill 106 – *Transparency in Public Matters Act, 2003*
- Bill 99 – *Transparency in Public Matters Act, 2004*
- Bill 123 – *Transparency in Public Matters Act, 2004*

## Bill 123: AMO Position

- Supports the principles of open, transparent and accountable municipal governments
- Content ... counters AMO's work under the *Municipal Act, 2001* review.

AMO Alert 05/068  
September 9, 2005

## *What's Next: IPC Initiative*

- “Private Sector and Health Privacy Legislation and Open Meetings Law called for by Ontario Information/Privacy Commissioner” 2002 Annual Report/News Release (June 11, 2003)
- “Let the Public In: A case for Greater Openness and Transparency” by Ann Cavoukian and Tom Mitchinson (October 15, 2003) Toronto Star and IPC Perspectives (Fall 2003)
- Making Municipal Government More Accountable: The Need for an Open Meetings Law in Ontario by A. Cavoukian and T. Mitchinson (October 2003)

## *IPC Proposal - 2004*

“We are urging the Ontario Government to enact a tough new municipal open meetings law that would provide:

- A clear definition of a meeting;
- Notice requirements;
- A right to complain;
- Access to an oversight body
- Remedies and penalties.”

Making Municipal Government More Accountable: The Need for an Open Meetings Law in Ontario

IPC presentation, Toronto (October 7<sup>th</sup>, 2004)

## *IPC Annual Report 2004*

*“We recommended that the Ontario Government introduce a comprehensive “open meetings” law. In October 2004, Liberal MPP Caroline DiCocco introduced Bill 123, the Transparency in Public Matters Act, 2004. This bill captures Many of the principles that are key to an effective and meaningful open meetings law. We are pleased that a number of senior cabinet ministers and opposition politicians have expressed support for the bill ...”*

2004 Annual Report of the Information and Privacy Commissioner/Ontario

(June 22, 2005)

## *IPC Annual Report 2004 cont'd*

*“From an open government perspective, the most attractive part of Bill 123 is that it includes enforcement mechanisms. The bill would provide members of the public with a legal right to complain if they believed that open meetings rules had not been followed. It would also establish an oversight body responsible for investigating complaints and resolving disputes. A person who believed a designated public body had contravened or was about to contravene the bill could make a complaint to the Information and Privacy Commissioner of Ontario.*

2004 Annual Report of the Information and Privacy Commissioner/Ontario

(June 22, 2005)

## *Municipal Act, 2001 Review*

- Announced in June 2004, the purpose of the review includes:

“To provide local governments with more tools and greater flexibility to creatively serve their residents.”

“We no longer want to micro-manage municipal governments. They are a level of government, duly elected, just like the provincial and federal levels.”

Minister of Municipal Affairs and Housing  
Press Release (June 22, 2004)

## *Review - Submissions*

- AMO: *That municipal councils be granted the discretion to determine when and for what purpose council or a committee may hold a closed meeting.*
- AMCTO: *Supports a review of Section 239 of the Municipal Act to explore possible opportunities and to clarify and expand the current list of circumstances in which a meeting may be closed.*
- IPC: Advocates for Open Meetings Law and supports Bill 123.