

Candid About in Camera

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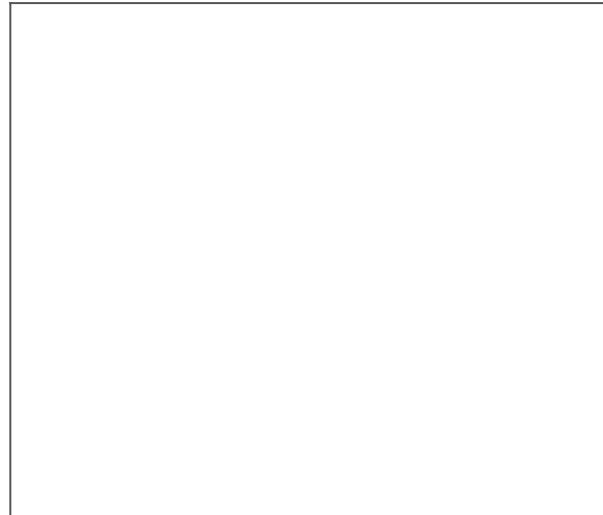
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It never fails to make me give a quiet chuckle when, at the conclusion of a discussion of confidential information at a meeting, someone says 'I move that we go out of camera.' The term 'in camera' is a Latin expression that literally means 'in chambers' and which has come to be used in English as meaning 'in private' or 'in secret'. When you are finished conducting business in camera, the meeting moves back into public session.

The Municipal Act (the 'Act') makes it clear that all council and committee meetings must be held in public. Everyone, whether they reside in the municipality or not, and including the press, has a right to be present at the council or committee meeting, so long as they are not being disruptive. The principle of open and public meetings is fundamental to the accountability of elected and appointed municipal officials to the public.

The only exceptions to fully public meetings, as set out in the Act, are when:

- for councils, where a council decides during the meeting to meet as a committee to discuss a matter; and
- the discussion will relate to:
- municipal assistance (i.e., social assistance),
- an employee (including attributions, salary and benefits, duties, and performance)
- a matter in its preliminary stages and where public discussion could prejudice a municipality's ability to carry out its activities or negotiations,



- existing or anticipated legal proceedings,
- an investigation under, or enforcement of, an Act or by-law,
- the security of documents or premises, or
- an investigation report received from the Provincial Ombudsman.

At a council meeting the decision to go in camera and the general nature of the subject matter of discussion must be recorded in the minutes of the meeting. Council cannot pass any resolution or by-law unless and until the meeting is back in public session. The only exception to this is a resolution to move back into public session.

Confidentiality does not die when the in camera portion of the meeting ends. The Act makes it very clear that a member of council must keep the information confidential until the matter is discussed in a public meeting. How long does this duty last? Well, suppose the discussion relates to the potential civil or criminal liability of the municipality arising of something that the municipality has done, but which no one else knows about. In that case the answer may be 'forever'.

The duty to maintain confidentiality is one that must be taken very seriously. A release of confidential information can result in significant financial and other implications to a municipality. A release of information about a potential claim could result in liability to the municipality or the loss of a potential defence. The discussion of the terms of proposed contracts or negotiating positions could result in lost bargaining power and increased costs to the municipality.

There are significant potential consequences for a member of council who breaches this

duty of confidentiality. The Act provides that the member is disqualified from council. This may apply to re-election. Because members of council have a duty to act in the best interests of the municipality, there may also be the prospect of civil liability for financial losses to the municipality.

There are limits to this cloak of confidentiality. First, a council or committee may not meet in private except to consider one of the items specifically listed in the Act. So, for example, if the discussion relates to a possible zoning by-law change or development approval that the municipality is considering, it is most likely that the meeting must be held in public.

This was considered in the recent Ontario Court of Appeal case *RSJ Holdings v. City of London*. London had been stonewalling RSJ on its demolition and building permit applications for a parcel of land that it owned. After two closed meetings, council passed an interim control by-law that had the effect of freezing development on the RSJ land, in open session and without any further discussion. (In fact, council passed 31 by-laws in 8 minutes.) RSJ sued to quash the by-law. The City argued that the by-law was discussed in private because of the concern about a potential law suit by the RSJ. The Court tossed out the by-law and observed:

[W]here the subject matter under consideration is an interim control by-law, it cannot be said that the subject matter under consideration is potential litigation simply because there is a statutory right of appeal by a person affected by the interim control by-law or because the interim control by-law may be subject to a motion to quash. The fact that there might be, or even inevitably would be,

litigation arising from the interim control by-law does not make the 'subject matter under consideration' potential litigation. [T]he meeting in which Council is to consider and vote on the interim control by-law is to be open. In the face of the 'draconian' nature of an interim control by-law and the reduction in rights of affected persons there is an even greater need that the meeting in which an interim control by-law is discussed be open to the public

Second, just because the discussion was in closed session, information might not be protected from having to be disclosed later. In *Nova Scotia (Human Rights Commission) v. Annapolis (County)*, the Court ordered that the municipality produce information and records for an investigation relating to the termination of a member of a volunteer municipal advisory committee, even though the council discussions were held in closed session.

In brief, regular council business is everybody's business. But when it comes down to matters discussed at legitimate, confidential meetings, mum's the word.

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