

Deliberations Newsletter – Eli Mina – Part 1

A happy spring to everyone. This newsletter includes four items for you:

First: Below is an article entitled '*Meeting Behind Closed Doors? (Part 1)*'

Second: For clients in **NOVA SCOTIA**, two workshops have been scheduled in Halifax for September 2017: "*Supporting Successful Meetings*" for support staff (Thursday September 21) and "*We've Got to Stop Meeting Like This*" for elected officials and senior staff (Friday, September 22). For details click <http://www.elimina.com/training/training-scheduled-halifax.html>.

Third: You may want to check out a previously posted video on preventing and dealing with Board dysfunctions at http://www.elimina.com/#video_dysfunction (**FOURTH** video from the left side).

And, lastly: This newsletter is emailed every two months. Contact eli@elimina.com to propose a topic for a future article or to be added to the newsletter distribution list.

[Meeting Behind Closed Doors? \(Part 1\)](#)

It is sometimes alleged that elected bodies meet behind closed doors too often and without legitimate reasons for doing so. Perceptions of unnecessary secrecy can diminish public trust and confidence in public bodies. There is also another practical problem in holding discussions behind closed doors without valid reasons: Elected members can be unreasonably constrained in communicating with constituents, e.g.: Their oath of confidentiality may prohibit them from publicly discussing any closed meeting agenda items, even when some items were incorrectly placed on closed meeting agendas.

In order to address the issue of confidentiality effectively, it is important that all affected parties (Chairs, Board Members, Staff, Citizens and Stakeholder Groups) fully understand and appreciate the parameters and the processes that relate to closed meetings. Meaningful educational efforts on the process of classifying items as confidential can boost public trust and reduce criticism and conflict.

The first question that must be addressed is this: What is a legitimate reason to meet behind closed doors? The officially recognized justifications for closed meetings are often (but not always) spelled out in the organization's applicable legislation (such as municipal government acts, or freedom of information and protection of privacy laws) or in internal bylaws and policies. In some jurisdictions, closed meeting provisions are detailed, explicit, specific and restrictive, while in other jurisdictions, the governing documents are broader, for example: including an overall statement that a Board or Council is authorized to determine (using its own collective discretion) that the public interest would be served by discussing certain sensitive issues behind closed doors.

Looking beyond the formal provisions and the subtle legalities, it is important to appreciate high level non-technical reasons for meeting behind closed doors. Put briefly, when considering whether to meet behind closed doors, the respective body should weigh two important principles: **Public Transparency** versus **Risk Management**. The overall requirement for public bodies is to be transparent and accountable to constituents and to hold its meetings in public. On the other hand, a public body also has the duty to protect the organization and the privacy of individuals from risk. In most settings, public transparency would be the norm, and risk management would be the exception. Therefore, most agenda items would be discussed in open meetings, and only the odd ones would require confidentiality.

Examples? In local government settings, there is often reference to the 3 L's (law, land, and labour) as being potential justifications for closed meetings. The first L (law) may refer to ongoing or potential litigation that the organization may initiate or be subjected to. The second L (Land) may point to sensitive and significant land transactions (or other transactions) that are currently pending. The third L (labour) may relate to contract negotiations with staff, or issues that may affect the privacy of an employee (such as hiring, dismissal, or disciplinary matters) or the privacy of a third party.

It should be emphasized that, although the 3 L's are often referred to when a public body seeks to justify a closed meeting, they are not necessarily an all encompassing list of the justifications for placing an item on a closed meeting agenda. The applicable legislation, bylaws and/or policies may provide additional potential justifications for placing **risk management** in front of **public transparency**.

The second question about closed meetings is this: Suppose an item seems to fit within the 3 L's or within other documented justifications for a closed meeting. Does this automatically mean that such an item may only be discussed during a closed meeting? The answer to this question is definitely not an automatic yes, but a carefully considered maybe. Look for details in the next newsletter.

Deliberations Newsletter – Eli Mina – Part 2

A happy spring to everyone. This newsletter includes six items for you:

First: Below is an article entitled '*Meeting Behind Closed Doors? (Part 2)*'

Second: For clients in **NOVA SCOTIA**, two workshops have been scheduled in Halifax for September 2017: "*Supporting Successful Meetings*" for support staff (Thursday September 21) and "*We've Got to Stop Meeting Like This*" for elected officials and senior staff (Friday, September 22). For details click <http://www.elimina.com/training/training-scheduled-halifax.html>.

Third: Several clients have asked about holding "*Supporting Successful Meetings*" and/or "*Robert's Rules of Order - Demystified*" in their communities, so they can save the cost of out of town travel. In fact, we have co-sponsored such sessions with municipalities and aboriginal organizations. The process is simple and has worked well for the co-sponsors and their communities. For information contact us at 604-730-0377 or email eli@elimina.com.

Fourth: You may want to check out a previously posted **podcast** on the fundamental principles for debates in meetings at "*What's the Deal with Robert's Rules?*". The podcast starts with an introduction of its sponsoring organization (so please be patient as you listen to it). The salient points are made within a few minutes.

Fifth: This newsletter is emailed every two months. Contact eli@elimina.com to propose a topic for a future article or to be added to the newsletter distribution list.

And, lastly, on a light-hearted note : '*What is the Best Vitamin for Making Friends? B1...*'

[Meeting Behind Closed Doors? \(Part 2\)](#)

The previous newsletter included the first installment of an article about closed meetings, otherwise referred to as 'in-camera' meetings' or 'executive sessions'. The key point made was that holding a meeting 'behind closed doors' is something that should be justified by weighing the principle of **public transparency** versus the principle of **risk management**. When the potential risks of holding certain discussions at an open meeting outweigh the benefits of public transparency, the body may be justified in holding the meeting behind closed doors and allowing only voting members and selected individuals to attend.

The first installment of the article ended with a question: Suppose an agenda item seems to fit within the 3 L's (Law, Labor, Land) or within any other documented justifications for a closed meeting. Does this mean that such an item would **automatically** be scheduled on the agenda of a closed meeting? It was indicated briefly that the answer is not an automatic yes, but a carefully considered maybe. An explanation of this ambiguous reply is required. Here it goes.

The only time when a certain class of agenda items **must** be discussed behind closed doors is when a legislative provision explicitly or implicitly stipulates it. In the absence of such a provision, the assignment of an item to a closed meeting agenda is **discretionary**. In other words, the body needs to determine whether the risk of discussing the item in public is too great, and whether the item is therefore suitable for inclusion on the agenda of a closed meeting. The fact that an agenda item involves a legal matter, a personnel matter, or a potential real estate transaction, may not, by itself, mean that the risk levels associated with this item are substantial enough to **automatically** forego public transparency and discuss it behind closed doors. For example: Discussions of proposed changes to general personnel policies may not necessarily affect the privacy of specific employees, and therefore such personnel-related discussions may not automatically be suitable for inclusion on a closed meeting agenda.

With this in mind, the question is: What process should a Board or Council go through to exercise its collective discretion and determine whether a certain issue is logically and justifiably a closed meeting agenda item? Ultimately, and especially when there are divergent views on what may constitute risk, a formal motion, followed by a debate and a formal vote, may be needed to resolve this procedural issue.

And when should **the suitability** of items for a closed meeting agenda be debated and voted on? Such a process should **not** occur in public, so as to prevent the inadvertent discussion of risk-prone issues in public. Instead, such a process should be **the first item on the closed meeting agenda**. **Here is** the sequence of events that would likely be followed:

1. Before the closed session is convened, the body would go through a process of **provisionally** placing items on a closed meeting agenda. It should do so **without any debate**.
2. Immediately after the closed meeting is called to order, the Chair, or a designated staff advisor, would explain the justifications for including the various items on the closed meeting's agenda.
3. The Chair would then ask whether anyone objects to including any of the stated items on the closed meeting agenda.
4. If no one objects to the inclusion of any item on the closed meeting agenda, a motion would be introduced to adopt the agenda. After limited debate (or possibly no debate), the motion would be voted on.
5. On the other hand, if one or more members object to the inclusion of one or more items on the closed meeting agenda, because they do not agree with the risk assessment, various motions may need to be introduced, debated and voted on. One motion would be to authorize the placement of all the **unchallenged items** on the closed meeting agenda. This would be followed by separate motions on including **each challenged item** (or any logical groupings of challenged items) on the closed meeting agenda.

6. The debates on the above motions should focus exclusively on the procedural issue: Is the risk level associated with discussing a certain item in public sufficiently large to classify the item as confidential and forego public debate on it? A majority vote would be required to adopt each of the motions to include a **challenged item** on the closed meeting agenda.

Good luck.

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