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To: **"Direct to Mayor and Council - DL"**
Date: 9/14/2023 10:49:40 AM
Subject: Integrity Commissioner bulletin - open meeting principle
Attachments: 2023-03 IC Bulletin - Open Meeting Principle.pdf

Good morning Mayor and Council,

On behalf of the Integrity Commissioner, I am writing to share the attached bulletin setting out the Commissioner's guidance in respect of the obligations for Council to conduct business in open meetings.

The bulletin is also posted on the Commissioner's [website](#).

Best,
Paul

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The City of Vancouver acknowledges that it is situated on the unceded traditional territories of the xʷməθkʷəy̍əm (Musqueam), Snw̓x̌w̓ú7mesh (Squamish), and səliłwətał (Tseil-Waututh) Nations.

Integrity Commissioner Bulletin 2023-03: **Open Meeting Principle**

When is a gathering of Councillors considered to be a “meeting” so that it is subject to the open meeting principle, or simply a discussion amongst Councillors? If Councillors are informally gathering to discuss a matter, does that discussion need to be transparent and accessible to the public? At issue is the requirement to allow for public discussion and consideration of the matter before any vote is made by Councillors. Conversely, Councillors cannot decide on a matter during a gathering that has been improperly shielded from the view of the public. This Bulletin explains the open meeting principle, why it is important and how it applies to Councillors.

The Open Meeting Principle

The [Vancouver Charter](#) (and the [Community Charter](#)) state that in the normal business of Council, meetings are to be transparent and accessible to the public, except in specific circumstances where the meeting can be closed to the public, such as for discussions about labour relations or security of the City’s property (see subsections 165.2(1) and (2) for the list of exceptions). If a meeting is closed (otherwise identified as *in camera*), there are specific procedures to follow prior to the closure and rules about what can occur during the meeting (for example, Council must not vote on the reading or adoption of a by-law in a closed meeting (see section 165.1(2))). BC legislation requires local government meetings be open to the public and other jurisdictions have similar provisions in their statutes governing municipalities.

Why Is the Open Meeting Principle Important to Understand?

The open meeting principle underpins the legitimacy of the municipal democratic process and so decisions made by Council in violation of the principle may be declared void.

For example, in [London v RSJ Holdings Inc. v London \(City\)](#), the Supreme Court of Canada quashed a by-law adopted by the City of London’s Council at a public meeting. The by-law was quashed because prior to the public meeting, the Council met privately to discuss the proposed by-law and then emerged from the private meetings to enact the by-law at the public meeting with no substantive debate. The Supreme Court found the decision had in fact (but not in law) already been taken. In setting aside the by-law, the Supreme Court said:

The democratic legitimacy of municipal decisions does not spring solely from periodic elections, but also from a decision making process that is transparent, accessible to the public, and mandated by law. When a municipal government improperly acts with secrecy, this undermines the democratic legitimacy of its decision.

What Is a “Meeting”?

The [Vancouver Charter](#) does not define the word ‘meeting’, so it is not always easy to determine when an informal gathering of Council members is in fact a meeting subject to the open meeting principle.

The [Ontario Ombudsperson](#) has developed the following definition of a ‘meeting’ which can help decide whether Council members have complied with open meeting requirements:

Members of council (or a committee) must come together for the purpose of exercising the power or authority of the council (or committee), or for the purpose of doing the groundwork necessary to exercise that power or authority.

The Ontario Court of Appeal has similarly defined a 'meeting'. In [Southam Inc. v Regional Municipality of Hamilton-Wentworth](#), a committee of the Municipal Council agreed to meet *in camera* at its next regularly scheduled meeting, with staff, to review past, present and future objectives as well as the committees' terms of reference. A newspaper tried to attend the meeting but was made to leave so it then sought a declaration that the committee exceeded its jurisdiction in holding the meeting *in camera*. The Court of Appeal held the gathering was a meeting subject to the open meeting principle:

In the context of a statutory committee, meeting should be interpreted as any gathering to which all members of the committee are invited to discuss matters within their jurisdiction. And that is precisely what was being done on that occasion. No matter how the meeting might be disguised by the use of terms such as workshop, or the failure to make a formal report, the committee members were meeting to discuss matters within their jurisdiction. What the committee was trying to do was to have a meeting in camera, something expressly forbidden under the by-law.

When Are Discussions Among Council Members "Meetings"?

The requirement that meetings should be open to the public does not preclude informal discussions among Council members, either alone or with the assistance of their staff (see *Vanderkloet v Leeds & Grenville County Bd. of Education*, [1985 CanLII 1976 \(ON CA\)](#) at pp 16-17). However, even informal discussions can be a "meeting," depending on the circumstances. The factors various courts have considered in determining whether a gathering of Council members is in fact a meeting are described below.

- The nature of the group:
 - The presence of a quorum or the full membership of Council (or other body) is more likely to constitute a meeting, while a gathering of smaller groups is less likely to constitute a meeting.
 - Recognized groups, such as committees, are more likely to have their gatherings regarded as meetings.
 - Groups that exercise a decision-making authority are more likely to have their gatherings considered meetings than groups who study issues or recommend actions.
- The nature of the discussion:
 - A gathering is a meeting when it involves discussing matters within a local government's jurisdiction,¹ in a capacity that deprives the public of "the opportunity to observe a material part of the decision-making process."²
 - Any real progress in the decision-making process of a matter within the local government's jurisdiction strongly indicates that a gathering is a meeting. This does not necessarily mean, however, that if progress towards a decision is not made that the gathering is not

¹ *Southam Inc. v Regional Municipality of Hamilton-Wentworth*, [1988 CanLII 4709 \(ON CA\)](#) at p 7.

² *Southam Inc. v. Ottawa (City) Council (Div. Ct.)*, [1991 CanLII 7044 \(ON SC\)](#).

a meeting. It may still be a meeting if the discussion was for that purpose even though the desired progress or result was not achieved.³

- The nature of the gathering:
 - If a gathering shares some of the common features of a regular meeting, this may indicate that the gathering is in fact a meeting.⁴ For example, gatherings that occur regularly are more likely to be seen as meetings, as are gatherings that are planned.
 - Procedural matters can also indicate whether a gathering is a meeting. Gatherings that follow an order of proceeding, obey rules of order, have an agenda or record minutes are more likely to be meetings, and the presence of a chair or corporate administrator is also indicative of a meeting.⁵
 - Gatherings that are held at a local government body's normal meeting place are more likely to be seen as meetings. However, even if the meeting location is irregular, gatherings in areas completely under the control of the group, such as a private meeting room, are more likely seen to be meetings than those held in open, public settings.
 - A vote of any sort indicates that a gathering is in fact a meeting.⁶
 - Workshops, "shirt sleeve sessions" and retreats when Council members gather outside of scheduled meetings for training, planning, briefings or other purposes can be meetings.⁷

For more information on best practices for open and closed council meetings, see BC Ombudsperson, [Open Meetings: Best Practices Guide for Local Governments](#), Special Report No 34 to the Legislative Assembly of BC (September 2012).

³ BC Ombudsperson, [Open Meetings: Best Practices Guide for Local Governments](#), Special Report No 34 to the Legislative Assembly of BC (September 2012) at p 9.

⁴ *City of Yellowknife Property Owners Assn. v Yellowknife (City)*, [1998 CanLII 29867 \(NWT SC\)](#); *Southam Inc. v Regional Municipality of Hamilton-Wentworth*, [1988 CanLII 4709 \(ON CA\)](#) at p 9.

⁵ *City of Yellowknife Property Owners Assn. v Yellowknife (City)*, [1998 CanLII 29867 \(NWT SC\)](#).

⁶ *City of Yellowknife Property Owners Assn. v Yellowknife (City)*, [1998 CanLII 29867 \(NWT SC\)](#) at paras 17 and 19.

⁷ *Southam Inc. v Regional Municipality of Hamilton-Wentworth*, [1988 CanLII 4709 \(ON CA\)](#).