

## 2016 LGLA Leadership Forum



### Open Meetings: Best Practices for Local Governments

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## Outline

- ❑ Overview of the Office of the Ombudsperson
- ❑ Open & transparent local government
- ❑ Legislative framework
- ❑ What is a meeting?
- ❑ Electronic meetings
- ❑ Complying with the open meeting rules (best practices)
  - ✓ Notice
  - ✓ Closing a meeting
  - ✓ Conducting closed meetings
  - ✓ After a meeting
- ❑ Ombudsperson investigations

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## Office of the Ombudsperson

- ❑ established in 1979
- ❑ oversight to ensure fair and reasonable treatment by public authorities
- ❑ approximately 7,800 inquiries and complaints per year
- ❑ jurisdiction over local governments since 1995
- ❑ one of seven provincial Ombudsperson offices with jurisdiction over local governments

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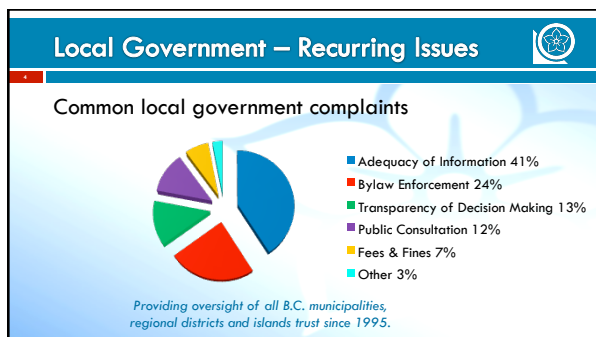
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### Open & Transparent Local Government

- essential element of healthy democracy
- increasing public expectations re: transparency
- enhances public confidence, trust and the local government's credibility
- provides opportunity & incentive for increased public participation
- reduces complaints

"The Ombudsperson serves the people of British Columbia by ... overseeing the administrative actions of provincial authorities in order to enhance **openness**, **transparency** and **accountability**."

Report of the Special Committee to Appoint an Ombudsperson, Legislative Assembly of British Columbia, Fourth Session, Fortieth Parliament, May, 2015, page 1

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### Open Meetings - Legislative Framework

**Community Charter (2003)**

- presumption that meetings will be open to the public - sec. 89(1)
- statutory provisions limit closed meetings:
  - limit circumstances under which a meeting can be closed
  - procedures to close a meeting
- applies to elected councils, advisory bodies, boards of variance

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Case Summary

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### Letting the public in

A citizen complained that the local government declared all regular meetings closed to the public until further notice.



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What is a Meeting?

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Consider the following 2 primary factors to determine if it is a **meeting**:

- > **Nature of the Group:** presence of a quorum, does the group have decision-making authority, or are they studying an issue/recommending action?
- > **Nature of the Discussion:** is it about a matter within the government's jurisdiction that if discussed in private deprives the public of the opportunity to observe a material part of the decision-making process

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Indicators of a Meeting

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- ☐ presence of a quorum
- ☐ voting
- ☐ deal with matters in a way that moves them materially toward a decision
- ☐ timing of the meeting
- ☐ formality of procedure followed

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Case Summary

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### The lines are now open

A citizen didn't understand why a council meeting was closed to the public. The meeting was a special council meeting held by telephone.



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Best Practice: Electronic Meetings

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### Community Charter sec. 128

- Electronic Meeting Regulation – Regional Districts & Islands Trust
- same factors apply whether the meeting is in person, or through electronic means (email, instant messaging, conference call, video meeting etc.)
- procedure bylaw may authorize electronic meetings

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Best Practice: Electronic Meetings

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### Limitations

- procedure bylaw in place
- participants are able to hear or watch & hear
- public is able to hear or watch & hear
- notice of meeting includes a description of the electronic means & where the public may attend to hear the parts of the meeting that are open




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Best Practice: Public Notice

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**Community Charter sec. 127**

- minimum 24 hours notice of special meeting - date, time & place – exception: urgent meetings sec. 127(4)
- post at regular meeting place & other places as per procedures by law (e.g., web site)
- provide general information concerning the matters to be discussed & the authorizing paragraph of sec. 90 of the Charter
- closed meeting in advance of vs. following a regular meeting

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Best Practice: Deciding to Close a Meeting

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**Meetings should be open except when:**

- closure is authorized **and** necessary or,
- closure is mandatory under section 90(2) of the Community Charter

*Sometimes multiple criteria must be satisfied before discretion to close a meeting can be exercised.*

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Best Practice: Reasons to Close a Meeting

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**Community Charter sec. 90 (1)**

- 15 circumstances in which council may exercise discretion to close a meeting

**Examples:**

- provision of municipal service
- land acquisition/disposition/expropriation
- ... if disclosure could harm interests of local government
- litigation
- confidential human resources matters

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Best Practice: Reasons to Close a Meeting

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**Community Charter sec. 90 (2) lists five circumstances a meeting must be closed.**

For example, if the subject matter being considered relates to:

- > A request under FIPPA
- > Negotiations with Federal or Provincial government
- > Ombudsperson investigation



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Best Practice: Resolution to Close a Meeting

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**Before closing a meeting, council must pass a resolution in a public meeting**

**The resolution should include three things:**

- > that a meeting or part of a meeting is to be closed
- > a brief description of the basis on which the meeting is to be closed
- > the specific paragraphs in section 90 that require or authorize the closure



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Best Practice: During Closed Meetings

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- ❑ restrict discussion to subjects that were authorized by the resolution
- ❑ take detailed minutes and ensure the names of all persons in attendance are recorded
- ❑ voting on the reading or adoption of a bylaw **not** permissible
- ❑ can vote or pass resolutions on other matters – disclose outcome at open meeting with as much detail as possible

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**Case Summary**

**Shedding light on closed meeting provisions**

A citizen complained that a building bylaw was rescinded in a closed meeting.




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**Best Practice: After the Closed Meeting**

- ☐ establish a process to periodically review information generated at closed meetings
- ☐ release information if doing so would not undermine the reason for closing the meeting




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**Ombudsperson Investigations**

**What We Look At:**

- ☐ Was the person treated in a fair and reasonable manner?
- ☐ Were the rules, policies and the law followed?
- ☐ Were the principles of administrative fairness followed (notice, relevant information considered, reasons?)
- ☐ Are the rules and policies themselves fair and reasonable?

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Ombudsperson Investigations



Decide whether or not to investigate the complaint

Investigation Steps:

- Notify the local government of our investigation
- Request information from the local government
- Assess all of the information provided
- If appropriate, consult with the local government on a fair resolution to the complaint
- Notify the complainant and local government in writing of the outcome of the investigation

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Ombudsperson Investigations



**Examples of resolutions**

- ▣ Releasing the minutes of closed meetings
- ▣ reimbursing fines, fees or penalties
- ▣ providing reasons for decisions
- ▣ apologizing
- ▣ changing or developing a policy
- ▣ amending a bylaw
- ▣ re-do a hearing process




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Best practices: Bylaw Enforcement



- ▣ **Coming March, 2016**
- ▣ Describes role of council and local government staff
  - ▣ A-Z: From drafting bylaws to enforcement and ultimately to appeals
- ▣ Practical checklists



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Questions?


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