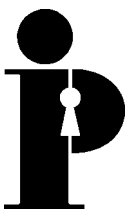
Information
and Privacy
Commissioner/
Ontario

Making Municipal Government More Accountable:

The Need for an Open Meetings Law in Ontario

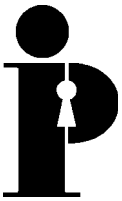


Ann Cavoukian, Ph.D.
Commissioner

Tom Mitchinson
Assistant Commissioner

October 2003

Dr. Ann Cavoukian, the Information and Privacy Commissioner of Ontario, gratefully acknowledges the work of Colin Bhattacharjee in preparing this report.



Information and Privacy Commissioner/Ontario

2 Bloor Street East
Suite 1400
Toronto, Ontario
M4W 1A8

416-326-3333
1-800-387-0073
Fax: 416-325-9195
TTY (Teletypewriter): 416-325-7539
Website: www.ipc.on.ca

This publication is also available on the IPC website.

Table of Contents

Introduction

The principle of open government is a linchpin of democracy because it allows citizens to scrutinize the activities of elected officials and public servants to ensure that they are acting in the public interest. One pillar that supports open government in Ontario is the province's freedom of information laws that give people the right to access government-held information.[1] However, the second pillar that supports open government – requiring public bodies to conduct open meetings – is only partly built.

In the United States, the federal government and all state governments have enacted open meetings laws that guarantee, with limited exceptions, that the public can attend meetings of public bodies, including municipal governments. Ontario does not have a stand-alone open meetings law that requires provincial and municipal governments to open their meetings to the public. Instead, open meetings requirements tend to be subsumed in other pieces of legislation governing public bodies, such as the *Municipal Act*.[2]

This paper explains why the Information and Privacy Commissioner is urging the Ontario government to introduce a comprehensive open meetings law that would first apply to municipal governments. In particular, this paper points to the detailed and comparatively tough open meetings laws that exist in U.S. jurisdictions. Although Ontario's *Municipal Act* requires, with limited exceptions, that all meetings be open to the public, it does not far enough.

A new municipal open meetings law must:

- provide a clear, precise and practical definition of a meeting;
- require municipalities to give the public proper and adequate advance notice of each council and board meeting;
- prohibit councils and boards from considering business not included on a published notice;
- give the public a legal right to complain if it feels that open meetings rules have not been followed;
- establish an efficient and accessible oversight system, with a body responsible for investigating complaints and resolving disputes; and
- provide remedies and penalties if the law has been breached.

The Need for an Open Meetings Law

In a democracy, the people are vested with ultimate decision-making authority, which they delegate to elected representatives and other public servants. Except in very limited and specific circumstances, public officials should conduct their business in open, not in secret, and ensure that the people to whom they are accountable – the public – are given proper notice of all meetings.

Comprehensive open meetings laws facilitate citizen participation in the policy and decision-making process of government. They enhance the ability of the public to evaluate the performance of the individuals whom it has elected to represent its interests. Open meetings laws may also serve to build public confidence in government by assuring the public that elected and appointed officials are serious about keeping corruption and favouritism out of the decision-making process.[3]

Municipal governments take considerable pride in their open business style and, in some respects, they deserve this reputation for openness. However, public concerns are pushing them to be even more open. In the 2003 municipal election campaigns in Ontario, transparency and accountability have become hot issues. In the City of Toronto, for example, at least three of the five main candidates for mayor have complained that too many municipal meetings take place in "backrooms" away from public scrutiny. Some call for tougher ethics rules, and others point to a need to reduce opportunities for closed meetings.[4]

The print media in Ontario have also cited instances where municipal councils and boards allegedly have closed meetings to the public for questionable reasons. For example, *The Hamilton Spectator* has complained that a Hamilton city council search committee met five times to discuss issues around the hiring of a new city manager. Both the content and existence of these meetings were kept secret from the public. In an editorial, the *Spectator* noted that "the remedies when councils meet improperly in secret are minimal" and urged that a new law be established that would "set penalties for councils that disregard the law."[5]

Similarly, *The Kingston Whig-Standard* reported that a citizens' group in South Frontenac sent a letter to the South Frontenac Township Council, urging it not to hold a debate about garbage collection behind closed doors. According to *The Whig-Standard*, the council "took the unusual step of going in camera to talk about a system for collecting recyclable garbage."[6]

Existing Open Meetings Requirements in Ontario

The importance of conducting meetings in public is part of Ontario's democratic culture and legislative framework. By convention, the Ontario legislature holds its proceedings and debates in public. However, the Standing Orders of the Legislative Assembly of Ontario allow for closed sessions. All "strangers" may be excluded from the House or any Committee on a motion properly moved and adopted by the House or the Committee, as the case may be.[7]

In the broader public sector, the *Education Act* requires, with limited exceptions, that school board meetings be open to the public.[8] Similarly, the *Police Services Act* mandates that subject to certain exceptions, meetings and hearings conducted by municipal police services boards be held in public.[9] On a broader scale, the *Municipal Act* requires, with limited exceptions, that all meetings of municipal councils and boards be open to the public.[10] However, a meeting or part of a meeting may be closed to the public if the subject matter being considered is:

- the security of the property of the municipality or local board;
- personal matters about an identifiable individual, including municipal or local board employees;
- a proposed or pending acquisition or disposition of land by the municipality or local board;
- labour relations or employee negotiations;
- litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board;
- advice that is subject to solicitor-client privilege, including communications necessary for that purpose;
- a matter in respect of which a council, board, committee or other body may hold a closed meeting under another *Act*.[11]

Moreover, a meeting must be closed to the public if the subject matter relates to the consideration of a request under the *Municipal Freedom of Information and Protection of Privacy Act* if the council, board, commission or other body is the head of an institution for the purposes of that *Act*.[12]

However, the open meetings requirements in the *Municipal Act* do not go far enough in protecting the public interest. As will be illustrated below, the definition of a "meeting" is insufficient and imprecise. Moreover, there is no clear obligation on municipalities to provide the public with advance notice that sets out the date, time, location and specific subject matter of all meetings. Also, if a municipal council or board refuses to abide by the open meetings requirements in the *Municipal Act*, citizens must turn to the courts, which can be a cumbersome, expensive and time-consuming process.

A new law is needed to ensure that both municipal officials and the public have a clear understanding of which gatherings constitute a "meeting" and which do not. It needs to ensure that citizens are given proper advance notice of meetings, and that municipal councils or boards do not try to slip something onto the agenda at the last minute without telling the public. It needs to ensure that the public has access to an efficient and effective oversight body that can investigate complaints and resolve disputes. The law must also provide remedies or penalties if municipal officials refuse to comply with open meetings requirements.

Definition of a Meeting

An open meetings law must provide a clear, precise and practical definition of a meeting.

The issue of what constitutes a "meeting" has dogged municipalities for years. The media occasionally report that a municipal council or board has held an "informal" meeting, without proper notice, invariably accompanied by cynical allegations that elected officials are trying to avoid an open public process for dealing with controversial issues. Municipal officials may argue, often with good reason, that chats over lunch or discussions at informal social gatherings are not true "meetings." However, such debates will continue to rage unless we have a definition of a meeting that is clear and easily understood.

For the purpose of the open meetings section of the *Municipal Act*, a "meeting" is simply defined as any regular, special, committee or other meeting of a council or local board.[13] This "a meeting is a meeting" definition merely describes the types of meetings that may be held by a council or board and provides little help in resolving ongoing debates about whether certain "backroom" or informal gatherings of municipal councillors or board members were meetings that should have been held in public.

The courts in Ontario have stepped in on occasion to provide direction on what constitutes a "meeting." In *Southam Inc.* v. *Hamilton-Wentworth (Regional Municipality) Economic Development Committee* (1988),[14] the Ontario Court of Appeal considered whether a workshop on proposed economic development held by the respondent was actually a "meeting." A municipal bylaw required all meetings of council and committees of council to be open to the public, with limited exceptions. The workshop was not held in the usual meeting room and the newspaper was excluded from the meeting.[15]

The Court noted that the bylaw provided no definition of "meeting," so it referred to *Black's Law Dictionary*, which defines a meeting as: " … an assembling of a number of persons for the purpose of discussing and acting upon some matter or matters in which they have a common interest …" 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.[16] The Court found that the committee workshop was indeed a meeting and was held *in camera* contrary to the bylaw.[17]

An open meetings law that applies to municipal councils and boards in Ontario should provide a clear, precise and practical definition of a meeting. Most people would agree that a gathering of all municipal councillors or board members where a decision is made or formal action is taken would constitute a meeting. However, it would arguably be unreasonable and impractical to include accidental encounters or informal social gatherings between a minority of municipal councillors or board members in the definition of a meeting.

Is a gathering a "meeting" only if a majority of municipal councillors or board members are present? Does a meeting occur if municipal councillors or board members simply "deliberate" about public business or public policy? What about an exchange of e-mail messages or a debate in an Internet chat room? Would participation in electronic forums such as these constitute a "meeting?"

In U.S. open meetings laws, there are a variety of definitions of the term "meeting," but at least two common indicators may be found in many of these definitions. First, a "meeting" may only be deemed to have taken place if a "quorum" of a public body's members is in attendance. A quorum is usually defined as a simple majority of the members of a public body; it is the number of members who must be present for a public body to act.[18] A majority of state open meetings laws use a quorum as the test for whether a meeting has taken place.[19]

Second, all states define a meeting as including the "deliberations" of a public body leading up to a decision, even if no formal action occurs.[20] Massachusetts further defines the term "deliberations" as "a verbal exchange between a quorum of members of a governmental body attempting to arrive at a decision on any public business within its jurisdiction."[21]

Some examples of states that include the quorum and deliberations indicators in their definition of a meeting include:

- Arizona defines a meeting as "the gathering of a quorum of members of a public body to propose or take legal action, including any deliberations with respect to such action."[22]

- Texas provides that a meeting is "a deliberation between a quorum of a governmental body, or between a quorum of a governmental body and another person, during which public business or public policy over which the governmental body has supervision or control is discussed or considered, or during which a governmental body takes formal action."[23]

- Oregon and West Virginia define a meeting as "the convening of a governing body of a public body for which quorum is required in order to make a decision or to deliberate toward a decision on any matter."[24]

The debate over whether a particular gathering constitutes a "meeting" has been subject to litigation in the courts and other complaint or advisory forums in U.S. jurisdictions with open meetings laws. In Virginia, the Freedom of Information Advisory Council and its staff issue advisory opinions interpreting provisions of the Virginia *Freedom of Information Act* (FOIA) upon request by citizens, public officials and reporters.[25] The council has issued advisory opinions about the FOIA's open meetings provisions, including whether a particular gathering was a "meeting."[26]

For example, the council found that a proposed e-mail network, consisting of the members of the Winchester city council, the city manager, and the city attorney, among others, would be more akin to a meeting than to mere correspondence and noted:

> The network would allow an electronic conversation to ensue, in which ideas concerning public business could readily be exchanged among all members of a public body … While this conversation might not ensue as instantaneously as a face-to-face conversation, the end result would be the same exchange and discussion of ideas outside of the public's view.[27]

Notice Requirements

An open meetings law must:

- ***require municipalities to give the public proper and adequate advance notice of each council and board meeting;***
- ***prohibit councils and boards from considering business not included on a published notice.***

The *Municipal Act* contains at least one provision that specifically requires a municipality to provide the public with notice of certain meetings. Section 150 sets out a municipality's power to licence and regulate businesses for the purposes of health and safety, nuisance control and consumer protection.[28] Subsection 150(4) states that before passing a bylaw under this section, the council of the municipality shall, except in the case of emergency:

- hold at least one public meeting at which any person who attends has an opportunity to make representation with respect to the matter; and
- ensure that notice of the public meeting is given.[29]

However, the *Municipal Act* does not contain a general provision that requires municipalities to provide the public with advance notice that sets out the date, time, location and specific subject matter of all council and board meetings. Instead, subsection 238(2) simply requires that every municipality and local board pass a procedure bylaw for governing the calling, place and proceedings of meetings.[30] In other words, it is left up to municipalities to decide whether they wish to include formal requirements in their procedure bylaws that the public be provided with proper and adequate advance notice of each council and board meeting.

In practice, many municipalities are using their Web sites to publish advance schedules and agendas for council and board meetings and the subsequent minutes for such meetings. However, the print media in Ontario continue to cite instances where municipal councils and boards have allegedly failed to provide the public with proper notice of meetings. For example, *The Ottawa Citizen* has reported that the Ottawa Public Library Board had a regular practice of starting meetings one hour before the publicly announced time of 7 p.m. and immediately moving *in camera*. No public notice was ever given that a meeting was happening at 6 p.m.[31]

Similarly, the *Dunnville Chronicle* noted that on December 17, 2002 and January 10, 2003, Haldimand County councillors met with senior managers to discuss 283 projects and priority issues, including the timelines for the development of the county's first official plan. The *Chronicle* alleged that the meetings were not advertised and the media were not notified.[32]

Most U.S. open meetings statutes have a general provision that require public bodies to provide proper and advance notice of all meetings to the public, although the particular notice requirements vary from statute to statute. Notices that fail to identity the place, date and time of a meeting are usually deemed to be in violation of the law.[33]

In most states, the statutory notice requirements set the minimum standard that must be met. Public bodies may give more extensive notice than stipulated in the open meetings law.[34] Notice requirements found in other statutes or in local ordinances or regulations may also supplement the requirements set forth in an open meetings law.[35]

The advanced time period within which the public must be notified of a meeting varies from state to state. Some open meetings laws prescribe specific notice periods that vary from 24 hours to 10 days prior to regular meetings.[36] A small number of states do not prescribe a specific time period but instead require that "reasonable notice" be given.[37] For example, Maryland requires "reasonable advance notice to the public,"[38] while Oregon requires "public notice, reasonably calculated to give actual notice to interested persons including news media."[39]

Many states require public bodies to provide an agenda to the public at some designated time before a meeting.[40] However, only a small number of states define the term "agenda."[41] In Delaware, an agenda is defined as "a general statement of the major issues expected to be discussed at a public meeting …"[42] In California, local public bodies are only required to provide "a brief, general description of the business to be transacted or discussed."[43]

Hawaii's "Sunshine Law" prohibits a board from meeting unless written public notice, including an agenda of items to be discussed, is provided at least six days before the meeting.[44] If the notice period is not complied with, the meeting must be cancelled.[45] After an agenda has been filed, a board may not add an item if it is of "reasonably major importance" and action on this item by the board would affect a significant number of persons.[46]

In general, a notice must be posted in a location that is freely accessible to the public.[47] Some states require that notice be filed or posted for public inspection in the office of the public entity in question.[48] For example, Arizona requires public bodies to file a statement with the secretary of state or clerk of counties, cities or other bodies stating the location of public notices of meetings.[49] Oklahoma requires public bodies to give an annual schedule of meetings to the secretary of state for state entities or the appropriate county or municipal clerk for county, municipal, district and regional public entities.[50]

Some states require that notice of a meeting be sent to or printed in a newspaper in the city or town where the public body will be meeting.[51] Few open meetings statutes require public bodies to post notice of meetings on their Web sites, although this is now a common practice in many jurisdictions.

Right to Complain/Oversight Body

An open meetings law must:

- *give the public a legal right to complain if it feels that open meetings rules have not been followed;*
- *establish an efficient and accessible oversight system, with a body responsible for investigating complaints and resolving disputes.*

In most U.S. states, relief for violations of open meetings laws is available on application of "any person," "any taxpayer," or "any citizen of the state."[52] Some states, such as Indiana, do not require plaintiffs to allege or prove that they have suffered any special damage different from that suffered by the public at large.[53] Other states, such as Connecticut, require plaintiffs to show a specific personal and legal interest in the subject matter and some possibility of a special and injurious effect on that specific interest to establish a complaint.[54] Oregon allows "any person affected by a decision" to sue under its open meetings law.[55]

Ontario's *Municipal Act* does not provide the public with a formal right to complain about a violation of the open meetings rules in section 239. However, there are two general provisions that an individual may use to attempt to (1) quash a bylaw for illegality or (2) "restrain by action" the contravention of a bylaw.

Subsection 273(1) states that upon application of any person, the Superior Court of Justice may quash a bylaw of a municipality in whole or in part for illegality. Subsection 273(2) further defines a bylaw as including an order or resolution.[56] In other words, an individual could ask the Superior Court of Justice to quash a procedural bylaw for illegality if the bylaw failed to fully address the calling, place and proceedings of meetings, as required under subsection 238(2) of the *Municipal Act*.

Similarly, a member of the public could use subsection 273(1) to challenge a municipal body that passes a resolution to hold a closed meeting. Subsection 239(4) states that before holding a meeting or part of a meeting that is to be closed to the public, a municipality, local board or committee must pass a resolution that states that a closed meeting will be taking place and the general nature of the matter to be considered at the closed meeting.[57] A member of the public could ask the Superior Court of Justice to quash such a resolution for illegality if the general nature of matter to be considered does not fit into the list of exceptions to open meetings found in subsection 239(2) (e.g., personal matters about an identifiable individual) or if the resolution fails to otherwise comply with the requirements of subsection 239(4).

A member of the public could also attempt to use section 443 of the *Municipal Act* if a municipality contravenes its own procedural bylaw governing the calling, place and proceedings of meetings. Section 443 states that if any bylaw of a municipality or local board under this or any other *Act* is contravened, in addition to any other remedy and to any penalty imposed by the bylaw, the contravention may be "restrained by action" at the instance of a taxpayer or the municipality or local board.[58] Consequently, if a council put in place a procedural bylaw that required it to give the public seven days notice of meetings but consistently failed to do so, a taxpayer could attempt to use section 443 to "restrain" or stop the council from continuously violating the bylaw.

However, requiring the public to go to court to quash a municipal bylaw for illegality or to "restrain" a municipality from violating a procedure bylaw, is a cumbersome, costly and time-consuming process for addressing open meetings law violations. A better alternative would be to give the public access to an efficient and effective oversight body that could investigate complaints and resolve disputes.

There is substantial variation in U.S. open meetings statutes as to which parties or bodies may enforce such laws. However, several U.S. states have an ombudsman who oversees enforcement and interpretation of the open meetings law.[59] The courts typically show some level of deference to the ombudsman's interpretations of the law.[60] For example, in Connecticut, the Freedom of Information Commission[61] is responsible for reviewing alleged violations of the state's open meetings law and has the power to issue orders. In general, complainants must first seek relief from the Commission but may appeal to the courts if they are dissatisfied with the Commission's decision.[62]

Oregon's Government Standards and Practices Commission[63] has the power to review and investigate complaints that public officials have violated the state's open meetings law. The commission may interview witnesses, review minutes and other records *in camera*, and obtain other information about executive sessions (i.e., closed sessions) to determine if a violation of the open meetings law has occurred. It may also impose civil penalties in certain cases.[64]

In Maryland, the Open Meetings Law Compliance Board has the power to receive, review and resolve complaints from any person alleging a violation of the state's open meetings law. The board may also issue an opinion as to whether a violation has occurred or a prospective violation may occur.[65] However, the board's opinions are advisory in nature. It is prohibited from requiring or compelling specific action by a public body, and its opinions may not be introduced as evidence in proceedings brought before a court to enforce the open meetings law.[66]

Other state bodies that have some degree of oversight over open meetings laws include the Hawaii Office of Information Practices[67], New York's Committee on Open Government[68] and Virginia's Freedom of Information Advisory Council.[69]

The attorneys general in virtually all U.S. states have the power to issue opinions about the application and interpretation of an open meetings law.[70] Moreover, the power to enforce open meetings laws in the courts is often given to the attorney general or to the district attorney in the county in which the offence occurred or in which the public body normally meets.[71] Some states allow citizens to enforce the law in the courts but not seek a full range of remedies.[72] For example, in Wisconsin, any person may enforce the open meetings law but only the attorney general or district attorney may seek supplementary relief, including mandamus and injunctive or declaratory relief.[73]

In general, however, the power to seek enforcement of open meetings laws in such states is not vested exclusively in the attorney general or district attorney.[74] Private citizens may also seek enforcement of the law by filing a complaint with the attorney general or district attorney. For example, in Louisiana, the attorney general and district attorney may initiate proceedings on their own initiative and "shall institute such proceedings upon a complaint filed with him by any person …"[75] Similarly, Rhode Island and Wisconsin authorize citizens to complain to the attorney general, who is required to investigate the allegations and, if appropriate, file a complaint on behalf of the citizen.[76]

Remedies and Penalties

An open meetings law must provide remedies and penalties if the law has been breached.

If a court or oversight body determines that a municipal council or board has breached an open meetings law, there must be a remedy, or series of optional remedies, to address the problem. Moreover, it may be appropriate in certain circumstances to impose a penalty to deter future violations of the open meetings law.

The *Municipal Act* does not create any remedies or penalties that would specifically apply if a municipal body violated the *Act*'s opening meetings rules. However, as noted above, members of the public may seek relief from the courts if they believe that a municipal body has violated the open meetings rules in the *Act*. Specifically, they may ask the Superior Court of Justice to quash a municipal bylaw for illegality or seek to "restrain by action" the contravention of a bylaw.

Moreover, Part XIV of the *Act*, which deals with enforcement, may give municipalities the power to impose penalties on themselves for violating any opening meeting rules that they establish through the enactment of bylaws. Section 425(1) states that bylaws may be passed by all municipalities and by police services boards for providing that any person who contravenes any bylaw of the municipality or of the board, as the case may be, passed under this Act, is guilty of an offence.[77] In other words, a municipality could theoretically pass a bylaw that makes it an offence for municipal councillors or board members to violate its procedural bylaw that governs the calling, place and proceedings of meetings.

U.S. open meetings laws provide a number of remedies and penalties that are either generally available or may be applied to specific types of violations:

Injunctive Relief – Most open meetings laws authorize the imposition of temporary or permanent injunctive relief once a violation has been established. Injunctive relief is a prospective remedy. In other words, it requires a public body to comply with the open meetings law for a designated period in the future.[78]

For example, the Tennessee statute provides that the court "shall permanently enjoin any person adjudged by it in violation of this part." Moreover, it requires the court to retain jurisdiction over the parties and the subject matter for one year and requires the defendants to report in writing semi-annually as to their compliance with the open meetings law.[79]

Declaratory Relief – Declaratory relief is also available as a potential remedy under either the open meetings law or a generally applicable declaratory judgment statute. Public bodies themselves may seek such relief from the court to ensure that they are acting in compliance with the open meetings law.[80]

For example, in Iowa and Missouri, the open meetings laws provide that a governmental body that is in doubt as to the legality of closing a particular meeting or vote may sue to ascertain the propriety of its proposed action or may seek a formal opinion of the attorney general.[81]

Mandamus – This is an order that compels a person to perform a public or statutory duty.[82] This remedy is available for violations of open meetings laws under either the open meetings law or under a generally applicable law. As with injunctive relief, mandamus has a prospective application.[83]

Invalidation – In contrast to injunctive relief and mandamus, which are primarily prospective remedies, invalidation of an action taken in violation of an open meetings law is retrospective. Numerous open meetings statutes empower the courts to void any final action taken at a meeting that was not compliance with the statute.[84]

For example, under the Connecticut statute, the Freedom of Information Commission may declare null and void any action taken at any meeting to which a person was denied the right to attend.[85] If a court invalidates an action taken at a meeting because of a violation of the open meetings laws, the usual effect is to require the public body to start over in compliance with the law.[86]

Civil Penalties – Most open meetings laws authorize the imposition of civil monetary penalties once a violation has been established. The law may impose a specific civil penalty or authorize a penalty of up to a certain amount of money (e.g., $1,000). Some statutes increase the penalty for subsequent violations.[87]

For example, New Jersey provides a civil penalty of $100 for the first offence and from $100 to $500 for subsequent offences.[88] Depending on the state, civil penalties may be assessed against the public body itself, against the members of the public body who violated the law, or against a person who intentionally violates the law.[89]

Criminal Monetary Penalties and Imprisonment – Open meetings laws may also provide for criminal penalties, ranging from a fine to imprisonment. Misdemeanour penalties are often increased for subsequent violations.[90]

For example, Michigan provides for a fine of up to $1,000 for the first offence and a fine of up to $2,000 or imprisonment for up to a year or both for the second offence in the same term.[91] Although imprisonment is available as a statutory penalty in some states, it is rarely imposed.[92]

Forfeiture of Office or Future Public Office – Some open meetings laws contain provisions that allow the court to remove or bar from public office any official who has violated the law.[93]

For example, Arizona's open meetings law provides that the court may remove a public officer from office if he or she violated the open meetings law with intent to deprive the public of information or the opportunity to be heard.[94] Similarly, Ohio allows for the removal of a member of a public body who knowingly violates an injunction issued under the open meetings law.[95]

Contempt of Court – A standard remedy for violation of court orders is contempt of court. As in other situations, failure to comply with a court order or a consent decree reached under an open meetings law may result in a finding of contempt.[96]

This same principle applies to some of the ombudsman bodies that oversee open meetings laws in the U.S. For example, any member of a public body who fails to comply with an order of the Connecticut Freedom of Information Commission is guilty of a Class B misdemeanour.[97]

Conclusion

Ontario needs a tough new municipal open meetings law to ensure government actions are open and transparent. The *Municipal Act* does not go far enough. It does require, with limited exceptions, that councils and boards conduct their business at open meetings where the public can attend and observe the debate. However, accessible, transparent government goes far beyond opening the doors to a meeting.

The broader objective of transparency is to ensure that citizens understand how decisions are made and have an opportunity to participate in the decision-making process. To be truly effective, we need a new law that will encourage integrity in our municipal governments and help ensure that elected and appointed municipal officials are operating in the public interest.

A new law must ensure that both municipal officials and the public have a clearer understanding of which gatherings constitute a "meeting" and which do not. It needs to ensure that citizens are given proper advance notice of meetings, and that municipal councils or boards do not try to slip something onto the agenda at the last minute without telling the public. It needs to ensure that the public has access to an efficient and effective oversight body that can investigate complaints and resolve disputes. The law must also provide remedies or penalties if municipal officials refuse to comply with open meetings requirements.

Although this paper points to the much tougher open meetings rules that exist in U.S. jurisdictions, the provincial government should enact a made-in-Ontario open meetings law that is practical and fair. For example, the penalties available in some U.S. jurisdictions for violations of open meetings rules, particularly criminal penalties, may be inappropriate in Ontario's municipal environment.

An open meetings law may not enjoy full support from all incumbent municipal politicians in Ontario. However, this is a weak reason for not pushing forward with such an initiative. The Ontario government should consult with municipalities, businesses, unions, community groups, non-profit organizations, the media and all other stakeholders who have an interest in promoting open and transparent government. Ultimately, the general public should be the arbiter of whether the status quo is satisfactory or if a tough new open meetings regime is needed that will enable citizens to more effectively scrutinize the conduct of municipal governments.

Notes

1. See the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31,<www.ipc.on.ca/scripts/index_.asp?action=31&P_ID=11607&N_ID=1&PT_ID=23&U_ID=0> and the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, <www.ipc.on.ca/scripts/index_.asp?action=31&P_ID=11603&N_ID=1&PT_ID=23&U_ID=0>.

2. S.O. 2001, c. 25, <http://192.75.156.68/DBLaws/Statutes/English/01m25_e.htm>.

3. Ann Taylor Schwing, *Open Meeting Laws*, 2nd ed. (Anchorage: Fathom Publishing Company, 2000), p. 34.

4. "First on the agenda: Cleaning up city hall," *The Globe and Mail*, September 8, 2003, pp. A10-11.

5. "Rules, penalties needed to curb council huddles," June 13, 2003, p. A12.

6. Annette Phillips, "Secret garbage talks draw residents' ire," August 6, 2003, p. 1.

7. <www.ontla.on.ca/documents/standing_orders/out/index.htm>, s.18.

8. R.S.O. 1990, c. E.2, ss. 207(1) and (2), <www.e-laws.gov.on.ca/DBLaws/Statutes/English/90e02_e.htm.>

9. R.S.O. 1990, c. P.15, ss. 35(3) and (4), <www.e-laws.gov.on.ca/DBLaws/Statutes/English/90p15_e.htm.>

10. Supra note 2, s. 239(1).

11. Ibid., s. 239(2).

12. Ibid., s. 239(3).

13. Ibid., s. 238(1).

14. 66 O.R. (2d), p. 213.

15. Ibid., p. 214.

16. Ibid., p. 217.

17. Ibid., p. 218.

18. Schwing, supra note 3, p. 263.

19. Ibid., p. 265.

20. Ibid., p. 278.

21. Mass. Gen. Laws Ann. ch.30A, § 11A (West 1999 Cum.PP) (state bodies); Mass. Gen. Laws Ann. Ch. 34, § 9F (West 1985) (counties), Mass. Gen. Laws Ann. Ch. 39, § 23A (West 1999 Cum.99); as cited in Schwing, supra note 3, footnote 128 on p. 277.

22. Ariz. Rev. Stat. Ann. § 38-431(3) (1996); as cited in Schwing, ibid., footnote 54 on p. 265.

23. Tex. Gov't Code Ann. § 551.001(4) (Vernon 1994), as cited in Schwing, ibid., footnote 73 on p. 268.

24. Ore. Rev. Stat. § 192.610(5) (1995); W. Va. Code Ann. § 6-9A-2(4) (1998 Supp.), as cited in Schwing, ibid., footnote 80 on p. 269.

25. <http://dls.state.va.us/foiacouncil.htm>

26. <http://dls.state.va.us/groups/foiacouncil/ops/welcome.htm>

27. AO-1-01, <http://dls.state.va.us/groups/foiacouncil/ops/01/AO_1.htm>

28. Supra note 2.

29. Ibid.

30. Ibid.

31. Zev Singer, "Library board debates lessons in democracy," May 15, 2003, p. C1.

32. Karen Best, "Debate continues over closed door council meetings," April 16, 2003, p. 3.

33. Schwing, supra note 3, pp. 166-167.

34. Ibid., p. 167.

35. Ibid.

36. Ibid., p. 177.

37. Ibid., p. 173.

38. Md. Ann. Code State Gov't § 10-506(a) (1995), as cited in Schwing, ibid., footnote 52.

39. Ore. Rev. Stat § 192.640(1) (1995), as cited in Schwing, ibid., footnote 50.

40. Schwing, ibid., p. 196.

41. Ibid., p. 197.

42. Del. Code Ann. tit. 29, § 10002(f) (1997), as cited in Schwing, ibid., footnote 177.

43. Cal. Ann. Gov't Code § 54954.2(a) (West 1999 Cum.PP), as cited in Schwing, ibid., footnote 178.

44. Haw. Rev. Stat. ,§ 92-7(a), (b) (1998 Supp.)

45. Ibid., § 92-7(c).

46. Ibid., § 92-7(d).

47. Schwing, supra note 3, p. 188.

48. Ibid., p. 189.

49. Ariz. Rev. Stat. Ann. § 38-431.02(A) (1996), as cited in Schwing, ibid., footnote 136.

50. Okla. Stat. Ann. tit. 25, § 311(A) (West 1999 Cum.PP), as cited in Schwing, ibid., footnote 139 on p. 190.

51. Ibid., p. 190.

52. Schwing, supra note 3, p. 478.

53. Ind. Code Ann. § 5-14-1.5-7(a) (1998 Cum.PP) as cited in Schwing, ibid., footnote 54 on p. 479.

54. Ibid., p. 480.

55. Ore. Rev. Stat. § 192.680(2) (1998 Supp.), as cited in Schwing, ibid., footnote 60.

56. Supra note 2.

57. Ibid.

58. Ibid.

59. Ibid., p. 46.

60. Ibid.

61. <www.state.ct.us/foi/>

62. Conn. Gen. Stat. Ann. § 1-206(b),(c) (West 1999 Cum.PP), as cited in Schwing, supra note 3, footnote 229 on p. 47.

63. <www.gspc.state.or.us/>

64. Ore. Rev. Stat. § 192.685(1),(2), 244.260(1) (1998 Supp.), as cited in Schwing, supra note 3, footnotes 236 and 237 on p. 47.

65. Md. Ann. Code State Gov't § 10-502.1 et seq. (1995), as cited in Schwing, footnote 232 on p. 47.

66. Ibid., § 10-502.5(i), (j) (1998 Supp.), as cited in Schwing, footnote 233 on p. 47. See also the Maryland Attorney General's Web site, which contains advisory opinions of the State Open Meetings Law Compliance Board, <www.oag.state.md.us/Opengov/openmeet.htm#omopinions.>

67. www.state.hi.us/oip/

68. <www.dos.state.ny.us/coog/coogwww.html>

69. Supra note 25.

70. Schwing, supra note 3, p. 50.

71. Ibid., p. 473.

72. Ibid., p. 474.

73. Wis. Stat. Ann. § 19.97(2) (West 1996), as cited in Schwing, ibid., footnote 16 on p. 473.

74. Ibid.

75. La. Rev. Stat. Ann. tit. 42 § 10(A), (B) (West 1990), as cited in Schwing, ibid., footnote 20 on p. 474.

76. R.I. Gen. Laws § 42-46-8(a) (1998 Supp.); Wis. Stat. Ann. § 19.97 (West 1996), as cited in Schwing, ibid., footnotes 21 and 23.

77. Supra note 2.

78. Schwing, supra note 3, pp. 500-501.

79. Tenn. Code Ann. § 8-44-106(c),(d) as cited in Schwing, ibid., footnote 212 on p. 503.

80. Schwing supra note 3, pp. 504-505.

81. Iowa Code Ann. § 21.6(4) (1995); Mo. Ann. Stat. § 610.027(5) (Vernon 1999 Supp. Pamph.), as cited in Schwing, ibid., footnote 221 on p. 505.

82. R.E. Allen, *The Concise Oxford Dictionary* (New York: Oxford University Press, 1990).

83. Schwing, supra note 3, p. 506.

84. Ibid., 513.

85. Conn. Gen. Stat. Ann. § 1-206(b)(2) (West 1999 Cum.PP), as cited in Schwing, ibid., footnote 282 on p. 513.

86. Ibid., p. 516.

87. Ibid., pp. 507-508.

88. N.J. Stat. Ann. § 10:4-17 (West 1998 Cum.PP), as cited in Schwing, ibid., footnote 242 on p. 508.

89. Ibid., p. 508.

90. Ibid., pp. 509-510.

91. Mich. Comp. Laws Ann. § 15.272 (West 1994), as cited in Schwing, ibid., footnote 267 on p. 511.

92. Ibid., pp. 509-510.

93. Ibid., p. 527.

94. Ariz. Rev. Stat. Ann. § 38-431.07(A) (1996), as cited in Schwing, ibid., footnote 350 on p. 527.

95. Ohio Rev. Code Ann. § 121.22(I)(4) (Anderson 1998 Supp.), as cited in Schwing, ibid., footnote 353 on p. 527.

96. Schwing, ibid., p. 529.

97. Conn. Gen. Stat. Ann. § 1-240(b) (West 1999 Cum.PP), as cited in Schwing, ibid., footnote 364 on p. 529.