

Manitoulin-Sudbury District Services Board POLICY & PROCEDURES MANUAL	
Section: B. General Administration	Effective Date: July 1, 2010
Topic: 2. Governance	
Subject: 2.07. In Camera Sessions	
Policy No. B.2.07.	Page 1 of 3

POLICY

In-camera is a legal term which means “in secret”. In-camera meetings are closed and generally open only to members of the Board and certain management personnel. Other individuals may be included if their presence is considered by the Board as necessary to facilitate its work.

Typically, a Board only goes in-camera to discuss intimate financial or personnel matters or where matters may be disclosed at the meeting of such a nature that the desirability of avoiding open discussion outweighs the desirability of adhering to the principle that the meeting be open to the public.

The By-laws governing the Manitoulin-Sudbury DSB Board state at section 10.7:

Public or Confidential Meeting: No meeting or part of a meeting of the board or of its committees may be closed to the public except upon motion citing the legislative basis for closing the meeting to the public, including:

- a) the security of the property of the Board;
- b) personal matters about an identifiable individual, including Board employees;
- c) a proposed or pending acquisition of land for Board purposes;
- d) labour or employee negotiations; and
- e) litigation or potential litigation, including matters before administrative tribunals, affecting the Board.

PROCEDURE

It is clear that both the *Act* and the by-laws anticipate and allow for certain items to be discussed in-camera. These items again should only be those covered by the *Act* and restated in the by-law.

In order for the Board to go in-camera a motion must be made. This motion can be discussed and voted on. Once the Board has voted in favour of going in-camera, the information discussed should not be disclosed except as outlined below. Most boards utilize the in-camera function for the purpose of discussing sensitive issues. There is legislative authority for voting while in-camera on some issues.

That being said, it makes sense generally to hold discussions of sensitive issues in-camera, move out of in-camera and vote on any motions at that point. For

Manitoulin-Sudbury District Services Board POLICY & PROCEDURES MANUAL	
Section: B. General Administration	Effective Date: July 1, 2010
Topic: 2. Governance	
Subject: 2.07. In Camera Sessions	
Policy No. B.2.07.	Page 2 of 3

matters requiring discretion, the motion can be worded to avoid any reference to personnel, property or other contentious issues.

The Duty of Director

Directors have a special duty to the corporation. This duty is generally referred to as a fiduciary duty. This standard of care set forth provides that all Directors and Officers of a corporation in exercising their powers and discharging their duties shall act honestly and in good faith with a view to the best interests of the corporation, and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

Every Director and Officer of a corporation must also comply with the Acts that govern them, the regulations, the articles and by-laws. The section states that no provision in a contract, articles, or by-laws relieves a Director or Officer of his/her fiduciary duty.

Board Members have a legal obligation to the Board, wherein, the Board Member must act in good faith towards the organization and the Board. When a Board Member ignores this obligation or assumes that an obligation to another Board trumps the instant Board, the Board Member is breaching his/her fiduciary duty.

For clarity, Board Members receive proprietary information that is not public information. By disclosing the information, the Board Member, without authority, is making that information public. This is breach of the Board Members duty and as stated when an individual is on a Board, his/her duty is to that Board. If by virtue of being on that Board, the individual finds themselves in a conflict, the Member has an obligation to disclose the conflict and reclude themselves from any decision.

Information obtained for in-camera meetings is definitely not public. Disclosing information acquired as the result of sitting on the Board obviously has the affect of making non-public information public. The Board member is in breach of his/her obligation when this occurs.

Notwithstanding the above, a Director may be required to disclose information heard in-camera if required to by law. Both case law and legislation require that Directors disclose certain information even if that information is from an in-camera discussion. The most cited case on the subject relates to improper waste storage at a shoe plant. Directors were found to have a positive duty to report the spill even though this information was not authorized for release by the Board (R.V. Bata Industries Ltd. (1992) 7 CELR (N.S) 245).

Manitoulin-Sudbury District Services Board POLICY & PROCEDURES MANUAL	
Section: B. General Administration	Effective Date: July 1, 2010
Topic: 2. Governance	
Subject: 2.07. In Camera Sessions	
Policy No. B.2.07.	Page 3 of 3

Should a Board Member want to make an in-camera discussion public, approval of the Board is required, except again where required by law. The proceedings at a closed meeting of a Board should not be discussed beyond the persons entitled to be in attendance at that meeting. The decisions made at a closed meeting should not be made public until:

- a) the Chair of the Board so advises; or
- b) the report of the particular meeting, containing the decision, is released.

Additionally, under amendments to the Municipal Act, a member of the public can challenge the right of a Board to hold something in-camera. In such, a circumstance the Act provides for an investigation to be undertaken.

Conclusion

The *Act* and By-laws allows Boards to discuss issues in-camera. Issues discussed in-camera are confidential and cannot be disclosed without the authority of the Board. Directors have a fiduciary duty to the Board they sit on. Disclosing confidential information is a breach of this duty. Because of the makeup of the Manitoulin-Sudbury DSB Board, members will often be in conflict in terms of their duty to their township/municipality vs. Manitoulin-Sudbury DSB. Although the situation is difficult, the duty is clear; confidential information must remain confidential unless there is a pending legal reason to disclose the confidential information.