

How open meeting laws apply to local boards like the Tribunals Nominating Panel

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The Panel is a “city board” for the purposes of s. 190 of the City of Toronto Act (COTA)

- Tribunals Nominating Panel is a City board
- The Tribunals Nominating Panel’s meetings are held under the same meeting laws as City Council and its committees.

COTA requires every city board to adopt a procedures by-law

- City Council has already approved the use of Council Procedures (rules of committees) for the Tribunals Nominating Panel.

COTA requires public notice for all meetings of the Board

- The Clerk will give notice for all meetings of the board in accordance with Council Procedures
- Regular meetings will be scheduled in advance
- Special meetings require 24 hours notice

All Board meetings must be open to the public

- “Open” means:
 - At a place ordinarily considered a public place
 - At a time ordinarily considered a time to conduct public business
 - Accessible in accordance with AODA
 - There is room/seating for the public*
 - No barriers such as “buzzing through”, requirement for escorts, presentation of ID etc.*
- COTA has been amended to allow for electronic participation in meetings
 - The use of a technology/video platform like webex and providing members of the public access to the virtual meeting meets the open meeting provisions of COTA

A portion of a meeting may be closed to discuss certain matters

- Security of the property of the Board
- Personal matters about identifiable individuals
- Proposed or pending land acquisition or disposition
- Labour relations & employee negotiations
- Litigation or potential litigation
- Receiving of advice subject to solicitor-client privilege
- Education & training if no business is advanced
- Confidential Intergovernmental Information
- Certain competitive information
- Certain information about negotiations to be carried out

The Tribunals Nominating Panel is likely only ever to rely on the following reasons

- Routinely when reviewing candidates:
 - Personal matters about identifiable individuals
- Possible but unlikely:
 - Education & training if no business is advanced
 - Receiving of advice subject to solicitor-client privilege

#1 - personal matters about an identifiable individual, including a city employee or a local board employee

- For example:
 - Matters relating to an individual's race, national or ethnic origin, colour, religion, age, sex, sexual orientation and marital or family status.
 - The education, criminal, medical or employment history of an identifiable individual
 - Any identifying number, symbol or other particular assigned to an individual
 - The address, telephone number, fingerprints or blood type of an individual.

#2 – the receiving of advice that is subject to solicitor-client privilege including communications necessary for that purpose

- Verbal or written legal advice, whether given in contemplation of or for use in litigation or not.
- To qualify advice must be from person acting as the board's solicitor
 - Does not apply to advice from people who happen to be lawyers
 - Does not apply to the relay of legal advice by non-lawyers

#3 - education or training of members if no business is advanced

- Example:
 - Meeting of Councillors to provide Provincially-required training in the Ontario Clean Water Act
- This provision does not apply to “briefings” or “retreats”
- All other meeting rules apply

A meeting must be closed to consider the following:

- Freedom of Information (FOI) requests
- Interim reports or findings of the City or Provincial Ombudsman

Meetings must begin and end in public

- This applies even if all business on the agenda qualifies for a closed session
- Before meeting in closed session, COTA requires the board to adopt a resolution
 - Stating the general nature of the matter to be debated
 - The statutory exception relied upon to close the meeting
- After a closed session, the Board conducts its public debate on a matter

No votes may be taken in closed session*

- Exceptions
 - Votes on procedural motions
 - Votes on confidential instructions to officers, staff or agents
- All other votes must be conducted in public

There are risks associated with improperly closed meetings

- Any person who believes a meeting has been improperly closed may request that the City investigate
- The investigator makes a public report to the Board or Council with any recommendations they see fit
- Alternatively a person may make an application to a court or tribunal to have a decision quashed

Quorum

- A quorum of a majority of members must be present for business to proceed
- Quorum is not reduced by vacancies on the board
 - e.g. On a 9 member panel, quorum remains five even if 2 seats are vacant
- Quorum is reduced by Members declaring interests provided that at least 2 members are present.
 - e.g. Quorum is four if 2 members declare an interest in a matter (on a 9 member panel)

Voting

- The Chair votes
- Tie votes lose
- If any member requests it, the vote shall be recorded
- Recorded votes are conducted by the Clerk calling on each member to provide their vote verbally. The Clerk records the vote in the minutes of the meeting.

COTA requires a record of all meetings be made “without note or comment”

- The Clerk will prepare minutes of Board and committee meetings
- Minutes are public
 - Exception: Minutes of closed sessions must be taken, but are not made public
- This means that the Clerk must be present for all sessions of a meeting.

Members are bound by the Municipal Conflict of Interest Act

- Declarations of interest under MCIA
 - Each member must make an independent determination of their interest
 - Members' circumstances are not subject of points of order or rulings by the Chair
 - Must be made orally and in writing and submitted to the Clerk for publishing in a public register

Questions are welcome