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# **Municipal Statute Law Amendment Act, 2006 (Bill 130) Closed Meeting Investigator**

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**Presentation to General Committee  
October 29, 2007**



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# **BILL 130**

## Presentation Overview:

1. Review of New Meeting Rules
2. Review of Options for Closed Meeting Complaint Investigations
3. Staff Recommendations
4. Questions

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# 1. New “Meeting” Rules

## DEFINITIONS:

- MEETING now defined as “any regular, special or other meeting of a council, of a local board or of a committee of either of them.”

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# 1. New “Meeting” Rules (Cont’d)

- COMMITTEE now defined as “any advisory or other committee, subcommittee or similar entity of which at least 50% of the members are also members of one or more councils or local boards.”
- Local Board does not include Police Services Boards or Public Library Boards but does include BIAs.
- Regardless of new definition of “Committee”, it appears most municipalities plan to require all committees of Council to follow new meeting rules.

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# 1. New “Meeting” Rules (Cont’d)

## NOTICE OF MEETINGS:

- Municipal Councils/Committees & Local Boards are now required to give public notice of all upcoming meetings.
- Notice provisions to be stipulated in Council’s Procedural By-law.

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# 1. New “Meeting” Rules (Cont’d)

- Legislative Services staff preparing revised rules & procedures document for distribution to all Committees & Boards.
- Document will include post-Bill 130 procedural & closed meeting rules.

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# 1. New “Meeting” Rules (Cont’d)

- All meetings of Council/Committees/Local Boards to be open to the public with exception of circumstances contained in Municipal Act or any other Act.

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# 1. New “Meeting” Rules (Cont’d)

## CLOSED MEETINGS:

- In addition to reasons contained in pre-Bill 130 version of Act, meetings can now be closed for education or training provided:
  - *“no member discusses or otherwise deals with any matter in a way that materially advances the business/decision-making of the Council, local board or committee.”*



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# 1. New “Meeting” Rules (Cont’d)

## **CLOSED MEETINGS:**

- Prior to holding a closed meeting, councils, committees, and/or local boards, to pass a public resolution indicating:
  - A closed meeting is to be held, &
  - The general nature of matter to be discussed
- No votes to be taken in closed meetings except for circumstances stipulated in Act.

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## 2. Closed Meeting Investigation Options

- As of January 1, 2008, any person may request investigation of Town's closed meeting compliance (applicable to Council/Committees/Local Boards).
- Council must choose a mechanism for purpose of investigating complaints:
  - A. The Provincial Ombudsman if Council does not appoint an Investigator; or
  - B. A Council Appointed Investigator:
    - 1. Agreement with Individual
    - 2. Agreement with AMO's Local Authority Services (LAS)

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## Option A: Provincial Ombudsman

- Bill 130 provides Provincial Ombudsman with jurisdiction to investigate complaints that municipality/local board failed to open meeting to public.
- Generally, anonymous complaints will not be investigated.
- Ombudsman has discretion over what they will investigate.

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## Option A: Provincial Ombudsman (Cont'd)

- Most complaints resolved quickly by Office's "Early Resolution" staff.
- Once Ombudsman receives complaint, they assume jurisdiction over it - even if municipality subsequently appoints Investigator.

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## Option A: Provincial Ombudsman (Cont'd)

- If Ombudsman determines breach of rules has occurred, he will publicly report his opinion & reasons for it to municipality/local board & may make any recommendations deemed appropriate.
- Ombudsman's recommendations are not binding.
- According to Ombudsman's 2006/2007 Annual Report, the Office will monitor results of investigations conducted by municipalities to ensure new rules applied in fair & consistent manner across Ontario.

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## Option A: Provincial Ombudsman - Pros

- Office of Ombudsman already established & has sophisticated complaints investigation processes in place.
- Municipalities at “arms length” from investigations.
- Investigations to be conducted at no charge to municipality.

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## Option A: Provincial Ombudsman - Cons

- Optics of the Province getting involved in municipal operations likely not palatable to residents.
- Ombudsman staff lack knowledge of local context.

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## Option B: Council Appointed Investigator

- Municipalities can avoid investigation by the Provincial Ombudsman by appointing their own closed meeting investigators.
- To-date, this appears to be preferred approach for most municipalities.



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## Option B: Council Appointed Investigator (Cont'd)

- In appointing an individual to conduct investigations, municipalities must have regard to:
  - The Investigators' independence & impartiality;
  - Confidentiality with respect to investigator's activities; &
  - The credibility of investigative process.

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## Option B: Council Appointed Investigator (Cont'd)

- In addition to legislative requirements, Council should take the following personal attributes into consideration when selecting a closed meeting investigator:
  - Extensive knowledge of municipal government;
  - Working knowledge of Council operations & policies;
  - Knowledge of the Municipal Act & related statutes;
  - Credibility with Council, staff, public, & media; &
  - No specific connection to the Corporation.

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## Option B: Council Appointed Investigator (Cont'd)

- If, after conducting an investigation, a municipally appointed Investigator deems a closed meeting rule breach occurred, he/she will:
  - Report to municipality or local board;
  - Make any recommendations he/she feels appropriate.

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## Option B: Council Appointed Investigator (Cont'd)

### Choice of Investigation Method:

- Two options for municipal delivery of closed meeting complaint investigations:
  - B1** - Town enters into agreement with Individual
  - B2** - AMO's LAS Investigator Program

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## Option B1 - Agreement with Individual

- Town enters into agreement with individual to investigate closed meeting complaints.
- Retainer fees & investigative costs to be negotiated as part of service agreement.

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## Option B1: Agreement with Individual - Pros

- Council has more involvement in recruitment/selection process.
- Higher probability Investigator selected will have some knowledge of York Region context.

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## Option B1: Agreement with Individual - Cons

- January 1, 2008 timeframe a challenge.
- Town may be open to criticism re: selection of individual who appears “sympathetic” to municipality.
- No funds for this service included in 2008 budget.

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## Option B2: LAS Investigator Program

- AMO program managed by Local Authority Service (LAS).
- LAS has contract with third party company (Amberley Gavel Ltd. –business owned by Nigel Bellchamber & Fred Dean) to deliver investigative services.
- Agreement is for two years.
- Municipality to pay retainer fee to join program & daily investigative rate for investigations undertaken.



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## Option B2: LAS Investigator Program (Cont'd)

- Retainer fee is \$600.
- Cost of an investigation is \$1,250 per day (based on 8 hour day)
- Out-of pocket expenses (i.e. travel, meals, translation, admin costs) extra.

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## Option B2: LAS Agreement – Pros

- Program members provided with:
  - Ongoing education information related to “Closed Meeting” provisions of the Act
  - Access to all completed reports via a password protected website
  - Access to a pool of trained Review Officers
- The Town could easily join the program before the January 1, 2008 timeframe

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## Option B2: LAS Agreement – Cons

- Council has no involvement in selection of Investigator.
- No funds for this service included in 2008 budget.

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# Investigative Decisions - Provincial Context

- Few municipalities have made a final decision re: closed meeting investigations.
- See Handout

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### 3. Staff Recommendations

1. That Council appoint a closed meeting investigator in accordance with Section 239.2(1) of the Municipal Act.
2. That Council authorize staff to initiate an expedited recruitment process for a Closed Meeting Investigator.

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### **3. Staff Recommendations (Cont'd)**

3. That a selection committee comprised of three Members of Council be formed to review potential candidates for the position of Closed Meeting Investigator.
4. That the Selection Committee return to General Committee with a preferred Candidate by December 3, 2007.

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### 3. Staff Recommendations (Cont'd)

5. That Legal staff prepare a draft appointment by-law & agreement.
6. That staff continue to monitor the Closed Meeting Investigator service delivery experiences of other municipalities over the next year & report back on same in December, 2008.

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### 3. Staff Recommendations (Cont'd)

7. That the Clerk correspond with all Town Committees & Local Boards regarding post-Bill 130 procedural & closed meeting requirements & provide training on same, as required.



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## 4. QUESTIONS?

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