

In Camera Board Sessions: Careful How You Use Them

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The governance of non-profit and charitable organizations sometimes requires the board and senior management to deliberate on sensitive matters. This can include personnel items such as salaries, the evaluation of the Executive Director or CEO, the awarding of a contract, the handling of conflict of interest situations, or legal issues.

The idea of conducting these discussions *in camera* has gained considerable currency. In the U.S.A., the term sometimes used is “executive sessions.” The term “in camera” is from the Latin word for “chamber.” In the context of board meetings it means an “in private” session, a meeting, or portion of a meeting, where one or more of the people normally in attendance are excused. The legal term is “recused,” which means to disqualify someone from participation in a decision on grounds that they cannot, because of a particular interest or position, objectively discuss the matter.

The persons most likely to be excused in the non-profit context are particular board members, the executive director, or other staff members. Where organizations have “open” meetings, it can mean closing the meeting to association or society members or clients. In the municipal government context, *in camera* means meetings where members of the public and media are not able to be present.

There has been very little critical assessment of the merits of *in camera* sessions. Indeed, some sources regard the idea as a “standard” board practice. Some go so far as to recommend that boards routinely put *in camera* sessions on their meeting agendas, if not every meeting then maybe four times a year, even if they do not need them, so that fewer suspicions will be raised than if they were suddenly added.

In camera sessions challenge boards to assess whether the motivation for a closed or private deliberation is tied to the need for **confidentiality** and/or **secrecy**. While confidentiality is important to good board governance, secrecy can, and will, undermine it.

The following example of criteria for *in camera* governance sessions from a public hospital board is some indication of how ubiquitous the practice has become. While hospital boards almost certainly have many more sensitive legal issues before them than most non-profit organizations, criteria as broad as this opens the door to *in camera* board sessions to talk about almost any issue. Such a policy offers no guidance whatsoever to help the board distinguish the organization’s need for confidentiality from their own desire for secrecy.

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Hospital Board

Matters that will generally be dealt with in an *in-camera* session include, but are not limited to:

1. Assessing, rewarding or disciplining individuals;
2. Discussions and dealings with other entities or persons where the information being discussed may compromise the relationship of the hospital with them or its relationship with its stakeholders;
3. Labour relations or human resources issues;
4. Financial, personnel, contractual and/or other matters for which a decision must be made in which premature disclosure would be prejudicial;
5. Matters related to civil or criminal proceedings;
6. Personal health information related to an individual.

Confidentiality and Secrecy Compared

The Reverend Les Stahlke, author of Not for Profit Governance Matters: An Introduction of the Relationship Model of Governance (2010), suggests that the motivation to keep information confidential at the board level is to protect a person or organization; the motivation to be secret is to hurt someone or achieve a particular outcome that with full and open deliberation would not be possible.¹

The Certified General Accountants Association of Ontario, in its publication Grassroots Governance: Governance and the Non Profit Sector (2008, p.21), states that:

Confidentiality:

- Prevents undue harm to the organization and its assets, including volunteers, board members and staff.
- Is reconcilable with transparency; in effect, stakeholders are allowed to know enough.
- Is reconcilable with accountability, wherein stakeholders can question the processes and the outcomes.
- Requires, but does not strain, trust.

Secrecy:

- Attempts to protect someone or something from scrutiny.
- Cannot be reconciled with transparency.
- Attempts to prevent accountability.
- Demands, and then misuses, trust.

The CGA Ontario publication's first point about secrecy suggests that where the board's discussion might involve accusations about inappropriate behaviour, poor judgment or performance, the secrecy tends to protect the "accuser" not the "accused," that is, secrecy protects the evidence offered from close scrutiny by all who have direct knowledge to bring to bear on the situation.

The most important test of any board's deliberation is: **do we have the information necessary to make**

¹ See www.relationshipmodel.com

the best decision? Does excluding someone from deliberations compromise the information, expertise or perspective available to the board? Liberal use of *in camera* board sessions is likely to lead to poorer decisions.

Securing Confidentiality

Confidentiality around the board table is typically addressed in a number of ways, *in camera* sessions being only one.

- Code of conduct and board member responsibilities

Confidentiality is secured by the “contract” that many boards make explicit: that beyond what is reported in the minutes, board discussions will be confidential. In other words, “what is said in the meeting stays in the meeting.” This can be part of a board member’s agreement to serve, included in a code of conduct policy for the board, outlined in board member job descriptions and meeting ground rules. Where board conversations are on sensitive issues, existing ground rules may need to be reviewed or new ones established at the outset of a board meeting or with the move to a particular agenda item.

- Meeting minutes

Confidentiality is also secured by the board’s attention to, and agreement on, what is reported in its meeting minutes. A conversation about the form and substance of the minutes should be on the board’s agenda once a year. Also, the board should, when sensitive issues are being discussed, specify in the moment what should and should not be recorded in the minutes. “Let the minutes show” is a phrase that should be heard more often in a board meeting.

Board minutes, some would say, ought not to be considered confidential. Some organizations take the view that they are “public,” others that they are available to members, staff and others upon request. By-laws and government regulations may well speak to this issue, but boards themselves ought to be clear.

Here are some generally accepted minute reporting practices:

- The minutes should be a summary of discussions not verbatim transcripts.
- The minutes should reflect that the board deliberated before making a decision. This can involve a brief summary of the options considered, or pros and cons raised. A glimpse of the discussion can often be captured in point form.
- Minutes should identify that a vote was taken or consensus reached but not identify how the vote was split in a majority decision, or how individuals voted (unless of course a director asks that the vote go on record).

There are certainly situations where only by excluding certain individuals from the board meeting can confidentiality be protected. *In camera* discussions of union negotiation strategies, contract and legal issues, and certain hiring and firing decisions frequently qualify.

Conflict of interest situations, where individual directors or others are excused from a board session because they have a vested interest in the decision, might also fit here, although this is less about insuring confidentiality and more about the transparency of, and accountability for, the integrity of organizational decision-making.

Avoiding a Culture of Secrecy

Boards need to work hard to avoid secret discussions inside and outside the boardroom. In the absence of trust, invoking an *in camera* session in order for the board to have a frank discussion, likely serves to legitimize organizationally sanctioned secrecy.

- Board culture

Boards and executive directors need to cultivate a governance culture of robust debate, honest dialogue and respectful listening. Such is developed, in part, through attention to building the board as a social group.

- Clarity of board's role

Boards must be keenly aware of their role and how they ought to be spending their time. This understanding will often give rise to the question of whether a sensitive matter might be better explored or talked about in a different forum – a committee or task group. A board should always err on the side of openness and transparency; the governance dialogue is one that ought to be visible within the organization and to the community the organization serves.

- Clear policies and decision-making criteria

The discussion of human resource issues in general, and the evaluation of the CEO or executive director in particular, commonly trigger *in camera* discussions. Much more of this work should take place out in the open.

The design of the evaluation process itself, the criteria on which performance is to be judged and the kinds of evidence to be mustered, should be developed openly and in collaboration with the executive director. Although it is a common practice, there is probably no *good* reason to keep the executive director's salary, and how it compares with that paid by similar organizations, confidential. Where the evaluation of the executive director is closely tied to the performance of the organization, openness and accountability are one and the same. The creation of some useful evaluation criteria is another benefit of having a current strategic plan to which the organization is really committed.

In conclusion, there is a strong argument that *in camera* board sessions ought to be used only in extraordinary circumstances. When they are used, and especially where confidentiality is not the sole rationale, the first order of business must be agreement on the rules or board discipline that will apply within the *in camera* deliberations and the reporting out of its results.