

## Committee of the Whole: In Camera or In Public



How often does your board meet in committee of the whole? What kinds of things do you discuss in those meetings? Do you open those meetings to the public?

If your immediate response to that last question was along the lines of “Of course not! It’s a committee of the whole meeting!”, then it may be time for a refresher course on the concepts of in-camera and committee of the whole.

Many organizations and people use the two terms synonymously, but they don’t mean the same thing. “In camera” is a legal term meaning “in private.” “Committee of the whole” is a procedural term referring to a meeting where the normal rules of procedure are relaxed. That may mean that trustees can speak more often to the same question, or for a longer period each time, but it doesn’t necessarily mean that they get to speak behind closed doors.

Section 30(3) of The Public Schools Act requires that “every school board shall hold its meetings openly.” So, the school board is not permitted to meet, as the board, in camera. However, under section 30(4) of the PSA, committees may meet in camera. Because the committee of the whole is still a committee, albeit one comprised of all board members, it can meet in private.

So, what about the flip side of this discussion? If a board wishing to meet in camera has to meet as committee of the whole, does a committee of the whole meeting need to be held in camera? Definitely not! Let’s look back at section 30(4) of The Public Schools Act—it says that committee meetings may be held in camera, not that they shall be held in camera. In other words, the decision to meet in camera as committee of the whole (or as any other committee, for that matter) is at the discretion of the board. So, what should influence that decision?

The general rule is that in-camera discussions should be limited to confidential matters. The need for confidentiality may arise from legal requirements under privacy or other legislation. It may result from the need to protect the legitimate business interests of a school division—say, for example, one that’s looking to acquire property. Confidentiality may also be required when the board is considering some matter—perhaps a student or staff disciplinary one—involving specific, identifiable individuals.

In recent years, the use of committee of the whole deliberations by many school boards has increased as they have shifted their internal operating structures to employ at least some aspects of policy governance. Under a policy governance model, many of the committees traditionally used by school boards—transportation, personnel, facilities—have fallen into disrepute. Why? Because those committees tend to relate to management or administrative functions, rather than governance functions. Setting bus routes? That job’s for the transportation supervisor. Hiring a new custodian? That ones for the principal or some other administrator. Deciding on a contractor for the new school roof? The board may approve the final expenditure, but the nuts and bolts of the decision are somebody else’s responsibility, at least under a policy governance model.

In this shifting climate, many boards have done one of two things: they have either reduced the number of standing committees and adjusted the mandate of those remaining to ensure that they are policy-driven, or

they have dissolved all standing committees, with the committee of the whole filling any resulting void. It is this latter course of action that has the potential to cause trouble for boards.

Most often, when a traditional committee meeting is held in camera, issues are discussed, a consensus is (ideally) reached, perhaps a report is prepared, and the matter goes before the entire board for a decision. When the committee presents its recommendation to the board, there may be questions from trustees not on the committee, and there is some open discussion about the matter at hand. Now, from a strict policy governance standpoint, or even from a procedural standpoint, the board revisiting a committee's work might not be the best use of time. However, from a transparency and accountability standpoint, this "revisiting" has a great deal of value. It informs the community that the matter was considered thoroughly before a recommendation was developed, and makes it clear that any decision is that of the board, and that the board is not rubber-stamping the committee's work.

In dissolving its standing committees and moving towards a committee of the whole model, boards are most often looking to create efficiencies. After all, if a board needs to redo some or all of the work of a standing committee before it can reach the right decision, wouldn't it make sense that the board do the work in the first place? Well yes, but with one important caveat.

If the work of standing committees is to be undertaken by the board meeting as committee of the whole, the board needs to take steps to ensure that accountability and transparency are maintained. With the membership of the committee that considers any particular matter and the membership of the board making the final decision one and the same, the questioning from board members that might otherwise have accompanied a committee report will be absent. After all, everyone had their questions answered at the committee meeting; why would they need to ask them again at the board meeting? So, with no need for debate and everyone on the same page as to the preferred course of action, the actual board meeting is a model of efficiency. Except . . .

What if the committee of the whole meeting at which the decision was reached, if not technically adopted, was held in camera? And what if I'm a member of the public with a strong interest in the matter at hand, and I attend the board meeting only to see the board adopt a motion, seemingly without discussion? How can I be certain that the board has considered all sides of the question? How can I know that it's taken into account my point of view? I can't, and that doesn't leave me with any confidence that anyone on the board is hearing my concerns. Public confidence is diminished, and without that confidence, a board cannot be effective. So . . . .

What if the board held its committee of the whole meetings in public, and advertised those meetings, just as it would regular board meetings? The public has a chance to hear an open and thorough discussion of the matter at hand. And when the board next met as a decision-making body at its regular meeting, it could still be efficient in its deliberations, having already discussed the matter at some length. But the difference would be that the public would understand why the board reached the decision it did, and would be more inclined to accept (if not agree with) that decision.

So, the bottom line is this: a board can meet as committee of the whole, or it can meet as committee of the whole in camera. The key consideration in determining whether or not you need to go in camera is not that you can do it, but that you need to do it. That need is dictated by the matter under consideration, and nothing else.

For more on committee of the whole and in camera sessions, check out the School Board Members Handbook on our website. If you want to learn more about confidentiality and privacy in the conduct of school board business, you'll find a link to a webinar on that topic, also on our website.