

Ontario Association of
School Business Officials
Open vs. closed sessions of
audit committee meetings



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Executive summary

Boards of trustees are elected by municipal residents to govern and oversee the operations of school boards on behalf of various stakeholders, and consequently, are expected to act in the best interest of all stakeholders. School board operations are largely funded through provincial grants giving all taxpayers in the Province of Ontario the right to knowledge of how their tax dollars are being utilized.

An audit committee is a subcommittee of the Board of Trustees which has been established through Provincial regulation, mandated to fulfill specific tasks on behalf of the Board of Trustees. The regulation requires that the committee include non-trustee external members who are selected based on their expertise to assist the Board of Trustees in providing oversight in the fulfillment of tasks defined in Ontario Regulation 361/10.

Ontario Regulation 361/10 delineates the duties of the audit committee of a district school board. Specifically the audit committee has oversight responsibility for:

- The financial reporting process
- Internal controls
- External audit
- Internal audit
- Compliance and risk management

Current legislation, specifically Subsection 207(2) of the Education Act, outlines topics that can be discussed in a closed meeting; otherwise, meetings should be held in an open session to ensure transparency to the public. Subsection 207(2) of the Education Act is applicable to the Board of Trustees and any committees of the Board of Trustees.

In developing this report, we have examined the role of the audit committee, the unique pressure of a public sector audit committee in balancing transparency and risk, the importance of open and candid communication, the Ombudsman's view on closed sessions, and other relevant public sector legislation.

In developing this report and determining our recommendations, it was important to note that while public sector governing bodies must demonstrate transparency, which extends to the audit committee, it shouldn't be at the expense of the effectiveness of the committee.

This report summarizes knowledge obtained from our research and leverages knowledge from our Subject Matter Experts within Deloitte who have experience in broader public sector organizations and developing audit committee best practices. Our research has shown there is a lack of consistency in legislation with respect of the requirement of open and closed sessions as it relates to committees of a board for a public sector organization.

It is important to note that the recommendations in this report are for audit committees of Ontario School Boards and that these recommendations may not be appropriate for other committees or for Board of Trustee meetings. It may be necessary to seek a legal opinion if further guidance beyond this report is required.

Our report and recommendations are based on the existing legislation and regulations in place as of September 1, 2015, which require that audit committee meetings be held in an open setting, with the option to move to a closed, or in camera session under certain circumstances. Our report does not consider or recommend any changes to the existing legislation. Based on the current legislative environment and our understanding of the education sector in Ontario, we make the following recommendations:

Recommendation #1 – Trustee attendance at audit committee meetings: Trustees who are not members of the audit committee should be permitted to attend open and closed audit committee meetings in the capacity of an observer. Observers are typically not allowed to participate in meetings unless they are invited to participate in the meeting by the chair of the committee. However under no circumstances would a non-committee member be allowed to vote on recommendations of the audit committee. The public should have access to the minutes from any open session, while Trustees who are not on the committee should have access to the minutes of any closed and open session.

Recommendation #2 – In-Camera Meetings: Guidance from the Ministry should clarify that audit committees have the ability to go in-camera (discuss topics without the presence of staff, including the Director of Education), which is acceptable under paragraph 10(c) of Regulation 361/10. In-camera meetings should not involve any decision making, and would typically just involve discussion with the appropriate party. Examples of in-camera sessions would be when the committee meets in-camera with the internal or external auditor.

Distinguishing the different types of meetings

Open	Closed	In-camera
<p>Open sessions provide transparency to the stakeholder. Invitation to this portion of the audit committee meetings is not exclusive to anyone; however, participation will remain limited to the audit committee members and individuals invited to participate (i.e. RIAT, external auditor) to ensure topical and effective conversations. In these meetings, the transparency allows the audit committee to be directly accountable to the taxpayers and increases public confidence in the decision making, as they are in attendance and fully aware of the process.</p>	<p>Closed sessions have a more restrictive audience in the sense that invitation is only extended to audit committee members, Board of Trustees, relevant management and designated participants to report on certain matters and answer questions (i.e., internal or external auditor, legal counsel or representatives from a reporting entity). These sessions allow for sensitive topics and related recommendations to be discussed with all the facts and information prior to exposing the issues to the public.</p>	<p>In-camera sessions allow the audit committee to receive feedback from designated participants without the presence of other parties. These sessions allow participants to openly engage in issues with the appropriate parties and encourages more open and robust discussions. It is up to the committee to determine which parties they would like to meet with and whether other parties should be present.</p>

Recommendation #3 – Communicating Closed Sessions: Audit committees should make publicly available a formal agenda for the open meeting that has been created and distributed in advance of the meeting. For closed sessions, the audit committee should state at the meeting the reasons as to why the committee would need to move into a closed session. Reports to the audit committee in an open session should be accessible to the public, while closed session reports should only be made available to the committee members, relevant management personnel, and the Board of Trustees.

Recommendation #4 – Decision making in a closed session: Recommendations made by the audit committee to the Board of Trustees should be made in an open session. Any decision making that occurs in a closed meeting could be perceived by the public as decision making with a lack of transparency and accountability. If it is not possible to make a decision in an open session (due to privacy or other closed session requirements), the audit committee should confirm how they meet the closed meeting requirements of 207(2) of the Education Act. When reporting to the Board of Trustees, the summary provided to the Board of Trustees should be in sufficient detail to understand the decisions and recommendations that came out of the closed meeting.

Recommendation #5 – Access to minutes: During the closed session, minutes should be taken in the same detail as minutes taken at the open session (focusing on decisions that are made by the committee or recommendations to the Board of Trustees). Members of the Board of Trustees should have access to all minutes, whether open or closed, whereas the public should only have access to open meeting minutes. In Camera minutes should be taken in the rare circumstances that those parts of the meeting involve decision making, and in-camera minutes would be restricted to those required to review closed session meeting minutes in accordance with their mandate (i.e. external auditors in accordance with generally accepted auditing standards, and others such as legal counsel).

Recommendation #6 – Circumstances that can lead to the closure of an audit committee meeting: The Education Act outlines the circumstances in which an audit committee can be closed. Regulation 361/10 provides the authority for an audit committee to go in-camera, and also provides the duties of an audit committee. It is not the duties of an audit committee which would force the audit committee to move into a closed session or an in-camera session, but rather the nature of the topics being discussed. Judgement will be required to identify when those topics arise. Our recommendations have identified that certain parties should have access to information in certain situations. The following table summarizes the accessibility of certain information that is provided for the Audit Committee and which other parties should have access to this information.

Information item	Available to public	Available to all trustees	Available to audit committee members
Agenda for open audit committee meetings	Yes	Yes	Yes
Agenda for closed audit committee meetings	No	Yes	Yes
Reports to be discussed in open sessions	Yes	Yes	Yes
Reports to be discussed in closed sessions	No	Yes	Yes
Minutes of open session	Yes	Yes	Yes
Minutes of closed session	No	Yes	Yes
Minutes of in-camera sessions	No	No	Yes

Role of the audit committee

In a world where the financial reporting and regulatory environment is increasingly complex, oversight of organizations and their internal controls is a top of mind issue for stakeholders.

The Board of Trustees is responsible for overall governance of a school board. With such vital responsibilities, the Board of Trustees can be most effective by allocating certain responsibilities to committees that comprise of individuals with the proper skillset to delve into the duties in a thorough manner. When a committee is effective in helping its Board of Trustees discharge its responsibilities, the Board of Trustees is aware of the significant issues that are dealt with by the committee, understand the process on how the committee was involved, and ultimately accepts the committee's position if necessary.

The role of the audit committee of a District School Board is prescribed by Ontario Regulation 361/10. Audit committee membership should include individuals with diverse backgrounds and skills to effectively represent the Board of Trustees and provide appropriate oversight over a variety of issues, including risk management, internal controls and financial reporting. External members of an audit committee should be financially sophisticated through their experience and education.

Ontario Regulation 361/10 prescribes the duties of the audit committee established by school boards as follows:

The audit committee has oversight responsibility for:

- The financial reporting process
- Internal controls
- External audit
- Internal audit
- Compliance and risk management.

Current legislation requires that audit committees assess whether these topics should be discussed in an open or a closed meeting, and also allows for audit committees to go in-camera if required. Audit committees must focus on their duties, while balancing between transparency to the stakeholders and minimizing the risk to the school board resulting from certain subject matter discussions being open to the public.

Given the specific duties of the audit committee as established by regulation, the audit committee must gather candid information on potentially sensitive topics and thoroughly investigate any issues raised or potential weaknesses in management controls. Sensitive topics, such as fraud or internal control deficiencies, will be an area of discussion and assessment amongst the audit committee members. It is the responsibility of the audit committee to scrutinize in-depth the information presented and provide advice and oversight over actions required to resolve and address any issues identified in the meeting.

The audit committee plays an important role in corporate governance in that they enable a governing body to carry out its responsibilities in an efficient and effective manner with a subset of individuals who have relevant areas of expertise. In the public sector, audit committees are accountable to their governing body, and help the governing body demonstrate that there is accountability and oversight of financial reporting and risk management. Audit committees must carry out their duties with a mindset of what is in the best interest to the public.

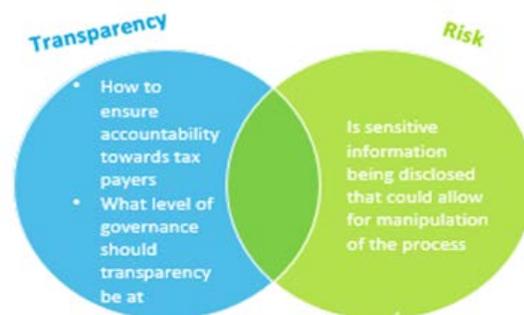
Balancing transparency and risk

It is particularly challenging for audit committees to focus on and appropriately fulfill their duties, while balancing between transparency to stakeholders and the potential risk of exposing sensitive issues. This is a unique pressure to Public Sector governing bodies and can be difficult to manage. This section of the report examines the significance of transparency and how audit committees can manage risks associated with open sessions.

Significance of transparency

A key factor of effective governance in the public sector is transparency; organizations need to be accountable to all stakeholders including taxpayers that effectively fund a significant portion of the operations. Through transparent and accountable measures, the public is able to evaluate how public funds are being used in the operation of school boards. Having information provided on a timely basis is important not only to management decision making, but to those charged with governance and ultimately the public. By providing regular reporting on the status of issues at a particular school board, the Board of Trustees and the public will be able to understand the status of the audit committee's work and how they are meeting their responsibilities.

Transparency is the channel in which the public is able to hold elected trustees accountable for their decisions. In the public sector, the public develops expectations of those in governance positions to perform responsibilities on behalf of the taxpayer, and in turn rely on business being conducted in a transparent manner. The transparency in which a Board of Trustees conducts its business is vital to taxpayers and other stakeholders in understanding the performance of elected trustees.



In the presence of opaque processes, business decisions and tax-dollar spending are more susceptible to unaccountability and hence, may not provide the public with assurance around the efficiency and effectiveness of the school board's operations. Governance and oversight practices should push the frontiers of transparency. It is through transparent measures that a trusting relationship can be built between the taxpayer and those in governance at the school boards.

In considering whether school board audit committee should be opened or closed, we have assessed the duties of the audit committee and the potential risks to a school board from conducting meetings in an open setting that could be attended by the public. We have identified some of the risks that could occur or be heightened when meetings are opened to the public that should be considered by audit committee members and how these risks could impact the effectiveness of the audit committee.

Audit committee effectiveness

Audit committees have a mandate which needs to be fulfilled and they need to be effective in how they meet their mandate in order to provide the most value to the Board of Trustees. While transparency is what the audit committee should strive for, it shouldn't be at the expense of the effectiveness of the committee.

Open audit committee sessions may be susceptible to disruption from special interest groups, the general public, and other parties. While it is important that the public is heard on issues, an audit committee meeting can be derailed if the appropriate mechanisms are not in place to allow for the appropriate conversations to occur so that the committee can achieve its mandate.

The effectiveness of an audit committee meeting depends on other factors, such as the quality of information produced by management, the effectiveness of presentations, and the ability of audit committee members to ask questions. Effectiveness can be impacted depending on whether the discussions are held in an open or closed session. The following operational risks are potentially heightened when audit committee meetings are open to the public and would therefore impact the effectiveness of the audit committee:

Reputational risk

School boards are largely funded through government funding. As a result, the public's perception of the school boards acts as a direct measure of reputational risk.

In cases where control deficiencies or perceived risks are identified, they will be brought to the attention of the audit committee at the meeting with the internal or external auditor. If said meeting is in an open session, the audit committee and the public will learn about the issues together at the same time. The audit committee will not have had the chance to use their expertise to exercise its governance responsibilities over management.

The public and media will have a different definition of materiality and priority sequencing than the audit committee. The audit committee will prioritize resolution of any issues based on their expertise and financial background; whereas, the public/media may have a dissimilar view of priorities and materiality. This difference in views may contribute to questions raised regarding the Board's ability to deliver on its roles and responsibilities effectively and the media attention may hinder the audit committee from effectively carrying out their roles based on their professional judgement.

The provisions in the Education Act allow for closed meetings when there are risks around privacy, commercially sensitive information in a transaction, and risk to the security of the property of the board. Ultimately however, the provisions cannot and will never be able to cover the perception of the public on the reputation of the school board.

Fraud risk

The role of the audit committee is to provide oversight over the work of the internal auditors, external auditors and Regional Internal Audit Team (RIAT), to ensure that management is effective with their controls and their risk management strategy. As part of that process, the audit committee must consider the risk of fraud as well as the current controls and policies in place to monitor and manage significant risks to the business. The ability to have an open and candid discussion with the internal auditor and external auditor around the risk of fraud can be very limiting in a public setting because statements made may be taken out of context, and because an open discussion on these matters would actually highlight the control weaknesses to the public. As such, in order to manage additional risk, and maximize the effectiveness of the committee, a closed session would be preferable when discussing fraud risks, audit findings, and internal control weaknesses.

Legal risk

Legal counsel may be brought into audit committee meetings to report on compliance with legal or regulatory matters, including the status of any litigation and potential outcomes. Non-compliance with legal or regulatory matters could significantly impact the financial situation of the school boards. The public should be aware of anything that could potentially have a financial impact on the school boards; however, this comes at the cost of exposing the school board's legal strategy in any litigations, their assessment of potential outcomes or willingness to settle. By sharing this information with the public, the other side of the litigation has access to this information and hence, weakens the school board's legal case.

This risk is mitigated through current provisions for closed sessions under Section 207(2) of the Education Act, which suggests that legal matters should be discussed in a closed session. When audit committee meetings are held in an open session, this risk is increased or elevated because it is dependent on committee members appropriately identifying which legal matters should be discussed in a closed or open session.

Privacy risk

The discussions within audit committee meetings will be in great detail; in cases where an investigation is launched, personal information may be discussed during the meeting such as names and information of individuals involved. While current legislation does require that privacy be maintained, there is the possibility that the public could infer from the information provided (correctly or incorrectly) information that would be sensitive to an individual.

Subsection 207(2)(b) of the Education Act specifically precludes “disclosure of intimate, personal or financial information in respect of a member of the board or committee, an employee or prospective employee of the board or a pupil or his or her parent or guardian” from being discussed in a meeting open to the public.

By holding meetings in an open session, this risk is heightened as it is dependent on audit committee members identifying that the issue being discussed would violate the Education Act.

Open and candid communication

The effectiveness of an audit committee is contingent upon open and candid communication between all relevant parties. Professional advisors such as external auditors, internal auditors, and legal counsel assist audit committees with reporting on the various functions within the organization.

Relationship with Board of Trustees

As part of the governance process, the audit committee is a statutory committee of the Board of Trustees. The audit committee acts upon its assigned tasks and reports to the Board of Trustees on the status of their duties as per Section 9 (7) of Ontario Regulation 361/10. As many of the duties of the audit committee can only be carried out through a working relationship with, and management of, the professional advisors who execute the work, audit committees must also report on the progress and status of the professional advisors' work to the Board of Trustees. Therefore audit committees are required to be transparent to the Board of Trustees.

Relationship with external parties

To carry out the audit committee's duties, legislation requires certain parties to assist the audit committee in carrying out their responsibilities. These parties can range from internal auditors who advise on management's internal controls and processes in place; external auditors who perform the annual external audit on the financial statements; and legal counsel who provide insight into litigation risks or ongoing litigations.

Presentations from the aforementioned parties may contain sensitive topics such as controls and risks that need to be discussed in a more restrictive audience setting.

An open and effective relationship between professional advisors and the audit committee can be fostered through substantive conversations in which both parties are engaged. An audit committee has a skill set that is directed towards financial literacy and risk and should include members who understand the implications of any issues or findings raised by the respective professional advisors. As financially aware individuals, the audit committee will also raise the appropriate questions and concerns to discuss among the professional advisors. Therefore, in order to have the appropriate communications with external parties, the audit committee needs to determine the correct setting for the discussion (open, closed, or in-camera).

Relationship with stakeholders

The audit committee is accountable to the Board of Trustees, who are ultimately accountable to stakeholders of the school board. Stakeholders have a right to hold the school boards accountable for their actions and this is achieved through transparency in open records and attendance at meetings.

The Municipal Freedom of Information and Protection of Privacy Act ("MFIPPA") dictates the level of access rights to information under the control of institutions, such as records and personal information. Under MFIPPA, school boards have an obligation to disclose records to the public if it is in the public interest to do so and does not violate personal information.

The audit committee has a fiduciary responsibility to represent and protect the property of the school board (Section 207(2) of the Education Act). These responsibilities have to be carried out while managing risk exposure, because allowing sensitive subject matters to surface at inappropriate times may put the security of school board property at risk. Since the audit committee is a subsection of the Board of Trustees it is important for the non-audit committee trustees to have access to the information that the committee is considering so that they can stay informed and monitor developments. This access supports the accountability relationship that is required between the Board of Trustees and the audit committee.

Ombudsman of Ontario reports

The Office of the Ombudsman of Ontario (“Ombudsman”) acts as an independent and impartial Officer of the Provincial Legislature and has a mandate to oversee government services and ensure accountability to the public. The Ombudsman will investigate any complaints received that fall under the Ombudsman’s jurisdiction. Currently, the Ombudsman has jurisdiction over Provincial ministries, crown corporations, tribunals, agencies, boards and commissions; and more recently, commencing on September 1, 2015, jurisdiction now includes Ontario school boards. With this extension to the jurisdiction of the Ombudsman, it is important to understand the views of the Ombudsman with regards to open vs. closed sessions within governance meetings.

Ontario’s Sunshine Law

The Ombudsman’s Sunshine Law was created in the form of amendments to the Municipal Act. The amendments that were made to the Act specifically aim to address accountability and transparency in the public sector, allowing for public observation whether it is governance meetings or records. The premise behind the amendments was to enforce openness in activities where business information is deliberated and decisions are made that could impact tax-funded operations under the jurisdiction of the Ombudsman.

As the Municipal Act governs accountability towards the public, there is an emphasis on closed sessions of Municipalities and their committees and ensuring any topics discussed in closed sessions are pursuant to the respective section of the legislative act that allow meetings to be closed.

The Municipal Act understands that “while transparency [...] should be maximized as far as possible, [...] there may be certain situations in which the privacy of an individual should be respected, or where open meetings would not serve the public interest, or the interests of the municipality”¹. Upon the decision to close sessions of a meeting, specific procedures should be followed such as stating by resolution in open session the general nature of matters to be closed and reason for closure. Additionally, voting is only permitted in a closed session if it is for a “procedural matter or for giving directions or instructions to officers, employees, agents of the [organization], or person under contract”². “All resolutions, decisions and other proceedings that take place must be recorded without comment, whether the meeting is open or closed”³.



¹ “Must all meetings be open to the public?” in The Sunshine Law Handbook, 3rd Edition, January 2015. The Office of the Ombudsman of Ontario

² “Can votes be taken during a closed meeting?” in The Sunshine Law Handbook, 3rd Edition, January 2015. The Office of the Ombudsman of Ontario

³ “Must a record be kept of the closed meeting?” in The Sunshine Law Handbook, 3rd Edition, January 2015. The Office of the Ombudsman of Ontario

In open sessions where the public are invited to attend, the public are only granted with the right to observe and not the right to participate.

Prior investigations

Various municipal meeting investigations

The common trend noted in many of the investigations of the closed municipal meetings was public concern regarding integrity of discussions within closed sessions that guide decisions to be made. The investigations noted that when meetings are closed and discussions are held within this closed environment, this reduces transparency and accountability in decisions as the public are not aware of the process and considerations made in the decision.

Some investigations required the Ombudsman to determine whether informal gatherings by all members of a municipal council or committee actually constituted a meeting of said council or committee. The risk with all members of a municipal council or committee gathering together is that municipal business could be conducted in a manner that is not open and transparent to the public.

Another issue that some municipalities face is when the membership of a committee consists of the same membership of the municipal council. In those circumstances, it would be more difficult to determine or distinguish conduct that is being conducted by the committee vs the council. When membership of an audit committee is the same as the governing body, the rules around opening and closing an audit committee should be the same as it is for council.

LHIN investigation (July 2010)

An investigation was launched on the Local Health Integration Network (“LHIN”) as there was concern regarding the community engagement in its decision-making process that had a direct impact on local residents. The main issue is that the LHIN “fail[ed] to follow an open and transparent process, [which] threatens to erode public confidence in decision-making relating to the local health system”⁴.

Decisions were made in meetings that were held in private. The investigation noted that by making decisions in private, this reduces the transparency and confidence in the decisions made, as the public are not aware of the thought process.

Potential implications to school boards in Ontario

In establishing best practices for audit committee meetings, the principles surrounding the Ombudsman’s investigations should be considered as they highlight the concerns around transparency, regardless of whether the action was intentional or not.

Public confidence over the integrity and accountability of the execution of duties of the audit committee is closely aligned with transparency in the processes of the duties performed. As such, if discussions are moved to a closed session, there should be clear and timely documentation disclosed that explains the reason of moving to closed session. Additionally, a summary of discussions held or decisions made should be disclosed with as much detail as possible after the closed meeting. A transparent governance and decision process will reduce public concern as they are more mindful of the process.

If membership of an audit committee is identical to that of the Board of Trustees, then the assignment of duties has not effectively been passed on to a subset of the Board of Trustees, and therefore less discussion will occur at the board level around items discussed at the audit committee. In situations where this does arise, audit committee meetings should be treated no differently than a meeting of the Board of Trustees.

⁴ “Overview” in The LHIN Spin, July 2010. The Office of the Ombudsman of Ontario

Ontario public sector legislation review

Transparency to the taxpayers is a common theme in organizations within the public sector. As such, it is beneficial to understand how other legislation in Ontario prescribe the conduct of audit committee meetings, specifically in dealing with open vs. closed sessions. The following section takes a look at the closed meeting requirements in the Education Act and how it compares to other legislation in Ontario.

EDUCATION ACT SECTION 207

Open meetings of boards

207. (1) Subject to subsections (2) and (2.1), the meetings of a board and the meetings of a committee of the board, including a committee of the whole board, shall be open to the public, and no person shall be excluded from a meeting that is open to the public except for improper conduct. R.S.O. 1990, c. E.2, s. 207 (1); 2014, c. 13, Sched. 9, s. 19 (1).

Closing of certain committee meetings

(2) A meeting of a committee of a board, including a committee of the whole board, may be closed to the public when the subject-matter under consideration involves,

- (a) the security of the property of the board;
- (b) the disclosure of intimate, personal or financial information in respect of a member of the board or committee, an employee or prospective employee of the board or a pupil or his or her parent or guardian;
- (c) the acquisition or disposal of a school site;
- (d) decisions in respect of negotiations with employees of the board; or
- (e) litigation affecting the board. R.S.O. 1990, c. E.2, s. 207 (2).

Closing of meetings re certain investigations

(2.1) A meeting of a board or of a committee of a board, including a committee of the whole board, shall be closed to the public when the subject-matter under consideration involves an ongoing investigation under the *Ombudsman Act* respecting the board. 2014, c. 13, Sched. 9, s. 19 (2).

Exclusion of persons

(3) The presiding officer may expel or exclude from any meeting any person who has been guilty of improper conduct at the meeting. R.S.O. 1990, c. E.2, s. 207 (3).

Inspections of books and accounts

(4) Any person may, at all reasonable hours, at the head office of the board inspect the minute book, the audited annual financial report and the current accounts of a board, and, upon the written request of any person and upon the payment to the board at the rate of 25 cents for every 100 words or at such lower rate as the board may fix, the secretary shall furnish copies of them or extracts therefrom certified under the secretary's hand. R.S.O. 1990, c. E.2, s. 207 (4).

The Education Act specifies certain instances in which audit committee meetings should be closed, however applying these requirements to the specific duties in legislation can be challenging. The inconsistency between the Education Act and other practices and legislation in Ontario indicates that there is inconsistency across the Province as to when meetings should be closed to the public.

Higher education

The Ministry of Training, Colleges and Universities follows Ontario Regulation 34/03 with regards to corporate governance. The following is an excerpt from the Act that delineates conduct of meetings in open vs. closed session:

ONTARIO REGULATION 34/03 – SECTION 5

Ontario Colleges of Applied Arts and Technology Act, 2002

(5) Subject to subsections (6) and (7), all meetings of a board of governors shall be open to the public and prior notice of the meeting shall be given to the members of the board of governors and to the public in such manner as the board of governors by by-law shall determine, and no person shall be excluded from a meeting except for improper conduct as determined by the board of governors. O. Reg. 34/03, s. 5 (5).

(6) Where a matter determined by a board of governors to be confidential to the college in accordance with criteria established by by-law is to be considered, the part of the meeting concerning such confidential matter may be closed to the public. O. Reg. 34/03, s. 5 (6).

(7) Where a matter of a personal nature concerning an individual may be considered at a meeting, the part of the meeting concerning such individual shall be closed to the public unless such individual requests and the board of governors agrees that that part of the meeting be open to the public. O. Reg. 34/03, s. 5 (7).

Ontario Regulation 34/03 allows for more judgement in determining when a meeting should be closed, allowing for matters that are confidential to the college to be discussed in a closed setting.

Example of an Ontario University

Universities in Ontario do not follow Ontario Regulation 34/03 and have established their own governance practices which follow some of the better practices from the private sector. In the governance practices at University of Toronto, the audit committee Terms of Reference state that “the Committee usually meets in closed session. Where matters before the Committee are of a particularly confidential or sensitive nature, the Committee may move in camera”⁵.

The audit committee acts as a standing committee to the governing council. Meetings of the governing council are open to the public, and transparency to the governance process and the respective standing committees is demonstrated through these meetings. Additionally, agenda and reports for the closed audit committee meetings are made public. By posting the agenda, the public is aware of the discussions held, without exposing sensitive topics such as perceived risks.

This is considered to be a leading practice in governance around audit committees as it allows for the audit committee to conduct its work for the board, and allows for the board and the public to hear about the audit committee’s work in an open session.

⁵ “6.1 Meetings” in Terms of Reference – Audit Committee, November 2013. University of Toronto

Municipalities

The following is an excerpt from the Municipal Act that outlines conduct of meetings in open vs. closed session for municipalities:

MUNICIPAL ACT, 2001

S.O. 2001, CHAPTER 25

Meetings open to public

239. (1) Except as provided in this section, all meetings shall be open to the public. 2001, c. 25, s. 239 (1)

Exceptions

- (2) A meeting or part of a meeting may be closed to the public if the subject matter being considered is,
- (a) the security of the property of the municipality or local board
 - (b) personal matters about an identifiable individual, including municipal or local board employees
 - (c) a proposed or pending acquisition or disposition of land by the municipality or local board
 - (d) labour relations or employee negotiations
 - (e) litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board
 - (f) advice that is subject to solicitor-client privilege, including communications necessary for that purpose
 - (g) a matter in respect of which a council, board, committee or other body may hold a closed meeting under another Act. 2001, c. 25, s. 239 (2).

Other criteria

- (3) A meeting shall be closed to the public if the subject matter relates to the consideration of a request under the Municipal Freedom of Information and Protection of Privacy Act if the council, board, commission or other body is the head of an institution for the purposes of that Act. 2001, c. 25, s. 239 (3).

The Municipal Act lays out the terms of exceptions to public meetings. Subsection 239(2) (a-e) of the Municipal Act is comparable to exceptions in the subsection 207(2) of the Education Act.

Audit committee meetings for the City of Toronto are open to the public. If topics are moved to a closed setting, a motion must be adopted that sets out “the nature of the subject to be discussed and the statutory reason for closing the session”⁶. The public meeting minutes include the topics discussed, reports received and actions made during any closed sessions.

The section of the Municipal Act that covers meetings does not distinguish between meetings of council vs meetings of a committee of council. In practice, committees of council are held in open sessions until topics that are covered in section 239 of the Municipal Act arise, in which case the meeting moves into a closed session.

⁶ City of Toronto. (2015). *Open and closed meetings of City Council, its Committees and local Boards*. Retrieved from <http://www.toronto.ca/legdocs/open-closed-meetings/index.htm>

Healthcare

The Local Health System Integration Act lays the premise for board and committee meetings across health care systems in Ontario.

LOCAL HEALTH SYSTEM INTEGRATION ACT, 2006

S.o. 2006, chapter 4

Public meetings

(4) All meetings of the board of directors of a local health integration network and its committees shall be open to the public. 2006, c. 4, s. 9 (4).

Exceptions

(5) Despite subsection (4), a local health integration network may exclude the public from any part of a meeting if,

- (a) financial, personal or other matters may be disclosed of such a nature that the desirability of avoiding public disclosure of them in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that meetings be open to the public
- (b) matters of public security will be discussed
- (c) the security of the members or property of the network will be discussed
- (d) personal health information, as defined in section 4 of the Personal Health Information Protection Act, 2004, will be discussed
- (e) a person involved in a civil or criminal proceeding may be prejudiced;
- (f) the safety of a person may be jeopardized
- (g) personnel matters involving an identifiable individual, including an employee of the network, will be discussed
- (h) negotiations or anticipated negotiations between the network and a person, bargaining agent or party to a proceeding or an anticipated proceeding relating to labour relations or a person's employment by the network will be discussed
- (i) litigation or contemplated litigation affecting the network will be discussed, or any legal advice provided to the network will be discussed, or any other matter subject to solicitor-client privilege will be discussed
- (j) matters prescribed for the purposes of this clause will be discussed, or
- (k) the network will deliberate whether to exclude the public from a meeting, and the deliberation will consider whether one or more of clauses (a) through (j) are applicable to the meeting or part of the meeting. 2006, c. 4, s. 9 (5).

The Local Health System Integration Act has many similarities to the Education Act in terms of exceptions to public meetings. Subsection 9(5) (b-c), (g) and (j) of the Local Health System Integration Act are comparable to exceptions in subsection 207(2) of the Education Act.

Audit committee meetings are made public and upon moving into a closed session, the applicable subsection 9(5) that allows for the topic to move into a closed session is disclosed and a form of common motion must be passed before the discussion in closed session can be held. In the public meeting minutes, the individuals that can attend the closed session are noted, as well as the topics discussed at the closed session (i.e., Board Chair expense review, Risk Report).

The Local Health System Integration Act is clear that both board of director meetings and audit committee meetings should be held in public.

Recommendations

Striking the right balance

The need for transparency and accountability towards the public is a fundamental principle in Public Sector governance. It is through transparent and accountable methods that the public is able to better understand and gain confidence over business decisions and how their tax dollars are effectively being spent to run the operations of the school boards. Weighing both sides of the scale, however we believe that the specific duties of the audit committee are best accomplished in closed session where committee members are able to openly discuss matters – many of which will be sensitive in nature.

Sufficient transparency can and should be achieved in summary reports of audit committee meeting which are presented at open board of trustee meetings.

Our recommendations on best practices for open and closed sessions for audit committees are as follows:

Trustees who are not members of the Audit Committee should be permitted to attend both open and closed sessions of the Audit Committee. A non-committee member Trustee who attends a committee meeting should only be permitted to observe unless they are invited to participate by the committee. Any documents that are provided to the audit committee related to both open and closed sessions should also be made available to the non-committee trustees. The chair of the audit committee should have discretion in determining which guests to the meeting should be allowed to present and discuss matters with the committee.

The public should have access to the minutes from any open session, while Trustees who are not on the committee should have access to the minutes of any closed and open session.

Recommendation #1 - Trustee attendance at audit committee meetings:

Trustees who are not members of the audit committee should be permitted to attend open and closed audit committee meetings in the capacity of an observer. Observers are typically not allowed to participate in meetings unless they are invited to participate in the meeting by the chair of the committee. However under no circumstances would a non-committee member be allowed to vote on recommendations of the audit committee. The public should have access to the minutes from any open session, while Trustees who are not on the committee should have access to the minutes of any closed and open session.

In-camera meetings

The main focus of this report is whether committee meetings should be open or closed, however, we believe that a distinction about in-camera sessions is appropriate. The Education Act allows for meetings to be held in an Open or Closed session, however Regulation 361/10 is where the ability to go in-camera resides. In-camera meetings are a best practice for audit committees in order to have sensitive conversations in the absence of staff and other parties. Non-audit committee members would typically not attend in-camera meetings unless requested to attend by the committee. A best practice of audit committees, for example, is to meet with the external auditor in-camera to understand how prepared management was for the audit, and whether there are any particular concerns that the auditor feels would be too sensitive to discuss in front of management. While auditors usually feel comfortable sharing any issue that they observe with management, an in-camera session is a best practice because it promotes an independent relationship between external parties who have a direct reporting relationship to the audit committee.

The determination to go in-camera can be done from either a closed session of the committee or an open session of the committee.

Purpose and benefit of different audience types

Open	Closed	In-camera
<p>Open sessions provide transparency to the stakeholder. Invitation to this portion of the audit committee meetings is not exclusive to anyone; however, participation will remain limited to the audit committee members and individuals invited to participate (i.e., RIAT, external auditor) to ensure topical and effective conversations. In these meetings, the transparency allows the audit committee to be directly accountable to the taxpayers and increases public confidence in the decision making, as they are in attendance and fully aware of the process.</p>	<p>Closed sessions have a more restrictive audience in the sense that invitation is only extended to audit committee members, Board of Trustees, relevant management and designated participants to report on certain matters and answer questions (i.e., internal or external auditor, legal counsel or representatives from a reporting entity). These sessions allow for sensitive topics and related recommendations to be discussed with all the facts and information prior to exposing the issues to the public...</p>	<p>In-camera sessions allow the audit committee to receive feedback from designated participants without the presence of other parties. These sessions allow participants to openly engage in issues with the appropriate parties and encourages more open and robust discussions. It is up to the committee to determine which parties they would like to meet with and whether other parties should be present.</p>

Recommendation #2 – In-camera sessions

Guidance from the Ministry should clarify that audit committees have the ability to go In-Camera (discuss topics without the presence of staff, including the Director of Education), and is acceptable under paragraph 10(c) of Regulation 361/10. In-Camera meetings should not involve any decision making, and would typically just involve discussion with the appropriate party. Examples of in-camera sessions would be when the committee meets with the internal or external auditor to discuss any matters of particular concern to the committee.

Communicating closed sessions

Audit committees should make publicly available a formal agenda that has been created and distributed in advance of the meeting. The agenda should outline topics for discussion in the open session. For closed sessions, the audit committee should state at the meeting the reasons as to why the committee would need to move into a closed session referencing the appropriate paragraph of 207(2) of the Education Act which permits the respective topic(s) to be held in closed session.

Any reports presented during the audit committee meeting should be made available to the Board of Trustees, regardless of whether the meeting was held in an open or closed session. If the reports were presented during the closed session of the audit committee, the Board of Trustees should keep that information closed as well.

Recommendation #3 – Communications of closed sessions

Audit committees should make publicly available a formal agenda for the open meeting that has been created and distributed in advance of the meeting. For closed sessions, the audit committee should state at the meeting the reasons as to why the committee would need to move into a closed session. Reports to the audit committee in an open session should be accessible to the public, while closed session reports should only be made available to the committee members, relevant management personnel, and the Board of Trustees.

Conducting meetings in a closed session

There have been several instances in the public sector in Ontario where the Ombudsman has pointed out that the practice of going into and out of a closed session was not done effectively. Best practices to consider when going in and out of open and closed sessions would include:

1. Clearly state at the meeting and in the minutes the reason for moving to a closed session and how that is acceptable under legislation
2. After the closed session, ensure that the public that is present has been invited back into the meeting room
3. Clearly state whether any decisions were made in the closed meeting, and if so, what those decisions were.

Recommendation #4 – Decision making in closed sessions

Recommendations made by the audit committee to the Board of Trustees should be made in an open session. Any decision making that occurs in a closed meeting could be perceived by the public as decision making with a lack of transparency and accountability. If it is not possible to make a decision in an open session (due to privacy or other closed session requirements), the audit committee should confirm how they meet the closed meeting requirements of 207(2) of the Education Act. When reporting to the Board of Trustees, the summary provided to the Board of Trustees should be in sufficient detail to understand the decisions and recommendations that came out of the closed meeting.

Minutes of closed and in-camera meetings

When audit committee meetings are closed or even in-camera, minutes of those meetings should be kept so that those who are present can refer back to the decisions reached if needed. The issue with closed and in-camera meeting minutes should not be about whether meeting minutes are kept, but more about how to control the distribution of those minutes. Once a meeting is closed, the access to those minutes should be restricted to the committee members, the Board of Trustees, and relevant staff. Minutes for closed sessions should be limited as the committee would be limited in the decisions that should be made. In-camera minutes should remain privileged to those who were in attendance at those meetings and certain other individuals, required to review them as part of their mandate (i.e. external auditors). Generally a staff minute taker of the committee would remain with the committee while the sensitive discussions are taking place. If an issue is too sensitive for even a staff member to remain to take notes, the chair of the committee could summarize the decision for the staff member after the committee comes out of the in-camera session.

Recommendation #5 – Access to minutes

During the closed session, minutes should be taken in the same detail as minutes taken at the open session (focusing on decisions that are made by the committee or recommendations to the Board of Trustees). Members of the Board of Trustees should have access to all minutes, whether open or closed, whereas the public should only have access to open meeting minutes. In Camera minutes should be taken in the rare circumstances that those parts of the meeting involve decision making, and in-camera minutes would be restricted to those required to review closed session meeting minutes in accordance with their mandate (i.e. external auditors in accordance with generally accepted auditing standards, and others such as legal counsel).

Guidance on when to close audit committee meetings

As a best practice, audit committee meetings should be closed to the public because of the amount of sensitive information that can be discussed. In the private sector, where transparency to the public is not as prevalent, audit committee meetings are always closed. While this is not necessarily an option for all public sector organizations, the transparency of the audit committee decision making process can be accomplished if there is effective reporting to the Board of Trustees that appropriately summarizes the decisions and thoughts of the audit committee.

Current legislation does not permit for audit committee meetings to be closed on a permanent basis. The determination of whether an item should be discussed in a closed or open session is ultimately based on the nature of the topic being discussed. Regulation 361/10 prescribes the duties of an audit committee and as the committee carries out each of these they will need to assess whether the topics that arise from carrying out those duties require the meetings to be closed. Appendix A of this report provides some considerations for audit committees on whether the meetings should be conducted in an open or closed session.

Recommendation #6 – Guidance on closing audit committee meetings

The Education Act outlines the circumstances in which an audit committee can be closed. Regulation 361/10 provides the authority for an audit committee to go in-camera, and also provides the duties of an audit committee. It is not the duties of an audit committee which would force the audit committee to move into a closed session or an in-camera session, but rather the nature of the topics being discussed. Judgement will be required to identify when those topics arise.

Accessibility of information

Our recommendations have identified that certain parties should have access to information in certain situations. The following table summarizes the accessibility of certain information that is provided for the Audit Committee and which other parties should have access to this information.

Information item	Available to public	Available to all trustees	Available to audit committee members
Agenda for open audit committee meetings	Yes	Yes	Yes
Agenda for closed audit committee meetings	No	Yes	Yes
Reports to be discussed in open sessions	Yes	Yes	Yes
Reports to be discussed in closed sessions	No	Yes	Yes
Minutes of open session	Yes	Yes	Yes
Minutes of closed session	No	Yes	Yes
Minutes of in-camera sessions	No	No	Yes

Appendix A – Duties of the Audit Committee

The following appendix examines the duties of an audit committee as described in regulation 361/10 and considers whether these duties could potentially lead to a discussion of topics that would result in a closed meeting under the Education Act. We have analysed the duties and provide a recommendation as to what duties would be appropriate to include in an open session. There are other duties which we could confirm should most likely occur in a closed session because they would often result in a conversation that would meet the closed session requirements under the Education Act. All other duties, the nature of whether it should be open or closed depends on the nature of the topic being discussed. The ultimate decision of whether a meeting should be open or closed does come from the nature of the topic being discussed, which this report does not and cannot contemplate. Users are cautioned not to use this report as a sole source for determining whether a meeting should be opened or closed.

Items for consideration for Open Sessions

Duties as per Regulation 361/10

- Review of the board's financial statements, including:
 - Relevant accounting and reporting practices and issues
 - Departures from CPA Canada's accounting principles, as applicable
 - Completeness
 - Consistent with known information
 - Reflect applicable accounting principles
 - Resolution to recommend approval of the audited financial statements
 - Review the mandate of internal audit
 - Review the activities of internal audit
 - Review the staffing and organizational structure of internal audit
 - Discussion of and resolution to recommend approval on a policy designating services that the external auditor may perform for the board and, if the board adopts the policy, to oversee its implementation
 - Coordination of efforts between internal and external audit
 - Review of processes for communicating and administering codes of conduct
 - Election of audit committee chair
 - Authorization of two consecutive absences for audit committee members
 - Declaration of conflicts of interest
 - Annual audit committee report to the board of trustees
-

Items for consideration for Closed Sessions

Duties as per Regulation 361/10	Explanatory Comments
<ul style="list-style-type: none"> Review of the external audit results 	<ul style="list-style-type: none"> External audit results will have communication requirements around fraud and internal controls. This could affect the security of the property of the board.
<ul style="list-style-type: none"> Review of any difficulties encountered by the external auditor 	<ul style="list-style-type: none"> This is usually noted in the audit results report from the auditor which should be discussed in a closed session.
<ul style="list-style-type: none"> Review of significant changes the external auditor made to the audit plan in response to issues identified in the audit 	<ul style="list-style-type: none"> This is usually noted in the audit results report from the auditor which should be discussed in a closed session.
<ul style="list-style-type: none"> Review of significant disagreements between the external auditor and the director/senior business official and how these were resolved 	<ul style="list-style-type: none"> This is usually noted in the audit results report from the auditor which should be discussed in a closed session. An in-camera session may be appropriate as well.
<ul style="list-style-type: none"> Review of all matters the external auditor is required to communicate to the audit committee under generally accepted auditing standards 	<ul style="list-style-type: none"> This is usually noted in the audit results report from the auditor which should be discussed in a closed session.
<ul style="list-style-type: none"> Review of material written communications between the external auditor and director/senior business official 	<ul style="list-style-type: none"> This is usually noted in the audit results report from the auditor which should be discussed in a closed session.
<ul style="list-style-type: none"> Discussion with the external auditor about whether the financial statements of the board's reporting entities, if any, have been consolidated with the board's financial statements 	<ul style="list-style-type: none"> This is usually noted in the audit results report from the auditor which should be discussed in a closed session.
<ul style="list-style-type: none"> Discussion with the external auditor on any other relevant issues 	<ul style="list-style-type: none"> This is usually noted in the audit results report from the auditor which should be discussed in a closed session.
<ul style="list-style-type: none"> Discussion of the board's significant financial risks and the measures taken to monitor and manage these risks 	<ul style="list-style-type: none"> Significant financial risks can affect the security of the property of the board and may contain information on transactions involving schools.
<ul style="list-style-type: none"> Review of the effectiveness of the board's system for monitoring compliance with policies, procedures and legislative requirements 	<ul style="list-style-type: none"> This discussion would often be a closed session due to the sensitivity of the items being discussed and the potential impact on the security of the property of the board.
<ul style="list-style-type: none"> Review of internal audit's effectiveness, including compliance with professional standards 	<ul style="list-style-type: none"> The discussion would likely entail information about the performance of an individual, which would be considered private under the Education Act.
<ul style="list-style-type: none"> Regional internal audit manager/regional internal audit team performance review 	<ul style="list-style-type: none"> The discussion would likely entail information about the performance of an individual, which would be considered private under the Education Act.
<ul style="list-style-type: none"> External Auditor Performance Review 	<ul style="list-style-type: none"> Assessing performance of a vendor should be done in a closed session due to the sensitivity of the topic.
<ul style="list-style-type: none"> Review of any investigation or action taken to address any instances of non-compliance 	<ul style="list-style-type: none"> This discussion would often be a closed session due to the sensitivity of the items being discussed and the potential impact on litigation affecting the board.
<ul style="list-style-type: none"> Obtain updates from senior management and legal counsel regarding compliance matters 	<ul style="list-style-type: none"> Matters that involve litigation should be disclosed in a closed session
<ul style="list-style-type: none"> Obtain from senior management confirmation of compliance with statutory requirements (e.g. compliance report) and related discussion 	<ul style="list-style-type: none"> Instances of non-compliance could result in litigation against the board
<ul style="list-style-type: none"> Annual Audit Committee Report to the Board of Trustees 	<ul style="list-style-type: none"> This report would summarize all of the committee's work, some which would have been conducted in a closed session.

Duties as per Regulation 361/10	Explanatory Comments
<ul style="list-style-type: none"> <li data-bbox="375 180 894 222">• Audit committee self-assessment 	<ul style="list-style-type: none"> <li data-bbox="894 180 1510 285">• In order to encourage open and honest feedback, this session should either be done in a closed session or in an in-camera session.
<ul style="list-style-type: none"> <li data-bbox="375 285 894 392">• Discussion of the board's significant risks with the director, Senior Business Official, Regional Internal Audit Manager/internal auditor, external auditor 	<ul style="list-style-type: none"> <li data-bbox="894 285 1510 392">• Significant risks would expose the security of the property of the board

Other duties

The other duties from Regulation 361/10 may or may not result in a discussion that would warrant a closed meeting. It will be up to the chair and those preparing for the meeting to conclude on whether a closed meeting would be appropriate based on the topic being discussed.

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