



# Electricity Distributors Association

## Directors Summit

Jody E. Johnson

June 1, 2017

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AIRD & BERLIS LLP

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# Agenda

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- Access to Information & Protection of Privacy
- Meetings with Municipal Councils – open vs. closed
- Proposed changes to the closed meeting rules
- Closed Meeting Investigations

# MFIPPA

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- LDCs are subject to the *Municipal Freedom of Information and Protection of Privacy Act* (“MFIPPA”)
- Ontario Regulation 372/91- subsection 1(1)(4.1)  
Every corporation incorporated under section 142 of the *Electricity Act, 1998*, except,
  - i. each subsidiary of Hydro One Inc., as “subsidiary” is defined in subsection 2 (1) of that Act, and
  - ii. Hydro One Brampton Networks Inc.

# MFIPPA

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- Obligations to provide access to records and to protect personal information
- Where do common issues arise?
  - 3<sup>rd</sup> party records
    - Reveal a trade secret or scientific, technical, commercial, financial or labour relations information
    - Supplied in confidence (implicit or explicit)
    - Prejudicial disclosure/info no longer provided
- Compiling/aggregating information
- Timelines & fee estimates

# Meetings with Municipal Councils

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- General rule = meetings of Council (and committees and local boards) are open to the public
- Limited and narrow exceptions – section 239 of the *Municipal Act, 2001*
- Requirements for notice of meetings, minutes of meetings
- Council as Shareholder

# Meetings with Municipal Councils

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- Closed meetings:
  - Security of the property of the municipality
  - Personal matters about identifiable individuals
  - Proposed or pending acquisition or disposition of land
  - Labour relations or employee negotiations
  - Litigation or potential litigation
  - Solicitor-client privileged advice
  - Matters permitted as closed under another act
  - MFIPPA (where council the “head”)
  - Ombudsman’s investigations
  - Education & training

# Meetings with Municipal Councils

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- Bill 68 – proposed changes to the *Municipal Act, 2001* regarding meetings
  - Section 238 (1) - the definition of "meeting" would be changed to mean any regular, special or other meeting of a council, or a local board or a committee (current definition) of either of them, where:
    - (a) a quorum of members is present and
    - (b) members discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of the council, local board or committee

# Meetings with Municipal Councils

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- Proposed additions to section 239(2)
- Meetings could be closed to the public if the matter being considered involves:
  - h) information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any of them;
  - i) a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
  - j) a trade secret or scientific, technical, commercial or financial information that belongs to the municipality or local board and has monetary value or potential monetary value; or
  - k) a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board.

# Closed Meeting Investigations

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- Section 239.1 – request investigation about compliance with closed meeting rules and meeting procedures around closed meetings
- Investigator – appoint or default (Ombudsman)
- Investigations – broad access
- Reports – if improper meetings, reports are public

# Closed meeting investigations

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- Specific requirement regarding closed meeting investigator reports proposed (subsection 239.2(12):
  - If the municipality or local board receives a closed meeting investigator's report indicating that a meeting or part of a meeting appears to have been improperly closed
  - The municipality or local board shall pass a resolution stating how it intends to address the report
  - This provision was added to the Bill during Standing Committee

# Closed Meeting Investigations

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- Meetings as shareholder
  - Council (as a whole)
  - Decision of Council with respects to votes and shareholder
  - Notice & minutes
- Education & Training
  - Use caution



# Contact Information

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Thank You

