



Ombudsman Report

**Investigation into whether
Council for the Village of Casselman
held illegal closed meetings
in November 2014**

“Sign Here”

**André Marin
Ombudsman of Ontario
February 2015**

Complaints

- 1 On November 17, 2014, my Office received a complaint that members of the newly elected council of the Village of Casselman had a dinner meeting at a local restaurant on November 11, 2014.
- 2 A complaint was also received that members of the current and newly elected council of the Village of Casselman signed a written resolution dated November 6, 2014, wherein they direct the Chief Administrative Officer of the Village to refrain from hiring anyone until the new council is in office.

Ombudsman jurisdiction

- 3 Under the *Municipal Act, 2001*, all meetings of council, local boards, and committees of council must be open to the public, unless they fall within prescribed exceptions.
- 4 As of January 1, 2008, the Act gives citizens the right to request an investigation into whether a municipality has properly closed a meeting to the public. Municipalities may appoint their own investigator or use the services of the Ontario Ombudsman. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own.
- 5 My Office is the closed meeting investigator for the Village of Casselman.
- 6 In investigating closed meeting complaints, we consider whether the open meeting requirements of the Act and the municipal procedure by-law have been observed.

The 2014 municipal election

- 7 The municipal election was held on October 27, 2014. A new Mayor was elected, two new councillors were elected, and two councillors were re-elected. The new council was sworn in on December 2, 2014.
- 8 In this report, reference is made to the former council in office as of November 2014 as well as to the new, current, council, as circumstances require.

Investigative process

- 9 Members of my Office's Open Meeting Law Enforcement Team (OMLET) reviewed relevant portions of the Village's procedure by-law and the Act, and

reviewed the written resolution. They also spoke with the Mayor, members of the current council, a former councillor, and the Chief Administrative Officer.

10 My Office received full co-operation in this matter.

Council procedure

- 11** The Village of Casselman's procedure by-law (88-270) contemplates that regular council meetings are to be held at 8:00 p.m. and to end no later than 11:00 p.m. on the second and fourth Tuesday of each month, unless otherwise modified by resolution of council.
- 12** The by-law states that all meetings are to be open to the public and no one is to be excluded except for bad behaviour. The by-law also provides that council may, by resolution, retire to Committee of the Whole and exclude some or all of the public. No resolutions may be made or voted and no by-laws passed during this time.
- 13** Agendas for regular meetings are to be distributed to each member of council no later than two days before the meeting. Notice of special meetings is to be given to each member of council at least 24 hours in advance of the meeting, with an agenda and all relevant documents provided.
- 14** While the *Municipal Act* does not specify how notice of meetings must be provided to the public, it does state that every municipality must pass a procedure by-law that provides for public notice of meetings.¹ The Village of Casselman's procedure by-law does not contain provisions related specifically to notice to the public of meetings.
- 15** According to the Village's website, council meetings are held on the second and fourth Tuesday of every month. Recent agendas show meetings starting at 7:15 p.m.

Dinner of November 11, 2014

- 16** On Tuesday, November 11, 2014, the newly elected council for the Village of Casselman dined at the Asian Bistro restaurant in Casselman. Those in attendance were:
- Conrad Lamadeleine, Mayor-elect
 - Marcel Cl  roux, Re-elected Councillor
 - Michel Desjardins, Re-elected Councillor

¹ s 238(2.1).

- Anik Charron, Councillor-elect
- Denis Renaud, Councillor-elect

- 17** In addition, Mr. Pierre Tessier, a consultant, was present.
- 18** The dinner was organized by the Mayor-elect, Conrad Lamadeleine. All present indicated in interviews with our Office that the dinner was primarily an opportunity for members of the new council to get to know one another, as two of the councillors had been elected for the first time. It was also an opportunity to discuss broad plans and priorities.
- 19** The Mayor-elect had invited Mr. Tessier in order to discuss the possibility of having a study conducted of the municipality. Most of those in attendance were not aware that Mr. Tessier would be at the dinner. Mr. Tessier presented his credentials and talked about what he could do for the municipality. The possibility of hiring Mr. Tessier as a consultant was discussed, though no decision was made. According to Councillor Cl  roux, Mr. Tessier left after those present had asked him a few questions.
- 20** The only specific follow-up from the dinner was a resolution at the council meeting on December 16, 2014 to hire a consultant to prepare a study of the municipality’s strengths and weaknesses. While the Mayor initially proposed that Mr. Tessier be hired, following advice from staff it was determined that the Village would put out a call for proposals.

Analysis

- 21** The *Municipal Act, 2001* does not prevent council members from meeting informally outside of council chambers. However, when a group of council members comes together informally, there is an increased danger that they, intentionally or otherwise, may obtain information and enter into discussions that lay the groundwork to exercise their power and authority.
- 22** The November 11, 2014, dinner gathering is reminiscent of the situation in the Town of Kearney,² where the newly elected mayor invited the newly elected council to his home for informal gatherings on two occasions. Council business was discussed at these meetings, including priority setting for the upcoming term of council, committee appointments, possible amendments to the procedure by-law, and changes to the municipality’s voting procedure. However, as only two of those present were sitting councillors, our Office could not conclude that the

² Ombudsman’s letter of January 17, 2011.

meetings were held in contravention of the open meeting requirements. We ultimately found that:

While technically these meetings may not have resulted in a violation of the Act, they appear to be inconsistent with the principles of transparency, accountability and openness underlying the open meeting requirements.

- 23** In the Casselman matter, the majority of the council members at the dinner gathering had not yet taken office, and the discussions were largely of a general and informal nature. Unlike the Town of Kearney case, the meeting did not appear to be an attempt to conduct council business or to lay the groundwork for such.

Letter of November 6, 2014

- 24** Our office was provided with a copy of a handwritten letter. It states the following (translated from French):

Mr Marc Chenier, Administrator, Village of Casselman

We, the current councillors of the Village of Casselman request the following of the Administrator, Mr. Marc Chénier:

That no one be hired for any work for the municipality before the new council is in place.

We ask that such decision be made by the new council as it is an administrative decision.

Signed at Casselman on November 6, 2014.

Marcel Cléroux	<i>signature</i>
Michel Desjardins	<i>signature</i>
Mario Laplante	<i>signature</i>
New Mayor Conrad Lamadeleine	<i>signature</i>
Anik Charron	
Denis Renaud	

- 25** The letter was signed by three councillors who were in office at the time: councillors Cléroux, Desjardins and Laplante. As council for the Village of Casselman is comprised of only five members, the letter was signed by a quorum of council.

- 26** The letter was drafted in response to a posting for two positions in the parks and recreation department. The posting had been published in the local newspaper during the municipal election period. The two positions had been approved by council several months earlier, but had yet to be filled. Given the timing of the posting, concerns were raised that the hiring decisions would be made by staff without input from council. There were also concerns that the outgoing council might step on the toes of the new council if it completed the hiring process..
- 27** The letter was drafted by Mayor-elect Lamadeleine. He then went to the other signatories individually, at their homes or at their places of work, to have them sign it. Though the names of the two newest members of council appear on the letter, they did not sign it and were not apprised of its existence.
- 28** While Mayor Lamadeleine and Councillor Cl  roux both told us that the letter was an informal request, Councillor Desjardins and former Councillor Laplante considered it to have been a resolution made in lieu of a special meeting of council. The Mayor said it was necessary because no more meetings of the old council were expected. However, this was incorrect, as council did hold a meeting on November 25, 2014.
- 29** The letter does not seem to have been discussed or made public by council. The hiring process for the two positions was delayed until the beginning of the new term, however. The new council conducted interviews and the selected candidates were approved by council at its meeting on December 16, 2014.

Analysis

- 30** The *Municipal Act, 2001* defines a “meeting” as “any regular, special or other meeting of a council, of a local board or of a committee of either of them.”³ This definition is circular and not particularly helpful in determining whether a meeting has actually occurred.
- 31** In a 2008 report,⁴ through review of the relevant case law and keeping in mind the underlying objectives of open meeting legislation, I developed a working definition of “meeting” to assist in the interpretation of the definition contained in the Act:

³ s. 238(1)

⁴ Ombudsman of Ontario, *Don't Let the Sun Go Down on Me: Opening the Door on the Elton John Ticket Scandal* (April 25, 2008), online: http://www.ombudsman.on.ca/Files/sitemedia/Documents/Resources/Reports/Municipal/SudburyReportEng2_2.pdf.

Members of council (or a committee) must come together for the purpose of exercising the power or authority of the council (or committee), or for the purpose of doing the groundwork necessary to exercise that power or authority.⁵

- 32** This definition remains consistent with leading interpretations of the open meetings law and reinforces the right of the public to observe municipal government in process.⁶
- 33** A meeting of council is not limited to a physical gathering of its members but may occur whenever council exercises its authority. In an April 2008 investigation, I considered whether sequential phone calls between the Mayor and individual councillors for the Township of Nipissing could be considered a “meeting” for the purpose of the open meeting requirements.⁷
- 34** In that case, the Mayor convened a special meeting of council and proceeded to telephone one councillor at a time. A quorum of council was never present in the same room or on the phone during any of the conversations. However, as a result of the calls, council collectively came to a consensus to approve additional costs related to the purchase of a fire vehicle. In considering these circumstances, I observed:

It is not necessarily the form that a meeting takes that should be determinative, but its substance. In my view, a meeting of council is not limited to a physical gathering of its members. Sequential telephone conversations of council members, for the purpose of exercising the power or authority of the council or for the purpose of doing the groundwork necessary to exercise that power or authority, may constitute a meeting...⁸

- 35** Similarly, our recent letter to the Township of Joly described a case in which the Township’s Mayor requested that members of council attend township office to sign a resolution.⁹ Referencing the illegal closed meeting in Nipissing, our Office

⁵ *Ibid* at paras 54-60.

⁶ *London (City) v. RSJ Holdings Inc.*, [2007] 2 S.C.R. 588, 2007 SCC 29 at para. 32; *Southam Inc. v. Ottawa (City)* (1991), 5 O.R. (3d) 726 (Ont. Div. Ct.) at paras. 12-18; *Southam Inc. v. Hamilton-Wentworth Economic Development Committee* (1988), 66 O.R. (2d) 213 (Ont. C.A.) at paras. 9-12.

⁷ Ombudsman Ontario, Investigation into Council of the Township of Nipissing Special Meeting of April 25, 2008 (February 6th, 2009), online:

<https://ombudsman.on.ca/Files/Sitemedia/Documents/Resources/Reports/Municipal/nipissingfinaleng.pdf>

⁸ *Ibid* at paras 29-30.

⁹ Ombudsman’s letter of August 21, 2014.

found that the serial attendance of councillors to approve a written resolution constituted a closed meeting.

- 36** In the Casselman matter, the letter of November 6, 2014, was signed serially in separate locations by a quorum of council. The letter gives a direction to staff and was an exercise of the authority of council. The signing of the letter constitutes a “meeting” for the purposes of the open meeting provisions of the Act.
- 37** The matter at issue in the letter could have been discussed at council’s meeting on November 25, 2014. In the alternative, if there was a real concern that a decision would be made to hire someone not approved by the new council, it could have been the subject of a special meeting, in accordance with the Village’s procedure by-law.

Opinion

- 38** The dinner of November 11, 2014 did not contravene the open meeting provisions of the *Municipal Act, 2001*.
- 39** However, the signing of the letter of November 6, 2014, involved a quorum of council exercising its authority in a sequential or serial manner. This was an illegal meeting in violation of the open meeting provisions of the *Municipal Act, 2001*.
- 40** I am making the following recommendations, which I hope will assist the council to meet its legal obligations with respect to closed meetings as well as improve its closed meeting practices.

Recommendations

Recommendation 1

The council of the Village of Casselman should refrain from conducting its business by sequential or serial decision-making of any kind.

Recommendation 2

The Village of Casselman should amend its procedure by-law to explicitly provide for notice to the public of regular and special meetings.

Recommendation 3

All members of council of the Village of Casselman should be vigilant in adhering to their individual and collective obligation to ensure that council complies with its responsibilities under the *Municipal Act, 2001* and its own procedure by-law.

Report

- 41 The council of the Village of Casselman was provided with an opportunity to comment on my report and recommendations. Their comments were taken into account in preparing this report.
- 42 This report should be made available to the public as soon as possible, and no later than the next council meeting.



André Marin
Ombudsman of Ontario