



Ombudsman Report

**Investigation into whether
Council for the Village of Casselman
held an illegal closed meeting
on January 8, 2015**

“Restaurant Roundtable”

**André Marin
Ombudsman of Ontario
April 2015**

Complaints

- 1 On January 15, 2015, my Office received a complaint that members of council of the Village of Casselman had a lunch meeting with developers at a local restaurant on January 8, 2015.

Ombudsman jurisdiction

- 2 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.
- 3 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.
- 4 My Office is the closed meeting investigator for the Village of Casselman.
- 5 In investigating closed meeting complaints, we consider whether the open meeting requirements of the Act and the municipal procedure by-law have been complied with.

Investigative process

- 6 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 available notes and other documentation relating to the gathering.
- 7 They also spoke with the Mayor, all councillors, the Chief Administrative Officer, the Deputy Clerk and the Director of Technical Services, and reviewed the audio recording of the council meeting of January 13, 2015, at which the lunch gathering was discussed in open session.
- 8 My Office received full co-operation in this matter.

Council procedure

- 9** On March 10, 2015, council for the Village of Casselman updated its procedure by-law to better reflect its current practices. By-law 2015-15 states that all meetings are to be open to the public, subject to the exceptions permitted by the *Municipal Act*. These exceptions are reflected in the by-law.
- 10** The by-law contemplates that regular council meetings are to be held at 7:00 p.m. on the second and fourth Tuesday of each month, unless otherwise provided by resolution of council.
- 11** Agendas for regular meetings are to be delivered electronically to each member of Council, the administration and the media no later than the Thursday evening preceding the scheduled meeting. Agendas and supporting materials are also to be posted on the website of the municipality. Notice of special meetings is to be given to each member of council at least 24 hours in advance of the meeting, with an indication of the nature of the business to be considered and the date, time and place of the special meeting.
- 12** 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 for providing notice to the public of special meetings.
- 13** In my February 2015 report with respect to the Village of Casselman, I recommended that the Village amend its procedure by-law to provide explicitly for public notice of regular and special meetings.

Lunch of January 8, 2015

- 14** On Thursday, January 8, 2015, four out of five members of council had lunch at Casselman Restaurant in Casselman. Those in attendance were Mayor Conrad Lamadeleine and Councillors Anik Charron, Marcel Cl  roux, and Denis Renaud.
- 15** The council members were accompanied by seven developers and engineers, as well as representatives from a neighbouring municipality and from the upper-tier municipality. The Chief Administrative Officer and the Director of Technical Services of the Village of Casselman were also in attendance.

¹ s 238(2.1).

- 16** Mayor Lamadeleine organized the lunch, which he described as a “roundtable.” Councillor Renaud stated that he and the Mayor had spoken about having such a gathering two weeks before it took place. According to Councillor Renaud, the intent was to get the pulse of developers in order to move the municipality forward and attempt to find solutions with respect to development in Casselman.

The lead-up to the gathering

- 17** Village staff advised my Office that concerns were raised about this gathering after the Mayor’s invitation went out.
- 18** The Chief Administrative Officer told us he believed it would be an illegal meeting. He said he raised this concern with Councillor Desjardins, who decided not to attend the meeting, and with Councillor Renaud, who responded that it would be an “information meeting” where no decisions would be made.
- 19** The Director of Technical Services said he had asked the Mayor who would be present, and was informed that Councillor Renaud would also be there. The Director of Technical Services then spoke with the Chief Administrative Officer, who explained that if only two members of council were attending, it would be fine.
- 20** On the morning of January 8, the Chief Administrative Officer found out that representatives from the neighbouring municipality of The Nation would be at the gathering. He told us that although he initially had no intention of attending the gathering, upon finding out that representatives from the neighbouring municipality would be in attendance, he and the Director of Technical Services felt they had to be there to ensure that no agreements were entered into and that no promises were made that could lead to a decision being made in the near future.

The lunch gathering

- 21** The Mayor explained that the gathering was held as a lunch because the contractors present would not have the time otherwise to share their views. The gathering ran from noon to 1:30 p.m.
- 22** In written correspondence to our Office, the Mayor stated [translated from original French]:

This gathering was an open house with contractors and engineers as well as with the mayor of The Nation [Municipality] and his planner to find out what we can improve

in our municipality to stimulate construction. For the past four years, construction has not moved much in Casselman.

- 23** According to the Chief Administrative Officer, the Mayor stated that the goal of the gathering was to [translation] “enable members of council to understand the corrective measures that are necessary over the next few weeks.” Councillor Renaud said the gathering was an opportunity to learn what the problems are in the Village, how things work elsewhere and to have the developers and engineers give councillors some ideas.
- 24** According to Councillor Renaud, after brief introductions, the contractors took the floor to raise their concerns. All those interviewed stated that the councillors in attendance listened to what the contractors had to say, but that there was no exchange among the members of council. There were no questions from the developers, no specific requests made, and no decisions made. However, the Chief Administrative Officer recalled the Mayor making statements about future action and the Director of Technical Services felt there was a clear desire to advance projects.
- 25** The Mayor took notes during the gathering, which were provided to our Office. They state that the lunch was a get-together with contractors, engineers and consultants, with the intention of finding out what can be done to make Casselman a model village in terms of residential and commercial development.
- 26** The notes summarize the comments of a number of the developers and engineers in attendance, provide a critical overview of how development projects are handled in Casselman, and go through how projects are handled in a nearby municipality. For example, one contractor is noted stating that a subdivision project has been going on for five years because of too many recommendations and extensions, creating additional costs. Elsewhere, a contractor is noted saying that Casselman’s policies are like those of a large city even though its projects are often much smaller.
- 27** The notes also have a “conclusion” section and a “recommendations” section, each signed by the Mayor. The conclusions relate directly to the comments of contractors as captured in the notes, and go on to say that action is needed by the end of March. The recommendations include calls for specific action on the part of the municipality with respect to a development committee, approval timelines for zoning changes and site plans, and other related matters.
- 28** The Mayor told us that these recommendations and conclusions were his alone, based on the information gleaned from the comments made during the lunch

gathering. He said they will be the subject of discussion at a yet-to-be-determined future meeting of council.

- 29** Councillor Renaud’s personal notes of the roundtable generally confirm the Mayor’s notes. The first page states that the reason for the gathering was to simplify the process of economic development, as those in attendance want the best for Casselman and The Nation. The notes go on to say: “Will come back in 15 days to work at what we need/have/want.”
- 30** The remainder of the document outlines the comments of the various developers and engineers in attendance, that is, their experiences with the process, their concerns, and their suggestions. For example, one contractor is noted saying that zoning changes take too long in Casselman. Elsewhere, another contractor is noted giving recommendations about development fees.
- 31** The majority of council members present at the gathering advised our Office that the lunch gathering was not intended to be a meeting of council. Rather, it was intended as a learning opportunity.
- 32** During interviews, municipal staff members told us they doubted the legality of the lunch gathering, and believed it was in fact a meeting that fell within the open meeting requirements. They noted that staff had on numerous occasions raised their concerns about informal gatherings of a quorum of council.

After the gathering

- 33** The Chief Administrative Officer indicated that the only follow-up at council from the lunch gathering was when a member of the public raised it during the question period of the January 13, 2015, meeting of council.
- 34** On the audio recording of the meeting, an individual can be heard characterizing the January 8 gathering as a meeting of council. In response, Councillor Renaud is heard saying [translation] “it was a gathering, not a meeting.” The individual then states that he thought it was a meeting because he saw the Mayor with a quorum of council. He complains that a number of local developers who live in Casselman were not invited, and that others who should have been there – such as the Village engineer – were not there either. He characterized the gathering as unfortunate and as a farce.
- 35** The Mayor responded that there was one gathering with some developers. Not all developers were there, as the restaurant would not be big enough. The Mayor stated that there would be other meetings, as this gathering was very beneficial.

Analysis

- 36** 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.”² This definition is circular and not particularly helpful in determining whether a meeting has actually occurred.
- 37** In a 2008 report,³ through review of the relevant case law and keeping in mind the underlying objectives of open meeting legislation, I developed a definition of “meeting” to assist in the interpretation of the definition contained in the Act:

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.

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.

- 38** 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.
- 39** When determining if a meeting has occurred, the concept of a legal quorum is an important consideration. Alone, it is not conclusive, but having a quorum means a sufficient number of members are present to legally transact business. It is obvious that once a gathering constitutes a quorum of a council or committee, the opportunity and risk of those individuals collectively exercising their authority increases.
- 40** Our Office has noted that gatherings of this sort can also attract public distrust because of their timing, particularly if they occur close to influential or controversial decision-making. As noted in my report on an investigation of a private breakfast meeting involving members of a Hamilton city committee:

² s. 238(1)

³ 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.

Unlike formal meetings when minutes are kept, it is difficult to accurately reconstruct the conversational record of informal gatherings. It is challenging in these circumstances to assure the public that no improper discussions have taken place... [C]ouncillors should be cautious when meeting informally, especially when they represent a quorum of a decision-making body, to ensure that any discussions do not stray into areas that might constitute laying the groundwork for future decision-making.⁴

- 41** With respect to the extent of discussion among members of council necessary to find an illegal meeting, I stated in a case involving the Township of Leeds and the Thousand Islands that:

The test for determining if an illegal meeting has occurred does not require that council members reach a decision or that multiple members of council contribute to a discussion of council business. If information is conveyed about an issue to come before council, in a manner that informs future decision-making on a topic, the gathering may constitute an illegal meeting.⁵

- 42** In that case, the Mayor distributed materials relating to senior staff compensation to a quorum of council, along with his summary of the issue and instructions to council. I found that this laid the groundwork for council's consideration of the compensation issue at a later meeting of council and therefore constituted an illegal meeting.
- 43** In another case, a quorum of council for the City of Elliot Lake attended an information session organized by a third party.⁶ The third party provided information about the steps involved in locating a deep geological repository, including the screening process and overview of public consultation processes. The topic of the information session had already come before council and had been the subject of public meetings. Our Office found that a quorum of council came

⁴ Ombudsman of Ontario, Investigation into whether the City of Hamilton's NHL Proposal Sub-Committee held an improperly closed meeting (February 2012), online: http://www.ombudsman.on.ca/Files/sitemedia/Images/Reports/HamiltonNHL-final-EN-forweb_1.pdf at para 24.

⁵ Ombudsman Ontario, "Investigation into whether members of Council for the Township of Leeds and the Thousand Islands held improper closed meetings on November 16, 2012 and February 19, 2013" (November 2013): [https://ombudsman.on.ca/Resources/Reports/Township-of-Leeds-and-the-Thousand-Islands-\(1\).aspx](https://ombudsman.on.ca/Resources/Reports/Township-of-Leeds-and-the-Thousand-Islands-(1).aspx)

⁶ Ombudsman Ontario, Letter to the City of Elliot Lake regarding meetings of April 16, 2012 and April 26, 2012 (August 10, 2012): <https://ombudsman.on.ca/Resources/Reports/Town-of-Elliot-Lake.aspx>

together to receive information that would inform the future decision-making of council and, as such, the gathering was subject to the open meeting requirements of the *Municipal Act, 2001*.

- 44** In addition, in my October 2013 report with respect to the City of London (*In the Back Room*), I noted that evidence of an actual decision having been made in the aftermath of an informal gathering is not necessary to find that a meeting was held.⁷

Was the gathering of January 8, 2015 a meeting of council?

- 45** In the present case, a quorum of council for the Village of Casselman came together over lunch to hear the opinions of a number of developers and engineers with respect to the development process in Casselman. Those we interviewed were consistent in their recollection that members of council did not discuss among themselves any of the information received nor did they come to any decisions. As noted, however, this lack of active discussion among members of council does not mean that the gathering was not a meeting.
- 46** The question then becomes whether or not the information received over lunch at Casselman Restaurant was meant to lay the groundwork for council business and decision-making. The gathering was characterized as being necessary to determine “what we can improve in our municipality to stimulate construction”; to move the municipality forward and attempt to find solutions with respect to development; and, to “enable members of council to understand the corrective measures that are necessary over the next few weeks.”
- 47** The Mayor’s detailed notes of the gathering include his conclusions and recommendations based on the comments made by the developers and engineers in attendance. Councillor’s Renaud’s notes imply that there will be action of some sort within 15 days. The Director of Technical Services felt that there was a clear desire for action by council and the Chief Administrative Officer recalled future action being mentioned.
- 48** Based on all of the information received, I conclude that the purpose of the meeting at the restaurant was to lay the groundwork for council business and decision-making. The roundtable was a meeting for purposes of the *Municipal Act, 2001*.

⁷ Ombudsman Ontario, “In the Back Room: Investigation into whether members of Council for the City of London held an improper closed meeting on February 23, 2013” (October 2013): [https://ombudsman.on.ca/Resources/Reports/City-of-London-\(3\).aspx](https://ombudsman.on.ca/Resources/Reports/City-of-London-(3).aspx).

Was it a closed meeting?

- 49** That the meeting took place in a restaurant, in full view of the public, does not make it an open meeting for the purposes of the Act.
- 50** In this case only those invited specifically by the Mayor were aware that the meeting would be taking place. Councillor Renaud stated that other people in the restaurant could have spoken up if they so desired. This however does not make the gathering a meeting open to the public for purposes of the Act.
- 51** Given that there was no notice to the public of the roundtable, I find that it was a closed meeting of council under the *Municipal Act*.

Was the meeting closed under any of the permissible exceptions?

- 52** The information received at the roundtable does not fit within in any of the legislated exceptions to the open meetings requirements under section 239 of the *Municipal Act, 2001*.
- 53** Some of the council members involved felt that the session was educational. This raised the possibility that the education and training exception contained in section 239(3.1) of the Act could apply.
- 54** The scope of the education/training exception of the Act includes only meetings that are closed to allow council members to receive information that may assist them in better understanding the business of the municipality and/or to acquire skills, rather than “exchange information” on an issue. In a report on the Township of Madawaska Valley, the closed meeting investigator for the Township found that a presentation involving an “educational” component but essentially outlining specific options available to the town in imposing development charges did not meet the strict criteria for a closed educational or training session.⁸
- 55** In the case of the January 8 lunch, the discussions were not general in nature and related squarely to business that would be before council. Even if the correct procedures had been followed for an education/training closed session, including providing public notice of the meeting and passing a resolution to proceed in camera, I do not find that the subject matter was appropriate for in camera discussion under the education/training exception.

⁸ Local Authority Services, Report to the Council of the Township of Madawaska Valley (June 2013: Amberley Gavel Ltd.): http://www.agavel.com/wp-content/uploads/2013/09/Madawaska_Valley_2013.doc.

Opinion

- 56** In both our June 2013 letter⁹ and my February 2015 report¹⁰ regarding the Village of Casselman, our Office discussed the problems inherent to informal gatherings of council. In neither case, however, did we determine that the informal gatherings at issue were held in violation of the *Municipal Act, 2001*, although in the February 2015 report we did find that the act of having multiple council members consecutively sign a resolution constituted illegal council decision making.
- 57** The present case crossed the line from poor practice to illegal meeting. The discussion that took place during the lunch gathering could easily have taken place in a public meeting of council, with proper notice given to the public. The failure to provide public notice and the invitation by the Mayor of only specific parties had the effect of closing the meeting from the general public.
- 58** The Mayor’s contention that there would not have been enough space in Casselman Restaurant for all interested parties to participate does not absolve council of its obligations. As I noted recently in a report on the City of Clarence-Rockland,¹¹ municipalities should take reasonable steps to ensure access to all members of the public who wish to attend and observe meetings of council.
- 59** In addition, Village staff appear to have provided instructive advice to council on the need to comply with the open meeting requirements. Properly informed staff can be an extremely useful resource for council in assisting them to ensure that they respect the requirements of the *Municipal Act*.
- 60** The lunchtime gathering of January 8, 2015 was therefore an illegal meeting in violation of the open meeting provisions of the *Municipal Act, 2001*.
- 61** In the course of this investigation, my Office received correspondence from the Mayor in which he provided information about the current state of affairs in Casselman and stated that the lunchtime gathering was necessary to reinvigorate development in the Village. While the Mayor’s stated intentions are laudable, they

⁹ Ombudsman Ontario, Letter to the Village of Casselman, “Re: Closed Meeting Complaints – June 26 and July 10, 2012 and March 12, 2013” (June 12, 2013):

<https://ombudsman.on.ca/Files/sitemedia/Images/Reports/Casselma-closing-letter-June-10.pdf>

¹⁰ Ombudsman Ontario, “‘Sign Here’ – Investigation into whether Council for the Village of Casselman held illegal closed meetings in November 2014” (February 2015):

[https://ombudsman.on.ca/Resources/Reports/Village-of-Casselma-\(1\).aspx](https://ombudsman.on.ca/Resources/Reports/Village-of-Casselma-(1).aspx).

¹¹ Ombudsman Ontario, “‘Access Denied’ – Investigation into whether Council for the City of Clarence-Rockland held illegal closed meetings on August 27 and September 15, 2014” (December 2014):

[https://ombudsman.on.ca/Resources/Reports/City-of-Clarence-Rockland-\(1\).aspx](https://ombudsman.on.ca/Resources/Reports/City-of-Clarence-Rockland-(1).aspx)

should not get in the way of openness and transparency, and of ensuring that the open meeting requirements of the *Municipal Act, 2001* are followed.

- 62** I am making the following recommendations, which I hope will help the council meet its legal obligations with respect to closed meetings. I am also reiterating my recommendation to improve the Village of Casselman's procedure by-law with respect to special meetings of council.

Recommendations

Recommendation 1

The Village of Casselman should adopt written guidelines to ensure that council and committee members are educated on and fully understand the open meeting requirements of the *Municipal Act, 2001*. This should include a definition of what constitutes a "meeting", and an explanation of how the Act's meeting requirements may apply to informal discussions of council and committee business.

Recommendation 2

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.

Recommendation 3

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

Report

- 63** The council of the Village of Casselman was provided with an opportunity to comment on this report. Those who reviewed my report and recommendations chose not to comment.
- 64** The Mayor elected not to review the report; however, he did provide my Office with additional comments about the January 8 gathering and the complaint that led to my investigation. He said the gathering was beneficial for council and for the community, and that he believed the complaints to my Office were an attempt to undermine council.
- 65** While the meeting may have been well intentioned and considered a success, as I noted above, this does not relieve the municipality of the obligation to follow the open meeting requirements. With respect to the alleged motivation behind the complaints to my Office, the Act gives citizens the right to raise complaints as part of the checks and balances that exist to ensure municipal transparency.
- 66** 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