



Ombudsman Report

**Investigation into a complaint about a
January 9, 2018 meeting and a
January 11, 2018 discussion among
councillors for the Village of Casselman**

**Paul Dubé
Ombudsman of Ontario
July 2018**

Complaint

- 1 On January 22, 2018, my Office received a complaint about closed meetings of council for the Village of Casselman.
- 2 The complaint alleged that council for the village held an illegal closed session during its January 9, 2018 regular council meeting. The complaint also alleged that council met informally at town hall on January 11, 2018.

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 complied with the Act in closing 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 The Ombudsman is the closed meeting investigator for the Village of Casselman.
- 6 When investigating closed meeting complaints, we consider whether the open meeting requirements of the Act and the municipality's governing procedures have been observed.

Investigative process

- 7 On February 8, 2018, my Office issued a notice in accordance with section 18(1) of the *Ombudsman Act* that we would be investigating this complaint.
- 8 Members of my Office's staff reviewed relevant portions of the village's by-laws and policies, and the Act. We reviewed the agenda and minutes of the open and closed portions of the January 9, 2018 meeting of council. We also reviewed the agenda and public minutes of the January 23, 2018 meeting of council – during which the events of January 11, 2018 were discussed – and related media coverage.

- 9 The Mayor, all four councillors, the Acting Clerk and the Acting Chief Administrative Officer (CAO) were interviewed by my Office.

Previous complaints

- 10 My Office previously reviewed four closed meeting complaints about the Village of Casselman.
- 11 In a June 12, 2013 letter,¹ my Office found that council members did not violate the open meeting provisions of the *Municipal Act, 2001* when they gathered together prior to council meetings on three occasions, as council did not exercise its authority or lay the groundwork to do so during these gatherings. We did note, however, the problems inherent in informal gatherings of council members, in particular when a quorum of council is present.
- 12 A February 2015 report from my Office² found that council members did not violate the Act when the newly elected council met informally for dinner several weeks prior to their swearing-in. However, my Office did find that a written direction to staff signed by a quorum of council in office at the time was an illegal meeting. We noted the problems inherent in serial meetings and recommended that the village cease the practice. We also noted issues with the procedure by-law and recommended that the village specifically provide for notice of regular and special meetings.
- 13 An April 2015 report from my Office³ found that a gathering of a quorum of council with a group of developers at a local restaurant was, in effect, a closed meeting of council in contravention of the open meeting provisions of the Act. We recommended that the village adopt written guidelines to ensure that council and committee members are educated on and fully understand the open meeting requirements, that council be vigilant in adhering to its obligations under the Act, and that the village amend its procedure by-law to explicitly provide for notice to the public of special meetings.

¹ Letter from Ombudsman of Ontario to Village of Casselman (June 12, 2013), online: <<https://www.ombudsman.on.ca/resources/reports-and-case-summaries/municipal-meetings/2013/village-of-casselman>>.

² Casselman (Village of) (Re), 2015 ONOMBUD 7 (CanLII), online: <<http://canlii.ca/t/gtp82>>.

³ Casselman (Village of) (Re), 2015 ONOMBUD 14 (CanLII), online: <<http://canlii.ca/t/gtp61>>.

- 14 In a January 29, 2016 letter,⁴ my Office found that council for the village did not violate the open meeting requirements when it discussed a consultant's report in two closed sessions under the personal matters exception. However, we made best practice suggestions that the village improve its resolutions to go into closed session and ensure greater consistency in its reporting back in open session.

Council procedures

- 15 The village last updated its procedure by-law in March 2015.
- 16 The portion of the procedure by-law that deals with closed meetings mirrors section 239 of the *Municipal Act, 2001*, except that it includes requests pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* under items that may be considered in camera, when the Act states that this topic must be considered in camera. The procedure by-law also does not include the mandatory exception with respect to Ombudsman investigations and the exceptions that came into force on January 1, 2018.
- 17 Section 4.10 of the procedure by-law reflects the requirement of section 239(4)(a) of the *Municipal Act, 2001* that council pass a resolution “stating the purpose of the holding of the closed meeting and including the general nature of the matter to be considered at the closed meeting.” In addition, section 7.9.1 of the procedure by-law states that the decisions of council and directions to the administration with respect to any of the items enumerated in the resolution to go into closed session under section 4.10 “shall be reported publicly by council to the extent that the public interest permits.”
- 18 The procedure by-law at section 4.11 indicates that in camera meetings are to be adjourned no later than 6:50 p.m. This does not appear to be consistent with the current practice of the village, as “Closed Session” is a standard item on the meeting agenda, and meetings start at 7:00 p.m.

⁴ Letter from Ombudsman of Ontario to Village of Casselman (January 29, 2016), online: <<https://www.ombudsman.on.ca/resources/reports-and-case-summaries/municipal-meetings/2016/village-of-casselman>>.

Meeting on January 9, 2018

Background

- 19 There were two closed sessions during the January 9, 2018 meeting of council.
- 20 The agenda of the January 9, 2018 meeting of council indicated a closed session to approve the minutes of a previous closed session at 5.1 and “Human resources” at 5.2.
- 21 At the beginning of the meeting, council passed a resolution to temporarily suspend council procedures in order to add two items to the agenda. One of these items was the addition of “18.1 Closed session – Human resources”.

First closed session

- 22 The open meeting minutes indicate that the following resolution to go into the first closed session was carried (items 5.1 and 5.2; resolution 2018-004):

Be it resolved that the present meeting be adjourned for a closed session to address matters pertaining so [sic] Section 239 (2) of the Municipal Act, 2001, S.O. 2001, chapter 25 to consider matters relating to:

1. Human resources art. (2) (b)

s. (b) personal matters about an identifiable individual, including municipal or local board employees;

- 23 The closed session began at 7:02 p.m. The closed session minutes indicate that during this first closed session, council deferred the approval of the minutes of the December 12, 2017 closed session to the next meeting. The minutes go on to indicate that council proceeded with a discussion of a legal opinion – provided in person by a solicitor – with respect to an employment contract, including the individual’s salary. The minutes conclude with a statement that a contract would be proposed.
- 24 The open meeting minutes do not record any report back on this closed session discussion.

Second closed session

- 25 The open meeting minutes indicate that the following resolution to go into the second closed session was carried (item 18.1; resolution 2018-017):

Be it resolved that the present meeting be adjourned for a closed session to address matters pertaining so [sic] Section 239 (2) of the Municipal Act, 2001, S.O. 2001, chapter 25 to consider matters relating to:

1. Human resources art. (2) (b)

s. (b) personal matters about an identifiable individual, including municipal or local board employees;

- 26 The minutes of the second closed session indicate that the session began at 8:09 p.m. Mayor Conrad Lamadeleine told council the reason for the closed session. The minutes note that Councillors Michel Desjardins and Anik Charron left the meeting at 8:28 p.m. and 8:32 p.m., respectively. Six staff members then joined the closed session at 8:35 p.m. The then-CAO, Daniel Gatien, left the meeting at 8:41 p.m.
- 27 The open session resumed at 9:23 p.m. The open meeting minutes do not record any report back on this closed session discussion. However, they do state “During the closed session, Mr. Michel Desjardins, Mrs. Anik Charron and Mr. Daniel Gatien removed themselves from the meeting.”

Analysis

Exceptions cited

- 28 Council cited the personal matters exception for both closed sessions.
- 29 The Act does not define “personal matters”. When reviewing the parameters of the open meeting exceptions, our Office has often considered the case law of the Office of the Information and Privacy Commissioner (the IPC). Although not binding on our Office, these cases can be informative.

- 30 The IPC has determined that, in order to qualify as “personal information”, the information must be about individuals in their personal capacity, rather than their professional, official or business capacity.⁵ However, information in a professional capacity may qualify as personal information if it reveals something of a personal nature about the individual.⁶
- 31 My Office has found that discussions of salary also fit within the personal matters exception.⁷
- 32 Council’s discussion during the first closed session dealt with matters of a personal nature relating to an identified individual, which went beyond their professional capacity. The discussion also included reference to an identified individual’s salary. This discussion fit within the personal matters exception.
- 33 Though not cited, the exception for advice subject to solicitor-client privilege could have applied in the circumstances, as council was receiving legal advice directly from a solicitor.⁸ Moreover, the first closed session discussion related specifically to the terms of an employment relationship with the village. This discussion could also have fit under the labour relations or employee negotiations exception.⁹
- 34 Council’s discussion during the second closed session was specifically related to the conduct of an identifiable individual. This discussion also fit within the personal matters exception.

Procedural matters

Voting and minutes

- 35 Sections 239(5) and (6) of the *Municipal Act* prohibit municipal councils and local boards from voting in a closed session, except where the meeting discussions fall within one of the exceptions in the Act, and the vote is for a procedural matter or to give directions to staff.

⁵ Aylmer (Town) (Re), 2007 CanLII 30462 (ON IPC), online: <<http://canlii.ca/t/1scqh>>.

⁶ Madawaska Valley (Township) (Re), 2010 CanLII 24619 (ON IPC), online: <<http://canlii.ca/t/29p2h>>.

⁷ Baldwin (Township of) (Re), 2009 ONOMBUD 3 (CanLII), online: <<http://canlii.ca/t/gtgp>>.

⁸ *Descôteaux et al. v. Mierzwinski*, [1982] 1 SCR 860, 1982 CanLII 22 (SCC), online: <<http://canlii.ca/t/1lpc6>>.

⁹ Fort Erie (Town of) (Re), 2017 ONOMBUD 8 (CanLII), online: <<http://canlii.ca/t/h4rx3>>.

- 36 The closed meeting minutes of the first session state that the contract discussed in camera would be proposed. When asked during interviews whether any direction to staff was given or votes taken, no one indicated that any such direction or vote occurred. It is therefore unclear who would propose the contract.
- 37 The decision to propose the contract of employment was not procedural. It could have taken the form of a direction to staff during the closed session or a vote during the open session. Neither are recorded in the minutes.

Report back

- 38 The village's procedure by-law also states that the decisions of council and directions to the administration with respect to any of the items enumerated in the resolution to go into closed session "shall be reported publicly by council to the extent that the public interest permits." This is consistent with past recommendations from closed meeting investigators, including my Office.¹⁰
- 39 There was no report back of this nature following either closed session.

Meeting on January 11, 2018

Background

- 40 Local media in a February 1, 2018 article¹¹ reported on the January 23, 2018 meeting of council. During that meeting, Councillor Charron had asked council about an apparent meeting of a quorum of council on January 11, 2018 at town hall. She stated that she had not received an invitation to the meeting.

¹⁰ Magnetawan (Municipality of) (Re), 2015 ONOMBUD 20 (CanLII), online: <<http://canlii.ca/t/gtp6h>>; Local Authority Services, *A Report to the corporation of the County of Essex* (September 2009) at 17, online: <http://www.agavel.com/wp-content/uploads/2013/09/Essex_County_Report_Sep_18_Final.doc>; Douglas R Wallace, *Report to the Council of the City of Ottawa Regarding the Investigation of the Closed Meetings of Ottawa City Council held on December 19, 2008, January 6, 2009 and January 14/15, 2009*, online: <<https://ottawa.ca/en/city-hall/accountability-and-transparency/accountability-framework/integrity-commissioner/meetings#report-council-city-ottawa-regarding-investigation-closed-meetings-ottawa-city-council-held-december-19-2008-january-6-2009-and-january-14-15-2009>>.

¹¹ Caroline Prévost, "Une « réunion » qui n'en était pas une à Casselman" *Le Reflet – The News Embrun*, ON (February 1, 2018) at 2, online: <<https://www.pressreader.com/canada/le-reflet-the-news/20180201/281496456723699>>.

41 According to the article, the Mayor stated it was not a meeting. The Acting Clerk then stated that the Mayor, Councillors Daniel Lafleur and Councillor Cl  roux were all in the Mayor's office that day at the same time. When Councillor Charron stated that that made it a meeting, the Mayor responded that the three of them found themselves unexpectedly at town hall at the same time, but that did not make it a meeting. Councillor Charron then stated that it is a matter of perception and transparency. The article ends noting that Councillor Lafleur stated that Councillor Desjardins was also there. Councillor Desjardins responded that he was at the building, but did not participate in the conversation.

42 The minutes of the January 23, 2018 meeting of council at item 12 state the following about this exchange:

i) Mrs. Anik Charron - request for information regarding the meeting on January 11th, 2018

Mrs. Charron asked members if there was a Council meeting on January 11th. Mayor Lamadeleine confirmed that there was no meeting. After being asked by Mrs. Charron if there was a meeting, Mrs. Peever responds that they were all in an office. M. Lamadeleine clarifies that it was not a meeting, but that they were at Town Hall at the same time.

43 In my Office's interview with Councillor Charron, she confirmed that she was not at town hall on January 11. She stated that she had suspicions about the events of January 11, 2018 due to an email sent to staff and council by the now Acting CAO at 2:33 p.m. that afternoon that stated the following (translation from French):

Hello

This email is to inform you that [the CAO] will be absent for about one month. As directed by Council all requests/questions with respect to human resources and follow-up of CAO files are to be sent to my attention.

Thank you

44 When asked about this email, the Acting CAO stated that she had not received any direction from council as such. She had not yet been appointed Acting CAO. She only wanted to inform staff and council that she would be covering the CAO's duties given the CAO's sudden departure.

The Acting CAO stated that the village was in crisis management mode at the time.

- 45** My Office's interviews with Mayor Lamadeleine, Councillor Lafleur, Councillor Cléroux, and Councillor Desjardins confirmed that all four had attended town hall on the morning of January 11, 2018. They were at town hall that day for different reasons, and arrived and departed town hall at different times:
- The Mayor stated that he arrived at town hall about 9 a.m. and left around 11 a.m. He had come to town hall to check on paperwork.
 - Councillor Lafleur said he visited town hall as he usually does every morning between 8:30 a.m. and 9:30 a.m. On January 11, he arrived around 8:45 a.m. and stayed to chat with the Mayor after both Councillors Cléroux and Desjardins had left.
 - Councillor Cléroux stated that he arrived around 9:30 a.m. and left about 15 to 20 minutes later. He went to town hall that day to inform the municipality about recent events in his private life that would impact his ability to participate fully in village matters for a while.
 - Councillor Desjardins stated that he arrived at town hall around 9:00 a.m. to speak with various staff at town hall. He then left around 10:00 a.m. to speak with staff elsewhere before returning to town hall around 11:00 a.m. for a few minutes.
- 46** All four council members indicated that they had had various interactions with one another throughout their time at town hall that morning. Of these interactions, two involved a quorum of council.
- 47** The first discussion among a quorum of council involved Mayor Lamadeleine, Councillor Lafleur and Councillor Cléroux. This discussion took place in the Mayor's office. It related to Councillor Cléroux's private life.
- 48** The second discussion among a quorum of council involved Mayor Lamadeleine, Councillor Lafleur, Councillor Cléroux and Councillor Desjardins. This discussion took place in the Mayor's office and the doorway to the Mayor's office. It related to Councillor Desjardins' departure from the second closed session during the January 9 meeting of council.

- 49 The Acting Clerk and the Acting CAO both stated that they had seen the four council members at town hall on the morning on January 11. Neither had any knowledge of the nature of the discussions among the council members.
- 50 During an interview with my Office, Councillor Desjardins stated that he had witnessed a third discussion at town hall on the morning of January 11 involving Mayor Lamadeleine, Councillor Lafleur and Councillor Cl  roux, as well as the Acting Clerk and the Acting CAO. The staff and council members we spoke to did not recall such a discussion.
- 51 We were also told by Councillor Desjardins of a written summary of the events of January 11 that he claims was prepared by the Mayor. Councillor Desjardins was unable to produce the document, saying that he had disposed of it. As part of a procedurally fair investigative process, other members of council were asked about the existence of such a document. The Mayor denied having created it and none of the other council members we spoke to recalled having seen it.

Analysis

- 52 Following the January 1, 2018 coming into force of amendments to the *Municipal Act, 2001*, the definition of “meeting” at section 238(1) is as follows:
- “meeting” means any regular, special or other meeting of a council, of a local board or of a committee 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.
- 53 The Act 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 materially advance the business or decision-making of council.

- 54 Four members of council were present at town hall at the same time on January 11. As council for the Village of Casselman has five members, only three members are required for a quorum. A quorum of council was therefore represented at town hall on the morning of January 11.
- 55 My Office was able to confirm that two separate discussions took place among the quorum of council that was present at town hall on January 11, 2018. I am satisfied, however, that neither of these two discussions dealt with any matter in a way that materially advanced the business or decision-making of council.
- 56 The first discussion related to a council member's private life and not to the business or decision-making of council.
- 57 The second related to the events of the second closed session on January 9. This discussion was retrospective and related only to the reasons for Councillor Desjardins' early departure from the second closed session. There is no indication that this discussion materially advanced the business or decision-making of council.
- 58 The discussions among a quorum of council for the Village of Casselman at town hall on the morning of January 11 did not constitute meetings for purposes of the Act.

Opinion

- 59 Council for the Village of Casselman did not contravene the *Municipal Act, 2001* and its procedure by-law when it held closed sessions during the January 9, 2018 meeting of council under the personal matters exception.
- 60 Council for the Village of Casselman failed to provide sufficient information in its minutes with respect to the outcome of council's discussions during the first closed session of the January 9, 2018 meeting of council.
- 61 Council for the Village of Casselman contravened its procedure by-law when it failed to report back in public following each of the two closed sessions during the January 9, 2018 meeting of council.
- 62 Council for the Village of Casselman did not contravene the *Municipal Act, 2001* and its procedure by-law when a quorum of councillors attended town hall and had discussions on the morning of January 11, 2018.

Recommendations

- 63 I make the following recommendations to assist the Village of Casselman in fulfilling its obligations under the Act and enhancing the transparency of its meetings.

Recommendation 1

All members of council for 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 2

The Village of Casselman should ensure that its in camera votes comply with section 239(6) of the *Municipal Act, 2001* and that council clearly identify the item being voted on, formally vote on it, and record the outcome in the closed session meeting minutes.

Recommendation 3

The Village of Casselman should report back in open session following an in camera meeting, as provided in its procedure by-law.

Recommendation 4

The Village of Casselman should update its procedure by-law to include the mandatory exceptions under section 239(3) of the *Municipal Act, 2001* with respect to consideration of a request under the *Municipal Freedom of Information and Protection of Privacy Act* and of an ongoing investigation under the *Ombudsman Act*.

Recommendation 5

The Village of Casselman should update its procedure by-law to accurately reflect its current meeting practices and the new open meeting provisions of the *Municipal Act, 2001*.

Report

- 64 The Village of Casselman was given the opportunity to review a preliminary version of this report and provide comments. The comments I received included concerns related to the open meetings complaints process and the ability of councillors to gather informally.

- 65 The *Municipal Act, 2001* gives citizens the right to raise complaints as part of the checks and balances that exist to ensure municipal transparency. My investigations are conducted with this in mind, regardless of the identity or motivations of the individuals who in good faith make open meeting complaints to my office.
- 66 As I state in this report, the Act does not prevent members of council from getting together outside of a formal meeting. The Act prohibits such gatherings only insofar as they materially advance the business of the municipality outside of the procedural protections set out in the Act. My reports consistently reflect this fact.
- 67 My report should be shared with council and made available to the public as soon as possible, and no later than the next council meeting. In accordance with the requirement in section 239.2 (12) of the Act, council should pass a resolution setting out how it intends to address the report.



Paul Dubé
Ombudsman of Ontario