

**REPORT TO  
THE CORPORATION OF THE MUNICIPALITY OF MISSISSIPPI MILLS  
REGARDING AN INVESTIGATION INTO VARIOUS CLOSED MEETINGS OF  
WORKING/ADVISORY GROUPS DURING 2015, 2016, and 2017**

**I. COMPLAINT**

The Corporation of the Municipality of Mississippi Mills (“Municipality”) received six complaints in close succession about closed meetings of various working or advisory groups. The essence of the complaints is that the meetings did not meet the requirements of the Municipal Act, 2001, as amended (“Municipal Act” or “Act”).

The requests were sent to the offices of Amberley Gavel Ltd. (“Amberley Gavel”) for investigation. Since the complaints were substantially similar in nature, all six are reported out in this Report.

**II. JURISDICTION**

The Municipality appointed Local Authority Services (LAS) as its closed meeting investigator pursuant to section 239.2 of the *Municipal Act*.

LAS has delegated its powers and duties to Amberley Gavel to undertake the investigation and report to Council.

**III. BACKGROUND**

Section 239 of the *Municipal Act* provides that all meetings of a municipal council, local board or a committee of either of them shall be open to the public. This requirement is one of the elements of transparent local government.

The section sets forth exceptions to this open meeting rule. It lists the reasons for which a meeting, or a portion of a meeting, may be closed to the public. The section confers discretion on a council or local board to decide whether a closed meeting is required for a matter. That is, it is not required to move into closed session if it does not feel the matter warrants a closed session discussion. Section 239 reads in part as follows:

### **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).

The *Act*, under subsections 239(5) and 239(6), does not permit a council, committee, or local board to vote while in closed session unless the *Act* requires or permits the meeting to be closed by virtue of one of its exceptions and the vote is for a procedural matter or for giving directions or instructions to officers, employees or agents of the municipality, local board or committee of either of them or persons retained by or under a contract with the municipality or local board.

The *Act* authorizes the municipality to appoint an investigator who has the function to investigate in an independent manner, on a complaint made to him or her by any person, whether the municipality or a local board has complied with section 239 or a procedure by-law under subsection 238(2) in respect of a meeting or part of a meeting that was closed to the public, and to report on the investigation (section 239(2)).

## **IV. INVESTIGATION**

Documents reviewed during the investigation included the Agenda and Minutes and Supporting Documents for the various meetings at issues in the complaint, the Procedural By-Law and Notice By-law, and other relevant documentation. The CAO and the Municipal Clerk (“Clerk”) were also consulted during the investigation.

## V. BACKGROUND

### (a) The Complaints

There are six complaints:

1. That the Municipal Property Working Group held an illegal closed meeting on November 1, 2016;
2. That the Municipal Property Working Group conducted several meetings at various times in 2015 (three dates provided) and in 2016 (eight dates provided, including November 1, 2016) for which no public notice was given;
3. That the Gemmill Park Working Group held an illegal closed meeting on November 8, 2016 and January 17, 2017;
4. That there was no public notice for the Striking Committee meeting held on December 20, 2016;
5. That there was no public notice about a meeting of the Municipality's Accessibility Advisory Committee held on February 15, 2017; and
6. That no public notice, agendas, or minutes are provided for the Almonte Skatepark Committee.

The six complaints involve 5 committees. Before examining the specific complaints, it is necessary to determine the status of each of these committees.

Section 238 of the Municipal Act reads in part as follows:

**238. (1)** In this section and in sections 239 to 239.2,

“committee” means any advisory or other committee, subcommittee or similar entity of which at least 50 per cent of the members are also members of one or more councils or local boards; (“comité”)

“local board” does not include police services boards or public library boards; (“conseil local”)

“meeting” means any regular, special or other meeting of a council, of a local board or of a committee of either of them. (“réunion”) 2001, c. 25, s. 238 (1); 2006, c. 32, Sched. A, s. 102 (1, 2).

### **Procedure by-laws respecting meetings**

(2) Every municipality and local board shall pass a procedure by-law for governing the calling, place and proceedings of meetings. 2001, c. 25, s. 238 (2).

## Notice

(2.1) The procedure by-law shall provide for public notice of meetings. 2006, c. 32, Sched. A, s. 102 (3).

Subsection 238 (1) defines a committee for the purposes of sections 238 and 239 only as having at least 50% of its members as members of council. The significance of this is that a “committee” with 50% or more of its members being members of council is required to comply with the closed meeting requirements found in section 239 of the Act.

A council committee which is composed of fewer than 50% members of council is not bound by the closed meeting requirements of section 239. That is, unless the Procedure By-law of the municipality brings those committees under the closed meeting rules in section 239.

Thus, the analysis must begin by categorizing each of the committees that council created and are now subject to the complaints.

### **(b) Committees with at least 50% of its Members being Members of Council**

#### **(i) The Municipal Property Working Group**

The Municipal Property Working Group was established by council in late 2013 during consideration of the Recreation Master Plan Final Report to “review surplus parkland”. It is comprised of five Members of Council and supported by staff.

It is therefore a committee for the purposes of sections 238 and 239 and thus must comply with the statutory notice and closed meeting requirements.

Staff advised that the meetings were not advertised as public (open) meetings and public notice is not given. All minutes of the meetings went to an open session of Council.

On November 1, six Members of Council attended the meeting of the Municipal Property Working Group. A substantive recommendation, regarding public consultation about various blocks of land, was made during the meeting. This recommendation was then forwarded to Council, through Committee of the Whole on November 15. A decision was deferred to the following Committee of the Whole meeting on December 6, 2016 for a more fulsome discussion.

At the December 6 meeting, a Member of Council called a point of order on a motion to receive the minutes of the Municipal Property Working Group.

The Councillor stated that the presence of a quorum on November 1 rendered the meeting illegal, that there had been no public notice, and that the vote on public consultation failed on a vote of 3 to 3. There was no recorded vote at the meeting. The CAO who took the minutes said that the “guest” councillor did not vote on the November 1 motions.

After the Chair's ruling to receive the minutes was upheld, the minutes were received and substantive decisions were made with respect to public information and input.

With respect to the Councillor, the committee meeting was illegal not because non committee members attended the meeting but rather because no public notice of the committee meeting was given.

Members of council who are not members of the committee are not prohibited from attending a meeting of a committee. Unless the Procedure By-law otherwise provides, they attend without the right to participate or vote; in effect they are there to observe. Their attendance alone does not turn the committee meeting into a meeting of council.

### **(ii) The Gemmill Park Working Group**

The Gemmill Park Working Group was also established by council in late 2013 during consideration of the Recreation Master Plan Final Report "to work on establishing Gemmill Park as the Town's main outdoor recreation venue". The Working Group is comprised of four Members of Council and includes staff and consultants.

It is therefore a committee for the purposes of sections 238 and 239 and thus must comply with the statutory notice and closed meeting requirements.

Staff advised that the meetings were not advertised as public (open) meetings and public notice is not given. All minutes of the meetings went to an open session of Council.

The Working Group met five times in 2016 and (to the date of the complaint) once in January 2017. Its December 19 meeting was combined with a meeting of the Municipality's "Canada 150 Working Group". Staff concluded that because this involved a quorum of Council Members, this combined meeting was advertised as an open meeting of the working groups. As will be discussed below, it was an appropriate action but for the wrong reason.

There was an identified overlap in scope between the Gemmill Park Working Group and the Canada 150 Working Group. This overlap was discussed at the December 20, 2016 meeting of Council's Striking Committee where the Striking Committee was asked to clarify the differing areas of responsibility for the two working groups. The Striking Committee recommended to Council that the Gemmill Park Working Group deal with all construction matters relating to Gemmill Park and the Canada 150 Working Group deal with all matters relating to the 150 celebrations (Canada's 150<sup>th</sup> Birthday).

**(iii) The Striking Committee**

The Striking Committee was set up pursuant to the Municipality's Procedure By-law and is comprised of the Mayor and three Councillors.

It is therefore a committee for the purposes of sections 238 and 239 and thus must comply with the statutory notice and closed meeting requirements.

Staff advised that the meetings were not advertised as public (open) meetings and public notice is not given. All minutes of the meetings went to an open session of Council.

As discussed earlier, the Striking Committee was asked to meet in December to address certain matters for which Council needed advice.

**(c) Committees Composed of less than 50% of its Members being Members of Council**

**(i) The Accessibility Advisory Committee**

The Accessibility Advisory Committee advises and assists the Municipality to promote and facilitate a barrier-free community for citizens. It is comprised of one Member of Council and four to six members of the public, with the majority being persons who have disabilities. Notice of the meetings is given through the Municipality's open agenda and calendar. The cancellation of the meeting at issue in the complaint was communicated publicly.

Because composition of the committee consists of less than 50 percent members of council, it is not a committee for the purposes of sections 238 and 239 of the Act and therefore is not required to comply with the closed meeting rules.

**(ii) The Almonte Skate Park Committee**

The Almonte Skate Park Committee is a group made up of volunteers within the community who are working to have a skate park built within Gemmill Park. Its work has been supported, but not directed or funded, by the Municipality's Recreation and Culture Department. It is not a committee of council although it is calendarized on the municipality's meeting calendar which is a publicly accessible document. Council has not appointed any Members of Council to this Committee.

## **VI. ANALYSIS AND FINDINGS**

### **(a) The Definition of a Committee**

Section 238 of the Municipal Act states that a committee is “any advisory or other committee, subcommittee or similar entity of which at least 50 per cent of the members are also members of one or more councils or local boards” for the purposes of sections 238 and 239. Thus, a committee can be titled an advisory committee, a subcommittee of another body, a standing committee of council, or other entity. The name does not matter in determining the status of the committee.

If at least 50 percent of the members of the entity are members of council or a local board, it is a committee of that council or local board for the purposes of sections 238 and 239.

If less than 50 percent of the members of the entity are not members of Council then it is not a committee as defined in section 238 of the Municipal Act. Thus, it is not obligated to comply with the closed meeting requirements in section 239. It is a committee created by council but one that falls outside the ambit of section 238. However, if the Procedure By-law requires, it must comply with the closed meeting requirements.

If it is a committee within the definition in section 238 of the Municipal Act, it is required to follow the dictates of the Municipal Act in terms of public notice, open meetings, restrictions on voting while in closed session, and minutes must be kept.

### **(b) The Definition of a Meeting**

We have previously defined it as a gathering of a quorum of members of council who enter into discussions that materially advance the business of the municipality or that set the foundation for decisions that would materially advance the business of the municipality at a future date.

### **(c) The Use of Advisory Committees or Working Groups**

Subsection 2.b of the Mississippi Mills Procedure By-law allows for the creation of advisory committees (also known as working groups) which is “an entity created by Council from time to time with Terms of Reference to advise Council of a specific matter or area with a membership comprised of less than 50 per cent Council members”. Advice on the “specific matter or area” is usually time-limited. The Canada 150 Working Group is a good example of this type of ad-hoc committee; its life will end after Canada’s 150th year (other than perhaps for debrief meetings).

On the other hand, subsection 2.h of the Procedure By-law defines a “Committee” as “a body established by Council from time to time, including a sub-committee or similar entity whose membership is comprised of at least 50 per cent Members of Council. It specifically excludes “Advisory Committees” which have fewer than half its members are members of council.

Council should be cautious when creating entities that do not fall within the definition in sections 238:

1. It is not the role of staff to be members of committees alongside members of council. Staff’s role as outlined in section 227 of the Act is to provide advice to council and its committees on policies and programs of the municipality and to implement council’s decisions. Certainly, a council can delegate its decision-making powers to staff to the extent permitted under the Municipal Act. However, it blurs the lines between council’s role and staff’s role if they are equal members of a committee or working group of council, jointly making decisions or recommendations to council.
2. Unless the meetings are purposely and, with notice, accessible to the public, the principles of openness and transparency of municipal decision-making are at risk of being ignored, even if unintentionally. Quite often, the public would like the opportunity to witness what goes into a recommendation in terms of the discussion, not just read the outcome in a set of minutes. The subjects discussed at most of the working group/advisory committee meetings would not otherwise have been permitted as closed items under the Municipal Act.
3. Many municipalities have adopted the view that all council committees, both section 238 committees and non 238 committees, should be open and transparent. They apply the sections 238 and 239 requirements to all committees. It is best practice.

**(d) Conclusions on the Complaints**

**i. The Municipal Property Working Group / The Gemmill Park Working Group / The Striking Committee**

All the members (100%) of the Municipal Property Working Group are Members of Council.

The Gemmill Park Working Group has eight regular members. At least 50% of the composition of the Working Groups are Members of Council.

All the members (100%) of the Striking Committee are Members of Council.

Each therefore meets the definition of a committee for the purposes of sections 238 and



239 of the Municipal Act. Each is required to follow the requirements of those sections in terms of public notice, open meetings, restrictions on voting (substantive decision making) while in closed session, and the creation of a record of the proceedings. To have done otherwise is a breach of the Municipal Act.

We acknowledge that the Municipality does provide a public record of the proceedings of these committees. However, there is no public notice of their meetings. The Municipality has treated these meetings as closed sessions (i.e. not open to the public) without adhering to the requirements or limitations of the Municipal Act.

## **ii. The Accessibility Advisory Committee**

The Accessibility Advisory Committee has only one Member of Council. Fifty percent of its membership is not comprised of Members of Council. Hence, it is not a committee of Council for the purposes of sections 238 and 239 of the Municipal Act or in the Municipality's Procedure By-law. Although the principles of transparency and openness would suggest that the Committee's meetings should be open to the public, it is not a breach of the Municipal Act if they are not.

## **(iii) The Almonte Skate Park Committee**

It is not a committee of council or a local board and it does not attract the requirements of the Municipal Act.

## **VII. CONCLUSION**

Amberley Gavel has concluded that the Municipality of Mississippi Mills had improper meetings of the Municipal Property Working Group, the Gemmill Park Working Group, and the Striking Committee in that no public notice was provided for their meetings, the meetings were effectively closed to the public, and substantive decisions were made in the absence of the public. The requirements of the Municipal Act were not met.

We have been advised that the Municipality is now providing public notice for the working group meetings and will conduct those meetings in public, except when the subject matter is a permitted exception to the open meetings rule under the Municipal Act.

The Accessibility Advisory Committee is a committee of Council but it is not a committee of council for the purposes of sections 238 and 239 as less than 50% of its membership are Members of Council.

Lastly, the Almonte Skate Park is a group of citizen volunteers that was not created by council and is not a committee of Council or a local board as that term is defined.

## **PUBLIC REPORT**

We received full co-operation from the CAO and Clerk and we thank them.

This report is forwarded to the Council of the Municipality of Mississippi Mills. The Municipal Act provides that this report be made public. It is suggested that the report be included on the agenda of the next regular meeting of Council or at a special meeting called for the purpose of receiving this report prior to the next regular meeting.

*Nigel Bellchamber*

for

**AMBERLEY GAVEL LTD.**

**June 2017**