



ADR CHAMBERS OMBUDS OFFICE INVESTIGATION REPORT

Complainant: [REDACTED]
Complaint Reference Number: MUN-23-0316
Complaint Submission Form Received: May 19, 2016 (Dated March 29, 2016)
Date All Required Information Received: September 9, 2016
Report Date: January 17, 2017
Investigator: Kimberly Parish

Complaints Addressed by [REDACTED]

The first component of [REDACTED] complaint stems from a Town of Milton Council meeting which took place on December 14, 2015 in which a tax levy was introduced which would phase out the urban and general tax levies and implement one “Uniform Tax Rate” for all residents of the Town of Milton (“Town”). [REDACTED] stated in a telephone interview with me on May 31, 2016 that this tax measure was introduced “abruptly.” Councillors could not debate the procedure at this meeting and rural residents of Milton were not provided with an opportunity to speak at this meeting. [REDACTED] notes the introduction of the “Uniform Tax Rate” was done in an “undemocratic and covert manner” and has contravened the *Municipal Act, 2001* (“*Municipal Act*”).

The second component of [REDACTED] complaint is that Council of the Whole for the Town voted to pass resolution CORS 008-16 2016 on February 8, 2016. This has led to Council voting and passing resolution CORS 008-16 2016 on February 22, 2016.

As stated by [REDACTED], the passing of CORS 008-16 2016 has violated the *Municipal Act* for the following reasons:

- 1) The *Municipal Act* does not allow tax measures to be passed beyond one calendar year, except if passed in November or December of the preceding year, as per section 317 (1), (2) of the *Municipal Act*.
- 2) The *Municipal Act* allows for the approval of multi-year budgets as per section 291 (1), but a multi-year budget was not passed.
- 3) If a tax levy is passed, it should only be for one year, as the budget is in effect for one year. Council of the Whole and Council passed a tax measure which takes effect in 2017 (and future budget years) and this is not permitted under the *Municipal Act*.
- 4) The old by-law had a measure in place that the general levy applied to rural residents and the urban tax levy applied to urban residents. This old by-law was never rescinded and should still remain in effect.

██████████ further corresponded to me by e-mail on July 22, 2016. In her e-mail, ██████████ indicated the Town received an opinion from their Town Solicitor regarding the Town's position there was no violation to the *Municipal Act* when the Uniform Tax Rate was implemented. She states that some Milton residents have requested a copy of this letter but the Town has refused to provide a copy of the letter.

Town of Milton's Response

The agenda for the December 14, 2015 Council meeting was posted and available on the Town of Milton's website on Thursday December 10, 2015. The agenda provided information regarding two Notices of Motion; to waive procedural rules and to address the Urban Service Area Tax Levy Phase Out.

The Town notes that members of the public could have registered to speak to the matter but there were no delegates which registered to speak in advance of the December 14, 2015 Council meeting.

At the December 14, 2015 Council meeting, a motion was held and it was voted 9-3 in favor of the Uniform Tax Rate.

On February 8, 2016, at the Committee of a Whole Meeting, Council voted to waive procedures and immediately consider a motion regarding the previous decision at the December 14, 2015 meeting relating to the implementation of the Uniform Tax Rate. Over twenty delegates were given the opportunity to speak on this matter. Following the statements made by the delegates, Council still decided to stand by the original decision made at the December 14, 2015 meeting and phase out the urban service area tax levy.

On May 9, 2016, Milton Town Council members were asked to pass the required Tax Levy By-law. Milton residents convinced Council to defer the decision to the May 30, 2016 Town Council meeting.

On May 30, 2016 a Milton Town Council meeting was held. The procedures within By-law 063-2015 were waived by a unanimous vote as allowed by section 2.2.2 to allow each delegate choosing to speak a maximum of 5 minutes, and not 10 minutes as stated in section 7.8.8 of By-law 063-2015.

It is the Town's position that the letter from their Town Solicitor is protected by Solicitor/Client privilege and the contents of this letter are not to be shared with the public. The Town has not agreed to share the contents of the letter with ADR Chambers Ombuds Office.

The Town has provided the following in response to ██████████ complaint that CORS 008-16 2016 has violated the *Municipal Act*:

The Town references section 326 of the *Municipal Act* which provides the "code" for by-laws which implement levies for special services. By-law number 122-2001 was passed on October 29, 2001 and created an "Urban Service Area." This by-law was used to identify special services and designate which areas receive the special services. The Town has passed a special levy by-law annually to determine and charge the specific amount to be collected yearly as the special levy. Section 326(4) of the *Act* permits the Town to do this. By-law 122-2001 must remain in effect for the 2016 tax year to form the basis for

the special levy imposed through the 2016 special tax levy by-law. This enables the two by-laws to work together.

In 2017, the Town will no longer have the special urban tax levy and by-law *122-2001* will need to be repealed. The resolution reached by Council for the Town in February 2016 established that Council's intention was not to pass a special urban tax levy bylaw for 2017 and no special levy by-law was passed. The 2017 budget has not been passed by Milton Town Council.

The Town has exercised its discretion under section 326 of the *Municipal Act*. It is not a requirement that a municipality impose a special levy to recover costs within a particular area of the municipality. This premise extends to areas within the municipality which receive more services or services which differ from other areas of the municipality. Section 326(1) (e) of the *Municipal Act* establishes the discretionary nature of cost recovery for special services. It is this discretionary power that enables the Town to set the special levy to recover any portion, or up to the full cost of the special services.

Thus the Town's position is that there has been no contravention to the *Municipal Act* by the implementation of the Uniform Tax Rate.

ADR Chambers Ombuds Office Investigation

ADR Chambers Ombuds Office reviewed the documentation provided by both ██████████ and the Town of Milton and conducted telephone interviews with:

- ██████████
- Mr. Troy McHarg, Town Clerk for the Town of Milton

Chronology of Investigation

ADR Chambers Ombuds Office received written correspondence dated March 25, 2016 from ██████████ ██████████ outlining the complaints below. A formal Complaint Submission Form was received from ██████████ on May 19, 2016. An e-mail was sent to ██████████ on May 27, 2016, and a telephone interview was conducted with her on May 31, 2016.

A telephone interview was conducted with Mr. McHarg, on June 27, 2016 and a letter was sent via e-mail to Mr. McHarg on that same date. The letter outlined ██████████ specific complaints regarding the Town of Milton's violation of the *Municipal Act*.

Written correspondence was received from Mr. McHarg on July 5 and July 8, 2016. This correspondence addressed some of the complaint concerns raised in the letter provided to Mr. McHarg on June 27, 2016.

An e-mail was received from ██████████ July 22, 2016 which requested additional information from the Town.

A letter was then sent to Mr. McHarg on August 5, 2016 requesting further information from the Town.

A response was received via e-mail from Mr. McHarg on August 9, 2016.

A telephone call was scheduled and took place with Mr. McHarg on August 12, 2016.

Written correspondence with additional information was received from Mr. McHarg on September 9, 2016.

Written correspondence was received via e-mail November 2, 2016 and December 9, 2016 from Mr. McHarg.

Written correspondence from ██████████ was received in a letter via e-mail on November 21, 2016.

ADR Chambers Ombuds Office Analysis

The chronology surrounding the Uniform Tax Rate is as follows:

- As noted by the Town, on December 10, 2015, the Town advised members of the public through a posting of the agenda on their website about the December 14, 2015 Council meeting. The Town is required to do this as per Section 6.2 of Procedure By-Law 063-2015 which states: *“When reasonably possible, agendas for Council and Committee meetings shall be made available to the public by 4:30 p.m. on Thursdays prior to a meeting.”*¹

The agenda advising members of the public of the December 14, 2015 Council meeting stated the following:

“IX. NOTICE OF MOTIONS

1 Notice of Motion - Councillor Malboeuf

Subject: Waive Procedure Rules to Permit Immediate NOM Consideration

2 Notice of Motion - Councillor Malboeuf

*Subject: Urban Service Area Tax Levy Phase-Out”*²

Upon review of the electronic copy of the Town of Milton Council Agenda released to Milton residents December 10, 2015, details regarding the waiving of procedural rules and the Urban Service Area Tax Levy Phase Out were provided to the Milton residents. This information was located on page 9 of the agenda contained within section IX, under the first and second items of Notice of Motion addressing the subject items: “Waive Procedural Rules to Permit Immediate NOM Consideration and Urban Service Area Tax Levy Phase Out.” Upon electronically clicking on the sections in blue for Notice of Motion 1 & 2: “Notice of Motion - Councillor Malboeuf”, additional information is available which states:

¹ Consolidated Version - Amended by By-law 006-2016, 019-2016
of By-law No. 063-2015, page 13.

² Town of Milton Council Agenda December 14, 2015, page 9.

1. Notice of Motion - Councillor Malboeuf:

“WHEREAS section 7.9.3 of the Town of Milton Procedure By-Law 063-2015 permits a Notice of motion be considered upon its introduction by an affirmative vote of two-thirds of the members present, where it is deemed impractical or not in the best interests of the Town of Milton to delay consideration;

BE IT RESOLVED THAT the pertinent rules contained in section 7.9 of Procedure By Law 063-2015 be waived to permit immediate consideration by Council of the notice of motion on the agenda related to the urban service area tax levy phase-out due to timing requirements for 2016 budget preparation.”

2. Notice of Motion - Councillor Malboeuf:

“BE IT RESOLVED THAT fifty per cent of the net cost of the programs and services normally funded through the urban service area tax levy be included in the urban service area tax levy in the 2016 budget;”

AND FURTHER THAT one uniform tax rate be implemented for the 2017 and future budgets;

AND FURTHER THAT staff be directed to present the necessary by-law to Council for approval.”

- A Notice of Motion was introduced at the December 14, 2015 Town of Milton Council Meeting stating that whereas section 7.9.3 of the Town of Milton Procedure By-Law 063-2015 permits a notice of motion be considered upon its introduction by an affirmative vote of two-thirds of the members present, where it is deemed impractical or not in the best interests of the Town of Milton to delay consideration, be it resolved that the pertinent rules contained in section 7.0 of Procedure By-Law 063-2015 be waived to permit immediate consideration by Council of the notice of motion on the agenda related to the Urban Service Area Tax Levy Phase Out due to timing requirements for 2016 budget preparation. The Motion was carried after a 9-2 vote in favour of the Motion.
- This was followed by a second Notice of Motion stating that fifty per cent of the net cost of the programs and services normally funded through the urban service area tax levy be included in the urban service area tax levy in the 2016 budget and that one uniform rate be implemented for the 2017 and future budgets. The Motion was carried after an 8-3 vote in favour of the Motion.
- On February 8, 2016 at the Town of Milton Committee of the Whole Meeting, Council voted to waive procedures to allow for immediate consideration of a motion to reconsider the previous decision on the tax rate made at the Town of Milton meeting on December 14, 2015. The motion was carried forward through a vote of 9-2 in favour and twenty delegates were given an opportunity to speak on this matter. After the delegates spoke, Council stood by their original decision to phase out the urban services tax levy, with 6 voting in favour and 5 against.

- Council ratified this decision to phase out the urban services tax levy on February 22, 2016.
- On May 9, 2016, Council was asked to pass the Tax Levy By-law. Milton residents spoke at this meeting and convinced Council to defer their decision to the May 30, 2016 Council meeting.
- On May 30, 2016, Council relied on section 2.2.2 of By-law 063-2015 when they waived procedural rule contained in section 7.8.8 of By-law 063-2015, which permitted Town of Milton delegates to each speak for a maximum of five minutes instead of 10 minutes on the urban services tax levy issue. Council then voted 8-3 in favor to pass the tax levy by-law.

The first issue is whether or not there have been procedural violations by the Town with respect to by-law 063-2015 during the Town of Milton Council meeting on December 14, 2015.

The agenda of December 10, 2015 provided advance notice that a meeting was to be taking place on December 14, 2015 to address two Notices of Motion to waive the procedural rules and to address an Urban Service Area Tax Levy Phase Out. The agenda also provided some information regarding the two Notices of Motion to be brought up at the December 14, 2015 Council meeting.

██████████ has stated that the residents were not given an opportunity to speak at this meeting. Mr. McHarg has stated that no members of the public registered as a delegate to speak at this meeting.

However, I note section 7.9.2 of Procedure By-law 063-2015 states:

*“Notices of Motion shall be in writing and delivered to the Clerk by the agenda deadline, to be included on the agenda for introduction. Notices of motion shall not be discussed or debated upon introduction, but shall be included on the next regular Committee meeting agenda for consideration.”*³

A vote was held at the December 14, 2015 meeting and a motion was carried forward which favored the phasing out of the Urban Services Tax Levy.

Upon my review of the documentation provided, which includes viewing a taped webcast of the December 14, 2015 Town of Milton Council meeting, it was demonstrated that it was not in the Town’s best interest to delay consideration of the motion of the Urban Service Area Tax Levy Phase Out. Council relied on section 7.9.3 of By-law 063-2015 which states: *“Where it is deemed impractical or not in the best interests of the Town of Milton to delay consideration, a notice of motion may be considered by Committee upon its introduction by an affirmative vote of two-thirds of the members present.”*⁴

It is noted that there was a 9-2 vote in favour of the Motion in this case, meaning that the satisfaction of the requirement for an affirmative vote of two-thirds of the members was satisfied. Therefore, Committee was entitled to immediately consider the notice of motion related to the Urban Service Area Tax Levy Phase Out during the December 14, 2015 meeting.

³ *Supra*, note 1 at 17.

⁴ *Ibid* at pages 17-18.

With respect to section 317 of the *Municipal Act*, this provision states that a local municipality may pass a by-law levying amounts on the assessment of property in the local municipality rateable for local municipal purposes and that a by-law shall be passed in the year that the amounts are to be levied, or may be passed in November or December of the previous year if it provides that it does not come into force until a specified day in the following year. However, the by-law that has been passed in this case was passed in 2016 and provides for the levy and collection of rates of levies for 2016. No by-law has been passed for 2017.

Therefore upon review of the documentation and information obtained from ██████████ and Mr. McHarg, the policies and procedures in place were followed by the Town of Milton during this December 14, 2015 meeting. The Town of Milton has complied with the procedures outlined in By-law 063-2015.

As the implementation of this Uniform Tax Rate resulted in a significant change to the General Tax levy which the rural residents of Milton had in place for the past 15 years, it is understandable many residents would oppose the Uniform Tax Rate being implemented as it significantly impacts the amount of taxes these residents had been accustomed to paying. It would have been appropriate for the Town of Milton prior to the meeting of December 14, 2015 to have provided its rural residents with more information regarding the Uniform Tax Rate and what the implications for them would be. It would have been beneficial if the Town could have heard the concerns of the rural residents regarding the Urban Services Tax Levy Phase Out before an initial vote was held favoring the phasing out of the Urban Services Tax Levy.

The Milton rural residents did not speak as delegates regarding the Urban Services Tax Levy Phase Out prior to the February 2016 meeting. As two months had passed since the December 14, 2015 meeting, it would be understandable that frustration levels would continue to increase among the rural residents of Milton. However, the Town of Milton Council meetings in May, 2016 provided delegates with a further opportunity to speak for a maximum of five minutes on the implementation of the Uniform Tax Rate.

██████████ complaint also is that the Town has violated the *Municipal Act*. The Town maintains the position there has been no violation of the *Municipal Act* when they implemented the Uniform Tax Rate and removed the General Tax Levy and the Urban Tax Levy. The rationale for their position has been provided within this report.

The Town has responded to this by relying on section 326 of the *Municipal Act* which they submit provides them “discretionary” power to set the special levy to recover any portion of the costs of the special services. The Town also relies on section 326(4) of the *Municipal Act* when determining the specific amount to be collected as the special levy each year.

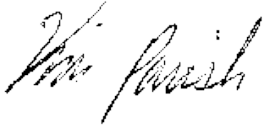
The Town passed a special levy by-law in May of 2016. It is the Town of Milton’s position that By-law 122-2001 will need to remain in effect for the 2016 tax year as it works along with the special levy by-law passed in May of 2016. This is the reasoning why by-law 122-2001 has not been rescinded.

It is noted that By-law 122-2001 is a by-law to establish to establish rates for areas of the municipality benefiting from rate services. The By-law stipulates that the rates applicable to the urban area will be set in an annual levying by-law. However, the Town has the discretion to determine what the rates will be each year according to the *Municipal Act* and there is no language in this By-law restricting that

discretion. Additionally, as a special levy by-law has been passed for 2016, the decision to not rescind By-law 122-2001 at this time is not unreasonable.

Recommendation

ADR Chambers Ombuds Office does not recommend any further action by the Town of Milton concerning this complaint.



Kimberly Parish
Investigator