



## INVESTIGATION REPORT

**Complainant:** [REDACTED]  
**Complaint Reference Number:** [REDACTED] MUN-11-0216  
**Complaint Submission Form Received:** May 26, 2016  
**Date Required Information Received:** September 09, 2016  
**Report Date:** January 17, 2017  
**Investigator:** Kimberly Parish

### Complaint

[REDACTED] first complaint states that the Town of Milton (“Town”) ignored procedural rules and passed a motion at the December 14, 2015, Town Council Meeting. The motion was carried out without debate to eliminate the two-tiered tax system which had been in place for many years and replaced it with a Uniform Tax Rate. [REDACTED] stated this tax issue was not an emergency and the motion should not have been brought forward in this way.

As noted by [REDACTED], the December 14, 2015 Town Council Meeting was a closed meeting. There was no public debate or discussion at this meeting. She indicates that a vote was carried out and 9 voted in favor and 3 opposed to the Uniform Tax Rate, and the motion was passed. She states that the rural residents had not been given an opportunity to share their views or have any input regarding this tax issue.

[REDACTED] has noted that at the February 8, 2016 meeting held by the Town, a non-negotiable motion was brought forward and voted on. The vote was 6-5 in favor of getting rid of the existing tax rate system and implementing a Uniform Tax Rate. [REDACTED] noted that the February 8, 2016 meeting again did not allow the rural residents an opportunity to address their concerns.

[REDACTED] second complaint is that the Town violated Municipal By-law 122-2001. [REDACTED] states this By-law has been in effect since 2001. [REDACTED] states By-law 122-2001 was never rescinded prior to the implementation of the Uniform Tax Rate.

By-law 122-2001 states:

*BEING A BY-LAW OF THE CORPORATION OF THE TOWN OF MILTON  
TO ESTABLISH RATES APPLICABLE TO AREAS OF THE MUNICIPALITY  
IN RESPECT OF URBAN SERVICES*

*WHEREAS it is desirable to review and reconsider the areas of the Town of Milton benefiting from urban services, such as bus service, street lighting, crossing guards, and the use of water in connection with fire hydrants, and to establish an appropriate rate structure;*

*AND WHEREAS The Municipal Act, Regional Municipality of Halton Act and the Public Utilities Act permit the Municipality to establish rates applicable to areas of The Municipality in respect of urban services;*

*NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE Town of Milton  
HEREBY ENACTS AS FOLLOWS:*

- 1. All prior service areas, except as set forth in this by-law are dissolved.*
- 2. In the Town of Milton, there shall be an area known as the “Urban Service Area” of the Town of Milton and which shall be defined in Schedule “A” hereto.*
- 3. The rates applicable to the Urban Service Area shall be set forth from time to time in the annual levying by-law considered and passed by the council of the Municipality and imposed on the assessed values of such rateable property within such area.*
- 4. By-law 35-88, By-law 81-95, By-law 49-97, a By-law 50-97, are repealed as of the date of the coming into force of this by-law.<sup>1</sup>*

**Town of Milton’s Response**

Regarding ██████████ first complaint, Mr. McHarg states the agenda for the December 14, 2015 meeting was posted to their website on December 10, 2015. The agenda listed two notices of motion to address: waiving of procedural rules and the Urban Service Area Tax Levy Phase Out. No members of the public registered as delegates to speak at this meeting.

Mr. McHarg further responds that section 2.2.2 of By-Law 063-2015 permits the Town to waive any of the rules contained in By-Law 063-2015.

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<sup>1</sup> Corporation of the Town of Milton By-Law 122-2001, page 1.

Section 2.2.2 of the *Corporation of the Town of Milton By-Law No. 063-2015* states:

*Notwithstanding subsection 2.2.1, the rules and regulations contained in this by-law may be suspended by Council or Committee on a single occasion by a vote of two-thirds of the entire Council or Committee, provided the suspension does not contravene the requirements of the Municipal Act, 2001 or any other statute.<sup>2</sup>*

Regarding ██████████ second complaint that the Town has not rescinded Municipal By-Law 122-2001 prior to implementing the Uniform Tax Rate, the Town relies on section 326 of the *Municipal Act, 2001* (“*Municipal Act*”) which provides the “code” for by-laws that implement special services levies. Section 326 of the *Municipal Act*, is discretionary. A municipality is not required to impose a special levy to recover any of those costs for a particular area of the municipality, even if some areas of the municipality receive more services, or services which differ from other areas of the municipality.

The Town further states Section 326(1)(e) of the *Municipal Act*, establishes this discretionary nature of the cost recovery involving special services. The Town maintains that it is the discretionary nature of this power which enables it to set the special levy to recover any portion of the costs of the special services, up to the full cost.

The Town indicates that By-law 122-2001 was used to identify the special services and to designate the area that receives the special services. The Town has annually passed a special levy by-law, as specified under section 326(4) of the *Municipal Act*. This has been done to determine and change the specific amount to be collected as the special levy each year.

In May of 2016, the special levy by-law was passed by Council. The Town takes the position that By-law 122-2001 will need to remain in effect for the 2016 tax year to provide a valid basis for the special levy imposed through the 2016 tax levy by-law. The two by-laws work together. However, it states that By-law 122-2001 will need to be repealed with effect for the 2017 tax year when the Town will no longer have the special urban tax levy.

Based on the above it is the Town’s position that there has been no contravention to the *Municipal Act*.

### **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

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<sup>2</sup> Consolidated Version - Amended by By-law 006-2016, 019-2016  
of By-law No. 063-2015, page 4.

## **Chronology of the Investigation**

ADR Chambers Ombuds Office first received written correspondence from ██████████ on February 23, 2016 and a formal Complaint Submission Form on May 26, 2016. A telephone interview was conducted with ██████████ on May 31, 2016.

Mr. McHarg was interviewed, on June 27, 2016 and a letter was sent via e-mail to him on that same date that outlined ██████████ specific complaints. Written correspondence was received from Mr. McHarg on July 5 and July 8, 2016 which addressed some of the complaint concerns.

A letter was sent to Mr. Mr. McHarg on August 5, 2016 requesting further information from the Town of Milton which resulted in a telephone call with Mr. McHarg on August 12, 2016.

Information was received by email from Mr. McHarg on September 9, 2016.

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

Further written correspondence from ██████████ was received in a letter dated November 18, 2016.

## **ADR Chambers Municipal Ombuds Analysis**

The chronology surrounding the Uniform Tax Rate is as follows:

- The Town posted to their website on December 10, 2015, the agenda for the Town of Milton Council meeting of December 14, 2015. The agenda listed two notices of motion to address: waiving of procedural rules and the Urban Service Area Tax Levy Phase Out.
- 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 substantive issues which form the basis for ██████████ two complaints against the Town of Milton will be addressed first.

The first complaint is that the Town ignored procedural rules when it brought forward and passed a motion relating to the phasing out of the urban services tax levy at the December 14, 2015 Town Council Meeting.

As indicated above, a Notice of Motion was introduced at the December 14, 2015 Meeting invoking section 7.9.3 of Procedure By-Law 063-2015. Section 7.9.3 states:

*7.9.3 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.<sup>3</sup>*

Upon 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. Additionally, 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.

The Town has also relied on section 2.2.2 of the *Corporation of the Town of Milton Procedure By-Law No. 063-2015*, which permits the Town to waive any of the procedural by-laws

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<sup>3</sup> *Ibid*, page 17.

contained within By-law 063-2015 on a single occasion by a vote of two-thirds by Council or Committee. The Town of Milton has exercised their ability to waive procedural rules under section 2.2.2 of the *Corporation of the Town of Milton Procedure By-Law No. 063-2015* and has done so on other Council and Committee meetings where the urban services tax levy was voted on.

██████████ has stated that at the February 8, 2016 Town of Milton Committee of a Whole Meeting, a motion was brought forward which allowed Councilors to vote on the phasing out of the Urban Services Tax Levy. The Town of Milton stated that delegates were allowed to speak at this meeting prior to Council standing by their original decision that the Urban Services Tax Levy would be phased out.

The Town notes that no members of the Public registered as delegates to speak at the December 14, 2015 meeting. The rural residents of Milton spoke at Council meetings on February 8, May 9, and May 30, 2016. Procedural rules were waived to reduce each delegates speaking time to a maximum of five minutes as permitted by section 2.2.2 of By-law 063-2015.

In this complaint, the role for the Investigator for the Ombudsman is to look at the actions taken by the Town and consider if these actions violated the *Corporation of the Town of Milton Procedure By-Law No. 063-2015*. In this case, the Town of Milton has relied on section 2.2.2 of the *Corporation of the Town of Milton Procedure By-Law No. 063-2015*, which permits them to waive the procedures on a single occasion, upon a vote of two-thirds vote of entire Council or Committee. It is found there has been no procedural violation by the Town bringing a motion forward at the meetings held on December 14, 2015 and February 8, 2015.

Upon review of the electronic copy of the Town of Milton Council Agenda, which the Town of Milton states was posted to their website and available to Milton residents on December 10, 2015, the agenda provides information regarding the waiving of procedural rules and the Urban Service Area Tax Levy Phase Out. 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 becomes available which states:

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.”*

██████████ stated that the rural residents had not been given an opportunity to share their views or have any input regarding this tax issue. Mr. McHarg stated no members of the public registered as delegates to speak at this meeting.

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.”<sup>4</sup>*

The issue involving the change in the tax structure for both urban and rural residents was an issue significantly impacting the rural residents of Milton. It would have been appropriate to provide the Milton residents, both urban and rural with as much information regarding the proposal of this tax change in advance of the December 14, 2015 meeting. It also would have been beneficial if the Town had provided details to the rural residents as to why the Uniform Tax Rate needed to be implemented in a manner involving the waiving of procedural rules at Council meetings in order to allow motions to be passed expeditiously.

██████████ second complaint is that the Town of Milton has not rescinded By-law 122-2001 and it is therefore in violation of this By-law.

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.

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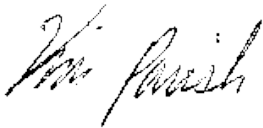
<sup>4</sup> *Ibid*, page 17.

I note 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.

The role of the Investigator for the Ombudsman is not to decide whether the Town of Milton was correct with keeping By-law *122-2001* in place for the remainder of 2016, but whether or not this has contravened the *Municipal Act*. Based on the above analysis it is found that the Town did not contravene the *Municipal Act*.

### **Recommendation**

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



Kimberly Parish  
Investigator