



## ADR CHAMBERS OMBUDS OFFICE INVESTIGATION REPORT

**Complainant:** [REDACTED]  
**Complaint Reference Number:** MUN-7-0116  
**Complaint Submission Form Received Dated:** May 19, 2016  
**Date All Required Information Received:** September 9, 2016  
**Report Date:** December 6, 2016  
**Investigator:** Kimberly Parish

### Complaints Addressed by [REDACTED]

[REDACTED] complaints are as follows:

The first part of the complaint brought forward by [REDACTED] is that a motion, Resolution 166-15 passed at the December 14, 2015 Council meeting is null and void.

Resolution 166-15 as stated in the Town of Milton (“Town”) meeting minutes for December 14, 2015:

*Res. 166-15: 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.<sup>1</sup>*

[REDACTED] states that section 7.9.3 of *Town of Milton Procedure By-law 063-2015* was wrongfully applied. [REDACTED] stated this section as stated in the by-law indicates that a notice of motion may only be considered at the Committee level only. The motion which was passed on December 15, 2016 was passed at the Council level.

[REDACTED] has stated that the meeting minutes and the webcast of the December 14, 2015 Town Council meeting made no reference to section 2.2.2 of By-law 063-2015. Only sections 7.9 and 7.9.3 were referenced in the meeting minutes.

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<sup>1</sup> Corporation of the Town of Milton Meeting Minutes for December 14, 2015, page 9.

██████████ has also stated she received a reply from Mr. McHarg on this issue and he advised that section 2.2.2 of By-law 063-2015 allowed the Committee/and or Council to waive the rules 7.9 and 7.9.3.

In my telephone interview with ██████████ on June 8, 2016, ██████████ stated that the motion passed on December 14, 2015 to remove 50% of the urban tax levy for 2016 had overruled the procedure of due notice as the Town staff needed to get the budget finalized.

██████████ stated Mr. McHarg confirmed with a parliamentary expert and that the Town correctly applied section 2.2.2 of By-law 063-2015. Ms. Walker requested from Mr. McHarg, the name of the parliamentary expert the Town conferred with but was not provided with the name of that person.

It was also noted by ██████████ that a motion which was passed by the Town on February 8, 2016 was passed at the Council level and not the Committee level. ██████████ states that in effect, section 7.9.3 of by-law 063-2015 was improperly applied when this motion was passed.

The second complaint by ██████████ is that the Town of Milton has not complied with section 7.8.8 of By-law 063-15, which states:

*7.8.8 Each person appearing in delegation shall be permitted to speak only once on the topic for a maximum of ten (10) minutes unless the matter has been previously considered by Committee, in which case delegations shall be limited to a maximum of five (5) minutes and delegates are requested to confine their delegation to information that was not available when the matter was previously considered.<sup>2</sup>*

██████████ referred to a Town of Milton Council Meeting held on May 30, 2016 to bring By-law 045-2016 back to the table for discussion. By-law 045-2016 addresses the implementation of the Uniform Tax Rate. Delegates present at this meeting could speak for a maximum of five minutes. ██████████ stated this is not what is stated in section 7.8.8 of By-law 063-2015 and thus the Town has violated its own by-law.

In addition, the Town made reference to a Solicitor's letter which maintains the Town had not contravened the *Municipal Act, 2001* ("Municipal Act") by implementing the Uniform Tax Rate. ██████████ stated that she later requested a copy of this letter from Mr. McHarg but was advised the letter was subject to Solicitor-Client Privilege and that the Town of Milton would not be providing her with a copy of that letter.

██████████ third complaint alleges that the Town violated the *Municipal Act*, as the Uniform Tax Rate was passed for budgets in years 2016 and 2017. ██████████ states this is a violation of the *Municipal Act* as a tax levy was passed for both current and future years.

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<sup>2</sup> Consolidated Version - Amended by By-law 006-2016, 019-2016 of By-law No. 063-2015, page 16.

## **Town of Milton's Response**

In response to ██████████ first complaint, Mr. McHarg states that section 2.2.2 of By-law *063-2015* permits the Town of Milton to waive any of the rules contained in By-law *063-2015*.

Relying on the above, the Town maintains the position that their actions are not null and void. The Town's view is that section 2.2.2 contained within By-law *063-2015* does not need to be referenced at a Council Meeting as it was not the rule being waived, but the rule permitting Council to waive the rules.

Mr. McHarg provided the name of the parliamentary expert the town conferred with to confirm they correctly applied section 2.2.2 of By-law *063-2015*. The parliamentary expert is Denise Labelle Gelinas, who is the former City Clerk for the City of Cornwall.

In addressing ██████████ complaint that section 7.9.3 of By-law *063-2015* was improperly applied when a motion was passed at the Council, not Committee level at the February 8, 2016 meeting, Mr. McHarg states that no notices of motion were on the agenda or decided upon by Council on February 8, 2016. Therefore section 7.9.3 does not apply.

In response to ██████████ second complaint regarding the Council Meeting held on May 30, 2016 where council unanimously voted to waive the rules in By-law *063-2015*, including section 7.8.8, the Town of Milton relied again on section 2.2.2 of By-law *063-2015*.

Regarding the letter from the Solicitor for the Town of Milton, Mr. McHarg has stated that this letter and its contents are protected by Solicitor/Client privilege. The Town has not agreed to share the content contained within the letter with ADR Chambers Ombuds Office.

With regards to ██████████ third complaint that the Town has contravened the *Municipal Act* as a tax levy was passed for current and future years. In the Town of Milton's response to this, they rely on Section 326 of the *Municipal Act* as providing a "code" for by-laws which implement levies for special services.

The Town notes Municipal 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 *Municipal 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 Town Council. The Council resolution held in February 2016 established Council's intention not to pass a special urban tax levy by-law for 2017. There has been no special levy by-law passed for 2017. The budget for 2017 has also not been passed by Milton Council.

As a result of information provided above, the Town of Milton maintains there has been no contravention of 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

### **Chronology of Investigation**

ADR Chambers Ombuds Office received written correspondence from ██████████ addressing complaints against the Town on the following dates: January 27, 2016 which included a copy of a letter addressed to the town (dated January 16, 2016), a letter dated January 27, 2016, April 22, 2016, and a formal Complaint Submission Form dated May 19, 2016. A telephone interview with ██████████ took place on June 8, 2016.

A telephone interview with Mr. McHarg took place on June 27, 2016 and a letter was sent via e-mail to him on that same date. The letter outlined the complaints filed with ADR Chambers Ombuds Office by ██████████. 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 I had provided to Mr. McHarg on June 27, 2016.

A letter was sent to Mr. McHarg on August 5, 2016 requesting further information from the Town. A telephone call was scheduled and took place with Mr. McHarg on August 12, 2016.

E-mail correspondence was received from ██████████ on August 25, 2016 and October 11, 2016 inquiring on the status of the investigation.

Correspondence in writing was received via e-mail from Mr. McHarg on September 9, 2016.

ADR Chambers received written correspondence dated November 17, 2016 from ██████████.

### **ADR Chambers Ombuds Office Analysis**

The chronology surrounding the Uniform Tax Rate is as follows:

- 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.

██████████ first two complaints are that the Town violated its own procedures contained within By-law 063-2015.

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 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. 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.

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<sup>3</sup> *Ibid*, pages 17-18.

It is also noted that section 2.2.2 of By-law 063-2015 allows Committee/ and or Council for the Town of Milton to waive any of the rules contained within By-law 063-2015.

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>4</sup>*

As Section 2.2.2 allowed the waiving of rules contained within By-law 063-2015 this further allowed for the motions for Resolution 165-15 and 166-15 to be carried forward through a majority vote.

The Town of Milton provided within their response, the name of the parliamentary expert who confirmed the waiving of the procedural rules of By-law 063-2015 is permitted under section 2.2.2 of this By-law.

With respect to the potential improper application of section 7.9.3 at the February 8, 2016 meeting, it is noted that section 7.9 of the Corporation of the Town of Milton Procedure By-law No. 063-2015 addresses the procedure for handling notices of motion.

From having reviewed the meeting minutes of the Council and Committee of the Whole Meetings of February 8, 2016, it is found that no notices of motion were addressed at those meetings. Additionally, there is no indication that the Town invoked section 7.9.3 at those meetings. Rather than invoking 7.9.3, section 2.2.2 was the provision used to waive the pertinent rules in By-law 063-2015. It is also noted that, as the vote was 9-2 in favour of waiving the rules, the two-thirds requirement outlined in section 2.2.2 was satisfied.

Therefore, there has been no violation by the Town with respect to section 7.9.3 of By-law 063-2015, as no notice of motion was passed at the Town Meetings on February 8, 2016.

██████████ second complaint states section 7.8.8 of By-law 063-15 had been violated when delegates at the May 30, 2016 meeting were only provided an opportunity to speak for a maximum of five minutes.

On more than one occasion, the Town has utilized its ability to rely on section 2.2.2 of By-law 063-2015 and waive the procedural rules when considering a notice of motion on the Uniform Tax Rate.

As indicated in the chronology, the Town relied on section 2.2.2 to waive the procedural rule contained in section 7.8.8. Section 2.2.2 allows for the rules and regulations contained in By-law No. 063-2015 to be suspended by a vote of two-thirds of Council or Committee. On May 30, 2016, a Resolution that the pertinent rules contained in 063-2015 be waived to permit any member of the audience wishing to speak a maximum of five minutes speaking time was carried unanimously. This met the two-thirds requirement and the Town therefore did not violate the By-law by allowing a maximum of five minutes.

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

Upon analysis of the information obtained through interviews conducted with the parties and documentation provided, it is found that the Town has not procedurally violated sections 7.8.8, 7.9, and 7.9.3 of By-law 063-2015.

To address ██████████ last complaint; that the implementation of the Uniform Tax Rate was passed for yearly budgets in both 2016 and 2017 and this violated the *Municipal Act*. The Town states that for 2017, no special levy by-law or budget has been passed. The Town maintains this has not contravened the *Municipal Act*. In my role as an Investigator, I am to determine if the *Municipal Act* has been violated by the implementation of the Uniform Tax Rate, but I am also to provide the information which was conveyed to me in response to ██████████ complaints which the Town of Milton had not previously provided to ██████████.

In this case, I note that the by-law that was passed, By-law 045-2016, was a by-law to provide for the levy and collection of rates of levies for 2016. No tax levy was passed for 2017 or any future years. Therefore, I find that there has been no violation of the *Municipal Act*.

It is noted there has been a significant impact on the rural residents of Milton with the removal of the two separate and distinct tax levies and the implementation of one Uniform Tax Rate. Prior to the December 14, 2015 meeting, it would have been appropriate for the Town of Milton to provide additional information to the rural residents about the Uniform Tax Rate. In addition, providing the Milton residents with the reasons why the Uniform Tax Rate needed to be implemented in a manner where procedural rules at council meetings needed to be waived in order to pass motions without further delay would have been beneficial. In the future, the Town of Milton should provide their residents with as much information as early as possible when dealing with issues which strongly impact their residents.

### **Recommendation**

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



Kimberly Parish  
Investigator