



INVESTIGATION REPORT

Complaint Reference Number: MUN-116-0317

Complaint Commenced: March 5, 2017

Date Required Information Received: April 6, 2017

Report Date: May 11, 2017

Investigator: Kileen Dagg Centurione

Terms of Reference

This report has been prepared pursuant to the ADR Chambers Ombuds Office (ADRO) Terms of Reference for the Town of Milton ("Milton") which describes the scope of ADRO's mandate, its process upon receiving complaints, and the authority and responsibilities of an ADRO Investigator. Defined terms used below have the same meaning as in the Terms of Reference.

Complaint

The Complainant complains that her request to address Council as a delegate was denied. The Clerk cited Town of Milton Procedural By-law 063-2015 (hereafter referred to as "By-law") Subsection 7.8.8 as the primary basis for the decision to deny her request to delegate on February 27, 2017. The Complainant believes that the Clerk (and his staff Legislative Administrator before him) did not have sufficient grounds for denying her request under the By-law.

ADRO Investigation

The ADRO Investigator reviewed the documentation provided by both the Complainant and Milton, conducted research into Milton's delegation and public consultation process, and conducted telephone interviews with:

- The Complainant; and
- Troy McHarg, Town Clerk, Milton.

Decision of Milton

Milton indicated to the Complainant that her "...application does not identify any information that was not previously available, therefore, your request was turned down."

ADRO Analysis

On February 27, 2017 the Complainant submitted a written request to be registered to address Milton Council as a delegate at a meeting on the same date, in regard to the 2016 ADRO report presented to the Committee as a Whole on February 6, 2017.

The “Delegate Request Form” was completed by the Complainant in accordance with the timelines and process stipulated on Milton’s website, in the By-law, and further clarified in the Town’s “Delegation Guidelines”. The Delegate Request Form indicates that, “[T]he Clerk’s office will contact you by email or phone after 10 am on the morning of the meeting to confirm receipt of your request.” There is no reference made to anything other than confirmation of the request. The Clerk’s Office, through his staff, did respond to the Complainant’s request and went beyond confirmation of receipt of the request (as outlined below).

The Complainant was unable to be in attendance at the February 6, 2017 meeting of the Milton Committee as a Whole due to health reasons. However, in her absence, the Complainant did submit written materials on February 6th regarding ADRO’s 2016 report, for the Committee as a Whole’s consideration. The Clerk indicated to the Investigator that copies of the Complainant’s written submission were subsequently circulated to Council.

On February 27th, following receipt and review of the Complainant’s completed Council and Standing Committee Delegate Request Form, Mr. Brett Stein, Milton Legislative Administrator, notified the Complainant by email that her request for delegation status was received and denied.

On February 27th, following the Complainant’s email response to the decision to deny her request for delegation status, Mr. Troy McHarg, Milton Town Clerk, advised the Complainant by email that he upheld the decision to deny her request and referred her directly to the Ombudsman for resolution of any concern regarding this decision.

The Clerk advised the Complaint that Subsection 7.8.8 of the By-law was the basis for denial of her request. Subsection 7.8.8 of the By-law pertains to Presentations and Delegations and states:

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.

Additionally, during the course of the investigation, the Clerk advised that Part 2 – Principles and Application of the By-law was also relied upon when arriving at the decision to deny the Complainant’s delegation request. In particular, he directed the Investigator to Subsections 2.1 (d) and 2.2.4, as follows:

2.1 (d) Members have a right to an efficient meeting; and

2.2.4 The *Clerk* shall be responsible to interpret the rules of procedure under this by-law which shall be interpreted in accordance with the principles set out in section 2.1.

The Clerk interpreted this overarching principle with respect to the Members' "right to an efficient meeting" to mean that in applying Subsection 7.8.8 to these circumstances, the Clerk had the discretionary authority to deny the Complainant's request to delegate at the Council meeting on February 27th.

Milton's "Public Consultation Principles", included alongside the Delegate Request information found online at Milton's website, states as follows:

Public Consultation Principles

The Town of Milton supports communication between government and the community on matters that affect the public. The Town of Milton is committed to the following principles public consultation principles:

- Value and Encourage Public Input
- Share Information and Educate
- Early Involvement
- Timeliness
- Openness/Two-Way Communication
- Accessibility/Diversity/Inclusiveness
- Mutual Respect/Objectivity
- Efficiency/Effectiveness
- Privacy
- Clarity
- Responsiveness/Feedback
- Evaluation/Closure
- Transparency
- Accountability

Moreover, Milton's Delegation Guidelines set out the process and other pertinent details for members of the public that request to be a delegate at a Standing Committee or Council meeting. In particular, the Delegation Guidelines indicate under the heading "Guidelines for Appearing as a Delegation" that:

During the meeting, delegations will be limited to speaking only once on the topic, for not more than 10 minutes, unless the delegation has already addressed the topic at a previous meeting; then the delegation shall be limited to speaking for a maximum of 5 minutes.

Both Subsection 7.8.8 of the By-law and Milton's Delegation Guidelines speak to the Members' "right to an efficient meeting" in so much as the By-law and its interpretation (guideline) serve to limit the delegate's speaking time, if the topic has been addressed at a previous meeting.

The Complainant previously provided a written submission, although she was unable to attend the February 6th Committee of the Whole meeting to engage in discussion of the issues. This previous meeting and the information addressed at that time was described as the primary basis for the denial of the Complainant's request to appear as a delegate before Council on February 27th, as expressed by Mr. Brett Stein in his email to the Complainant and later confirmed by the Clerk.

Subsection 7.8.8 of the By-law, as it stands, serves to potentially limit the amount of time a delegate may speak at the meeting *and* it is "requested" that the speaker "confine their delegation to information that was not available when the matter was previously considered."

The Clerk has the authority and may exercise the discretion necessary to discharge his responsibilities in accordance with Subsection 2.1(d) with respect to efficiency. However, the By-laws already expressly outline the specific restrictions placed upon this discretion vis-à-vis efficiency, or any other guiding principle, being that Subsection 7.8.8. allows for a time limit (from 10 down to 5 minutes) under specific circumstances, at the Clerk's discretion. The Clerk did not point the Investigator to where there is a provision in the current By-law or elsewhere that reduces the time a delegate may speak to less than the 5 minutes stipulated in Subsection 7.8.8 (even if the information was previously addressed or considered). The Investigator was also unable to independently find any support for this position.

Furthermore, Subsection 7.8.8 also *requests* that the "information be confined to that which was not available when the matter was previously considered." These are the only two possible restrictions or limitations indicated, time and content, under the current By-law.

At present, both the By-law relied upon by the Clerk in his decision and the Delegate Guidelines indicate that the restrictions that could have been placed on the Complainant as a delegate before Council were a *time limit* of 5 minutes combined with a *request to confine information* to that which was not previously available or considered.

Accordingly, based on the information available, ADRO was unable to identify a procedural basis for the denial of the Complainant's request for delegation status at the Council meeting on February 27, 2017.

Conclusion and Recommendation

It is ADRO's opinion that the Complainant's delegation request should not have been denied. The Complainant should have been permitted, in accordance with the terms of subsection 7.8.8, to address Council.

ADRO recommends that Council reconsider the Complainant's delegation request, in order to allow her the opportunity to address Council regarding the issues stemming from the original application. Regarding timing, in consideration of this report, Council

should permit the Complainant to address the substantive issues of the previous matter (the delegation request) at the same time as this ADRO report appears on the Council meeting agenda (ideally on May 29, 2017 or the subsequent meeting thereafter), should she so choose.

ADRO recommends that Milton should accept such delegation requests in the future, appreciating that subsection 7.8.8 should be interpreted to limit the time to five (5) minutes and requests that the speaker confine information to that which was not available when the matter was previously considered.

ADRO recommends that should Milton wish to continue with the practice of exercising its discretion to include the denial of delegation request, then the procedure by-law and supporting guidelines be amended to expressly state this as an option for responding to such requests.

Kileen Dagg Centurione
ADRO Investigator