



INVESTIGATION REPORT

Complainant: [REDACTED]
Complaint Reference Number: [REDACTED] **MUN-43-0516**
Complaint Opened: May 30, 2016
Date Required Information Received: November 4, 2016
Report Date: November 24, 2016
Investigator: Deborah Anshell

Complaint

[REDACTED] complain that the Town of Milton has changed the municipal tax charges in a manner that is unfair and unreasonable. Specifically, they complain that Milton Town Council dropped the urban tax levy for urban services such as transit, sidewalks and street lighting. All residents, even rural residents, must now pay for these services, even if those services are not available in rural areas. Prior to this change, only urban residents paid for these services.

[REDACTED] further state that their voices as rural residents were not heard. The rural representation on Town Council is outnumbered by the in-town representation on Council.

[REDACTED] complain that they are many kilometers from the Town of Milton, and they do not have transit, sidewalks, or street lighting. They note that they are senior citizens living on fixed income, and Canada Pension, and cannot afford this unjustified shifting of taxes onto them.

Town of Milton's Response

In response to the allegation that the decision was unfair, Troy McHarg, Town Clerk advised that the Council of the Town of Milton heard complaints relating to the new tax plan through numerous letters and presentations by the public between December 2015 and May 2016, and ultimately decided to implement the change. Council disagrees with the allegation that the change is unfair. The Town of Milton further takes the position that Section 326 of the *Municipal Act, 2001*, ("*the Act*") is entirely discretionary. A municipality is not required to impose a special levy to recover any of these costs for a particular area of the municipality.

With respect to the procedures that were followed in this matter, on December 14, 2015, Council voted to waive procedures to allow for immediate decision on a Notice of Motion proposed by Councillor Malboeuf. This was allowed, according to the Town, as per section 7.9.3 of the Town of Milton Procedure By-law 063-2015, which permits a notice of motion be considered upon its introduction by an



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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.

Normal process in the Town of Milton (and covered in its Procedure By-law) is that items of business are included in an agenda, which is posted to the town website the Thursday before the Monday night meeting. That public posting of the agenda to the website is the Town's notice to the public of upcoming items that Council will be dealing with. This is required under the Town's Public Notice Policy and Procedure By-law.

The public may then register to speak to the matter, if they register to speak prior to 10:00 a.m. the day of the meeting. Even if members of the public don't register by that deadline, Council will sometimes waive the rules to hear them at the meeting in any event.

There are, however, some initiatives that get further public notification before they are deliberated at a Council meeting. Past examples include ward boundary reviews and facility designs for new recreational facilities. The elimination of the urban tax surcharge was not one of those.

At the December 14, 2015 Council meeting, the Notice of Motion to waive the rules and deal with the Urban Tax Surcharge was on the agenda, and posted online on Thursday prior to the Monday night Council meeting. No members of the public registered as delegates to speak to the matter.

The rural residents were provided an opportunity to speak to the property tax issue through the normal processes at the December 14, 2015 Council meeting but none registered to do so.

On February 8, 2016 during budget deliberations at Committee of the Whole, Council then voted to waive procedure to immediately consider a motion to reconsider the previous decision and this motion was passed. Over twenty delegates came to speak to the matter. Council maintained their original decision to phase out the urban service area tax levy.

This Committee decision was ratified by Council on February 22, 2016. On May 9, 2016, Council was asked to pass the required Tax Levy By-law. Residents were permitted to speak to the matter, and Council decided to defer the decision to the May 30, 2016 Council meeting. On May 30, 2016 Council waived the rules to permit delegates to speak again on the matter. Council ultimately voted on May 30, 2016 to pass the tax levy by-law.

ADR Chambers Ombuds Office Investigation

We reviewed the documentation provided by [REDACTED] and the Town of Milton, and conducted telephone interviews with [REDACTED] and Troy McHarg, Town Clerk, Town of Milton.

ADR Chambers Ombuds Office Analysis

The essence of [REDACTED] Complaint is that it is unfair and unreasonable to ask them to pay for services they do not have, so that people who do have these services can enjoy an actual tax reduction at their expense. They did not include any specific contraventions of the *Act*, but rather frame their complaint on the basis of fairness and reasonableness.

It is important to note that it is not the role of the Ombudsman to second-guess or substitute its own opinion for that of Council. Rather, after reviewing the documentation and interviewing the parties, the Ombudsman must consider whether or not the Town has followed its policies and procedures.

Therefore, when conducting my analysis I cannot determine if the decision itself with respect to the urban tax levy is fair and reasonable. I must analyze the issue by considering whether the process itself was fair and reasonable.

After having interviewed [REDACTED], Mr. McHarg and reviewing their submissions, it is found that the Milton Town Council did not act unreasonably or unfairly.

The legislative provision dealing with special services levies is s. 326 of the *Act*. This provision specifically states that a municipality **may** (emphasis added) by by-law identify a special service and determine which costs are related to that special services. Once a special service has been identified the municipality may determine whether those additional costs will be raised by a special local municipality levy.

As has been established, in the past, The Town of Milton did choose to levy a special local municipality levy to collect the additional costs associated with the special services. The rural residents thus benefited in the past from that exercise of discretion provided for in s. 326 of the *Act*.

However, s. 326 is completely discretionary. There is nothing that requires the Town of Milton to identify any special services. The Town is not required to impose a special levy to recover costs for special services. So, although rural residents like [REDACTED] may be unhappy with the new direction taken by the Town, there is nothing in the legislation that requires the Town to consider some of the urban amenities to be a special service.

On this basis, it is impossible for me to find that the processes undertaken by the Council were unfair or unreasonable. The Town clearly has the mandate pursuant to s. 326 of the *Act* to use its discretion in identifying special services and the costs associated with those services.

Further with respect to the issue of fairness, I find that the rural residents had the opportunity to speak to the elimination of the urban tax surcharge on several occasions, specifically at Council meetings on December 14, 2015, February 8, 2016, May 9, 2016 and May 30, 2016.

Although they do not constitute a majority, rural residents are represented on the Town Council.

I conclude that the Town of Milton followed its policies and procedures, when considering the important issue of the urban tax surcharge. I cannot find that the Milton Town Council violated the *Act*.

Recommendation

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



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Deborah Anshell
Investigator