



INVESTIGATION REPORT

Complainant: [REDACTED]
Complaint Reference Number: [REDACTED] MUN-5-0116
Complaint Opened: May 27, 2016
Date Required Information Received: September 21, 2016
Report Date: October 12, 2016
Investigator: Marshall Schnapp

Complaint

[REDACTED] complains that the Town of Milton took illegal action in Council's votes made on December 14, 2015. Specifically [REDACTED] believes that the Town of Milton violated sections 224 and 270 of the *Municipal Act 2001* ("*Municipal Act*").

Immediately prior to the December 14, 2015 Council Meeting, Councilor Malboeuf had the Town Clerk add a motion about rural taxation to the Agenda. According to [REDACTED], the last minute addition to change the taxation policy to rural residents, which had been in place for decades, did not allow residents sufficient time and notice to speak to the matter and was orchestrated to avoid public input.

[REDACTED] does note that interested residents were given an opportunity to attend a council meeting on January 11, 2016 to voice their concerns about what they believed was a the lack of transparency and fairness with respect to these matters. However, [REDACTED] noted in his Complaint that "debate was denied. Reopening the issue was denied, explanations were denied all because we were not on the agenda."

In response to the above, The Town Clerk suggested that interested parties should come back and speak on February 8, 2016, during budget submissions.

[REDACTED] explained and broke down his complaint into the following components:

1. Milton Town Council violated the intent and spirit of section 224 (d.1) of the *Municipal Act* which reads as follows:

It is the role of council to ensure the accountability and transparency of the operations of the municipality, including the activities of the senior management of the municipality;

2. Council violated its own procedures on the basis that the matter was urgent and thus allowable under the rules, when in fact, they were trying to change the status quo which was in place for decades;
3. The last minute addition to the meeting of December 14, 2015 to change the taxation policy that had existed for decades was done so purposefully to ensure that residents did not have the opportunity for input or debate;
4. That the issue was a cheap political stunt by someone looking to pad their resume for a possible run for Mayor or an attempt to one up a rival Councilor; and
5. That on January 11, 2016, Council violated sections 224 and 270 of the *Municipal Act* when it refused to allow residents to speak on the issue.

██████████ believes the change in tax policy is unfair and should be reversed. Council acted in a wilful manner and disregarded the spirit of the Ontario Municipal Code and displayed a lack of basic democratic principles in the handling of this issue. He believes the bylaw change should be deemed unlawful and should be null and void until such time proper notice is given and a fair and reasonable debate can be had.

Town of Milton`s Response

The Town of Milton`s position is it did not violate the *Municipal Act*. Specifically on December 14, 2015, Council voted to waive procedures to allow for immediate decision on a Notice of Motion proposed by Councilor Malboeuf (see Page 8 of 10 of Town of Milton Council Minutes of December 14, 2015). 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 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.

It was also noted that Agendas are posted to the Town`s website on the Thursday prior to the meeting and the agenda included this issue.

As well, the Town of Milton also relies on their actions on February 8, 2016 during budget deliberations at Committee of the Whole Council where they voted to waive procedure to immediately consider a motion to reconsider the previous decision and this motion was passed. Over 20 delegates came to speak to the matter. After the delegates made their comments, Council still decided to stand by the original decision to phase out the urban service area tax levy.

This opportunity for reconsideration and to hear submissions by residents before another vote also shows the Town of Milton did not violate the *Municipal Act* and adhered to basic democratic principles.

The Town of Milton notes that 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 given another opportunity to speak to the matter and convinced Council to defer the decision to the May 30, 2016, Council meeting. On May 30, 2016, Council waived the rules to

permit delegations to speak again on the matter, and after those delegations, Council voted to pass the tax levy By-Law.

In response to ██████████ allegation that the Town of Milton violated its own procedures, the Town of Milton takes the position that Council has waived its procedure rules on more than one occasion throughout the history of this file. It has waived procedures that both found opposition and found favour from residents, in accordance with the Town's Procedure By-Law:

2.2.1 The rules of procedure established in this by-law shall be observed in all proceedings of Council and Committee and shall be the rules for the order and conduct for the dispatch of business in Council and Committee.

2.2.2 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.

The Town of Milton also relies on the broad general roles identified in s.224 of the *Municipal Act*.

With respect to the urban tax issue, s.326 of the *Municipal Act* provides the "code" for by-laws that implement special services levies. Importantly, Section 326 is entirely 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, or different, services than other areas of the municipality. The discretionary nature of the cost recovery for special services is explicitly established by s.326 (1)(e) of the Act, and the discretionary nature of this power means that the Town can set the special levy to recover any portion of the costs of the special services (up to the full cost).

ADR Chambers Ombuds Office Investigation

We reviewed the documentation provided by both ██████████ and the Town of Milton and conducted telephone interviews with

██████████
-Troy McHarg, Town Clerk, Town of Milton

ADR Chambers Ombuds Office Analysis

The substantive issues of his complaints are contained in complaints 1, 2 and 5 and those are the ones that were investigated.

After having interviewed ██████████, Mr. McHarg, reviewing their submissions and viewing the video recording of the Council deliberation and debate on December 13, 2015, it is found that

the Milton Town Council did not violate the intent and spirit of sections 224 and 270 of the *Municipal Act*.

It appears from the actions taken by Council that the issues being discussed were done so in a way that allowed residents an opportunity to voice concerns on several occasions after the December meeting. On February 8, 2016, during budget deliberations at Committee of the Whole Council, Council voted to waive procedures to immediately consider a motion to reconsider the previous decision and then heard from over 20 delegates who came to speak to the matter. On May 9, 2016, residents were given another opportunity to speak to the matter and convinced Council to defer the decision to May 30, 2016 Council. And again on May 30, 2016, Council waived the rules to permit delegations to speak again on the matter before a vote took place.

It is noted that an important part of ██████████'s complaint stems from his submission that Council violated its own procedures on the basis that the matter was urgent and thus the modified process was allowable under the rules, when in fact, they were trying to change the status quo for taxes which was in place for decades.

However, it appears from the wording of the Town of Milton's Procedure By-Law, that the test is not one of "urgency" but rather the Procedure By-law 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.

From the documentation reviewed, interviews conducted, and from watching the taped Council meeting that took place on December 13, 2015 it is found that Council found that it was not in the best interests of the Town of Milton to delay consideration of the motion.

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, and in this case it has done so.

Having said the above, it is recognized that, with respect to such an important issue as changing the nature of rural taxation, it would have been more appropriate to provide more notice and as much notice as possible to the residents that this item was going to be dealt with by Council. The Town of Milton should strive to make sure residents are given as much notice as possible when Council will be dealing with controversial and important issues affecting residents.

Recommendation

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

Yours truly,

A handwritten signature in black ink, appearing to read "Marshall Schnapp", with a long horizontal flourish extending to the right.

Marshall Schnapp
Ombudsman