



INVESTIGATION REPORT

Complainant: Mr. H
Complaint Reference Number: MUN-56-0716
Complaint Opened: July 18, 2016
Report Date: April 7, 2017
Investigator: Lynda Tanaka

Complaint

Mr. H complains that an administrative error on the part of the City of Burlington has resulted in his being sent property tax bills inappropriately for taxes for years prior to the current year, as well as imposing additional taxes on top of what he has already paid for property taxes. He has paid property taxes since he bought his home and he believes that the City should have been invoicing him the correct amount each month. He believes that to send him tax bills in June of 2016 totally almost \$8,000.00 for taxes for 2014, 2015 and 2016 to be paid in two instalments in June and August 2016, on top of the taxes he has already paid, is unfair and unreasonable.

Mr. H and his wife have owned two homes previously, including one new home, and this is the first time this tax situation has arisen. Their present home is a new home that they moved into in November 2014. At the time they bought, they inquired from their lawyer about the property taxes to ensure they could afford the home. At the time of the interview, Mr. H could not recall what his lawyer's estimate of the taxes was and how that compared to what he has been paying or is being paid for.

Mr. H indicated in his telephone interview that they will pay the taxes but they cannot afford to make such substantial tax payments in the time frame provided by the City.

Mr. H's view is that it is not up to him to tell the municipality that they have under-billed him. His complaint really focuses on the billing for the two years previously and the requirement in 2016 to pay the money within such a short period of time, on top of the already issued property tax bills.

Mr. H was asked to confirm that he had in fact received a notice last spring concerning the omitted assessment that forms the basis of the tax bills. He provided a copy of the three page Property Assessment Change Notice which indicates the change in assessment and gives the reason "Previously Omitted Realty Assessment."

City of Burlington's Response

The City's file indicates that in November 2014 the building permit on the new home was approved and finalized and sent to the Municipal Property Assessment Corporation (MPAC) (a provincial body responsible for determining the assessment of all property for the purposes of calculation of property taxes in Ontario). On May 27, 2016, according to the City's file, MPAC would have sent out to Mr. H a Notice of Assessment showing what is called an "omitted" assessment (known as an "omit") to reflect the value of the new house on the property and setting out his rights to challenge that value assigned to the house and also the effective date, November 5, 2014. Prior to this assessment, the assessment would only have reflected the land alone and not the structure on the land. The notice would provide for a deadline for filing a request for reconsideration if the property owner believed the assessment (value) was too high or the effective date was incorrect.

In 2016, the City received from MPAC, in the usual course, the file of supplementary and omitted assessments to be added to the tax roll of the City. The City made the adjustments in its files to reflect the additional assessments. On June 17, 2016 the City mailed out the tax bills. In this case the City issued three separate bills and the payment of the taxes due was split between two installments as set out in the table below:

Tax year	Instalment due July 29, 2016	Instalment due August 29, 2016
2014	\$363.23	\$363.00
2015	\$1,700.57	\$1,699.00
2016	\$1681.12	\$1681.00
Total	\$3,744.92	\$3,743.00

As can be seen, the total taxes owing is in excess of \$7,400.00, payable within less than 90 days of the bills being mailed out. It is important to note that this amount is payable in addition to the property taxes already billed which have instalments due in June and September.

The City relies on the provisions of the *Assessment Act* R.S.O. 1990 c. A.31 as amended and the *Municipal Act, 2001*, S.O. c. 25 as amended.

MPAC is required to comply with s. 33(1) of the *Assessment Act* which provides:

The following rules apply if land liable for assessment has been in whole or in part omitted from the tax roll for the current year or for all or part of either or both of the last two preceding years, and no taxes have been levied for the assessment omitted: (emphasis added)

The assessment for the property which had been done effective January 1, 2012 only included the land and not the new house which was subsequently built on the property. Therefore the value of the house was “omitted” and s. 33(1) applied.

The City must comply with the *Municipal Act* provisions, s. 307 and s. 341 which are set out below:

s. 307

(1) All taxes shall, unless expressly provided otherwise, be levied upon the whole of the assessment for real property or other assessments made under the Assessment Act according to the amounts assessed and not upon one or more kinds of property or assessment or in different proportions. 2001, c. 25, s. 307 (1).

(2) If, in this or any other Act or any by-law passed under any Act, taxes, fees or charges are expressly or in effect directed or authorized to be levied upon rateable property of a municipality for municipal purposes, unless expressly provided otherwise,

(a) such taxes, fees or charges shall be calculated as percentages of the assessment for real property in each property class; and

(b) the tax rates and the rates to raise the fees or charges shall be in the same proportion to each other as the tax ratios established under section 308 for the property classes are to each other. 2001, c. 25, s. 307 (2).

(3) Taxes imposed for a year shall be deemed to have been imposed and to be due on January 1 of the year unless the by-law imposing the tax provides otherwise. 2001, c. 25, s. 307 (3). (emphasis added)

s. 341

(1) The treasurer shall adjust the tax roll for a year to reflect the changes to the assessment roll for that year made under the Assessment Act after the tax roll is prepared.

(2) **Taxes for the year shall be collected in accordance with the adjusted tax roll as if the adjustments had formed part of the original tax roll** and the local municipality,...

(b) shall send another tax bill to raise the amount of any underpayment. (emphasis added)

Also, under s. 343 of the *Municipal Act*, the City must provide a tax bill to the property owners not less than 21 days before the taxes are due.

Interest and penalties are established under the Burlington policy referred to above by by-law and the City may review the rate each year. The City advised that the City’s by-law for penalty and interest requires that late payment charges be added on any outstanding tax balance as follows:

(a) a penalty of one and one quarter per cent of the amount in default shall be added on the first day of default; and

(b) interest charges shall be applied at the rate of one and one quarter per cent on the last day of each month on the outstanding tax balance. When a penalty has been applied in a given month, interest of one and one quarter per cent will be prorated from the date of default. (emphasis added)

The view of staff was that this by-law did not give them any discretion to waive either interest or penalties. In Burlington in 2016, the number of properties receiving omit tax bills for more than one tax year was 448 properties with 108 of these properties receiving omit assessments and tax bills for more than two years similar to Mr. and Mrs. H. The City staff's main concern was to ensure that they treat all taxpayers equitably.

The City file indicates that the property owners reached out to the City with their complaint on June 22 and the staff explained that the City could not bill taxes in earlier years without getting the information from MPAC regarding the value of the new construction. The City staff reported that they had explained that the property owners should pay what they can before month end and the penalty will not be "too bad" if they keep on top of making payments. The municipality imposes late payment charges pursuant to s. 345 of the *Municipal Act* and set out by by-law.

The City indicated in the interview that further information was provided to the property owner about the omitted tax assessment and property taxes over and above the actual bills. Ms. Ford acknowledged that there was no specific advice to new home buyers on the website concerning these provisions of the legislation and the City's tax bills.

In the interview with Ms. Ford of the City, she indicated that the property owner could have compared the assessment of the property as shown on the tax bills sent in 2015 and the interim and final 2016 bills with what they actually paid for the house and they would have seen that the assessment (reflecting only land) would have been much less than the purchase price.

I also asked Ms. Ford why the assessments were issued as omitted assessments and not supplementary assessments, one primary difference being the ability in the municipality to impose taxes for up to two years earlier for omitted assessments. The section of the *Assessment Act* (s. 34) that permits supplementary assessment makes specific reference to the erection of buildings and s. 33, which deals with omits, does not. She explained that the supplementary assessment provision is only used when MPAC is able to identify and assess property omission in the current year. The introductory words of s. 34 provide the timeframe of "after notices of assessment have been given under s. 31 and before the last day of the taxation year for which taxes are levied on the assessment referred to in the notices..."

ADR Chambers Municipal Ombuds Investigation

ADROO reviewed the documentation provided by both Mr. H and the City and conducted telephone interviews as noted above with:

- Mr. and Mrs. H
- Joan Ford, Treasurer for the City

In addition, ADROO conducted internet research of the City website searching "property taxes" and "omitted property taxes". The search revealed the City of Burlington Corporate Policy entitled "Finance - Accounting – Tax Billing and Collection". This policy was approved by Council on December 6, 2004 and was reviewed March 30, 2012. A further review is scheduled for 2017. The purpose of this policy is to set guidelines to "supplement the provincial legislation

that governs these areas, especially for situations where provincial legislation provides a choice, allows for City/Treasurer discretion and for issues on which the legislation is silent.”

This policy notes the traditional dates for payment of taxes for the interim and final bills (four dates from February to September). The following section appears under the heading “Supplementary/Omitted Tax Billings”:

- 1) There are two sections of the Assessment Act that allow for taxation of property not included in the annual assessment roll. They deal with omissions and additions to the roll.
- 2) Section 33 of the Assessment Act allows for the taxation of property that has been omitted from the roll. The provision allows for taxation in the current year, plus a maximum of the two preceding years.
- 3) Section 34 of the Assessment Act allows for the taxation of property that has increased in value due to the erection, alteration (sic), enlargement or improvement of a building or change in use since the return of the last revised roll. These taxes apply to the current year only.
- 4) Supplementary and omitted tax billings will provide for two installment dates, generally within two consecutive months.”

Further internet research was done of “omitted property taxes” on a broader scale and of the MPAC website to identify further information that would be available to a property owner. I was not able to locate any information on the MPAC website that was easily accessible, as it focuses on the method of calculation of the assessment. MPAC’s website has a short video explaining how taxes are calculated using the tax rate set by the City as a result of the annual budget process applied to the assessment for each property.

Some municipalities (specifically the City of Toronto but not the City of Burlington) include a recommendation that, for new homes, a property owner can determine the likely taxes payable on their new home by applying the municipality’s tax rate to the purchase price of the new home.

A brief review of the Assessment Review Board cases reported under CanLII dealing with omits and supplementary assessments indicates an application of the *Assessment* Act consistent with Ms. Ford’s interpretation, though there was no case I located in which the issue was directly raised before the Assessment Review Board. Given its limited jurisdiction, the issue could not have been determined there. There was no court decision that I located on CanLII determining the issue.

In addition I canvassed the possibility of settlement with the parties but was unable to obtain agreement.

ADR Chambers Municipal Ombuds Analysis

After having interviewed Mr. and Mrs. H and Ms. Ford of the City, reviewing their submissions and conducting the research set out above, it is found that the timing of the issuance and the quantum of the three tax bills in June 2016 is not the result of administrative error but rather is the result of the legislative provisions in place, including the City's by-law as to interest and penalties, as well as the timing of the issuance of the omit assessment by MPAC.

As is explained on the MPAC website, the amount of taxes paid by each property owner is based on the budget for municipal services (and education) and on the principle of sharing of those costs on a basis proportionate to the value of each property. All property owners share the burden of the municipal budget, and, where a property assessment has been omitted, the assessment needs to be added to ensure fairness. The legislation, however, places a two year limit on collection of taxes for previous years.

From the municipality's perspective, Mr. H and his family have not paid taxes on the new home itself (as opposed to the land) for the two years since November 2014 when they bought the property and it is appropriate for the municipality to recover the taxes for 2014 and 2015 as quickly as permitted under the legislation. The concern of fairness to other taxpayers is laudable and appropriate. But, when the City recovers the 2014 and 2015 taxes (and interest and penalties), there will be no refund to the other taxpayers of the City who have borne a larger proportion of the City budget in 2014 and 2015 because the assessment for this property had not been updated to reflect the new house.

Other property owners in Burlington have paid their taxes for 2014, 2015 and 2016 over the three year period. Burlington requires that in the case of omits, those taxes be paid in July and August in one year. It is not clear why the 2016 property tax bill could not have been payable without penalty over a longer period, just as the land portion of the property tax bill was spread over a period of February to September 2016. The Corporate Policy quoted from above provides for the omit instalments to be payable "generally over two months". The timeframe therefore appears to be a matter of municipal policy rather than a requirement of the legislation.

The problem facing both the property owners and the City is the delay by MPAC (18 months) in providing the assessment of the building. This timing is not in the control of the municipality or the property owner.

It is important to note that it is the role of the Ombudsman after reviewing the documentation and interviewing the parties, to consider whether or not the City has followed its policies and procedures. The City did so. It is also the Ombudsman's role to address whether a decision is unreasonable, unjust, oppressive or improperly discriminatory.

In response to the draft report the City advised that the outstanding tax bills had been paid in April 2017 and that their ability to compromise on interest and penalties was severely restricted by the legislation in place. The City also advised that it had updated its website to provide better information for purchasers of new homes for calculation of the omit tax obligations.

Mr. H and Burlington
April 7, 2017

Neither the City nor the property owners are responsible for the number of years over which the taxes have been lagging. One cannot lose sight of the fact that, in addition to the tax obligations from previous years, Mr. H will be obliged to also pay the current taxes as required.

There are opportunities to prevent this type of complaint arising and to address what appears to be unfairness to the property owners.

Recommendation

ADR Chambers Municipal Ombuds recommends that at the time of review in 2017 of the Finance- Accounting-Tax Billing and Collection Corporate Policy, the City of Burlington should change its by-law concerning the instalment payment provisions under paragraph 4) of that Policy quoted above, for the omitted assessments to permit a more generous timeframe for payments (better aligned with the timeframe for the usual payment schedule) without the imposition of interest and penalties.

Lynda Tanaka
Investigator