



ADR Chambers Ombuds Office

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December 5, 2019

BY E-MAIL: angela.morgan@burlington.ca

Angela Morgan, City Clerk
The Corporation of the City of Burlington
Office of the City Clerk
426 Brant Street
Burlington, ON L7R 3Z6

Dear Madam:

RE: Complaint against the City of Burlington, MUN-347-0918

Our investigation of the above complaint against the City of Burlington has been completed, and I have enclosed the Ombudsman's report.

As you are aware, both parties were provided the opportunity to comment on the draft report. The Ombudsman then takes the comments into account and makes any modifications deemed appropriate. In this case, apart from anonymizing the final report (replacing names with titles and/or initials) and correcting a date on page three, paragraph three, the report is unchanged.

Our file in this matter is now closed.

Yours sincerely,

Peter Maniatakis
Deputy Ombuds



INVESTIGATION REPORT

Complaint Reference Number: MUN-347-0918

Complaint Commenced:

Date Required Information Received: August 14, 2019

Report Date: December 5, 2019

Investigator: Michael L. Maynard

Terms of Reference

This report has been prepared pursuant to the ADR Chambers Ombuds Office (ADRO) Terms of Reference for the City of Burlington which describe 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 claims that her neighbour's central air-conditioning unit (the "Air Conditioner" or "AC") makes noise in excess of that which is permitted by law, a consequence of which is the diminished enjoyment of her own property. She has submitted requests to the By-law Enforcement office ("By-law Office") for the City of Burlington (the "City" or "Burlington") but has been left unsatisfied with the attention given by them to her issue.

She has since sought assistance from the ADR Chambers Municipal Ombuds office to investigate and report as to whether the City has properly handled her noise by-law complaint, and to make such recommendations as to resolve the allegedly noisy Air Conditioner issue.

Investigation

The investigation included: (i) a review of initial complaint and documentary evidence provided by the Parties; (ii) a telephone interview with the Complainant on July 31, 2019; (iii) a telephone interview with the Supervisor, By-law Enforcement for the City of Burlington (the "Supervisor") on August 1, 2019; (iv) follow-up email correspondence with the Supervisor and the City of Burlington and a review of additional documentation; and, (v) independent research on noise by-laws for the City of Burlington ("By-law 19-2003", the "Noise By-law") and neighbouring municipalities, as well as a review of Ontario's *Environmental Protection Act* ("EPA") and its Noise Pollution Control guidelines ("NPC"s), namely:

- **NPC-216** - Residential Air Conditioning Devices ("NPC-216")
- **NPC-205** - Sound Level Limits for Stationary Sources in Class 1 and 2 Areas (Urban) ("NPC-205")
- **NPC-300** - Environmental Noise Guideline - Stationary and Transportation Sources - Approval and Planning ("NPC-300")

Facts and Issues in the Complaint - Statements and Documents of the Complainant

The Complainant has resided at her current address for four summers, and for the last two of them (being 2018 and 2019) she has claimed to have suffered from a loud, penetrating and debilitating noise emanating from her next-door neighbour's Air Conditioner which sits between the houses on the neighbour's side of the property line. The Complainant pursued a resolution to her noise complaint through the City of Burlington's By-law Office, the City Clerk's office, and eventually through Burlington Council (via both the Mayor's Office and her City Councillor). She has not obtained the resolution she desires through any of her efforts.

A summary of the chronology of the Complainant's interactions with the By-law Office and other City offices, as relayed by her and revealed through the documentation on file, is as follows:

On or around July 4, 2018, the Complainant made a by-law complaint (the "Noise Complaint") under By-law 19-2003. On July 5, 2019, she received the following response from a By-law Enforcement Officer (initials: "S.O."):

"We have received a file with your email advising us of the concerns about the air conditioner next door. The area officer –

[name of officer (initials "J.P.")] is away this week and will investigate next week upon his return. Please be advised that at this time, our office can only address issues regarding maintenance for air conditioners. The City of Burlington Noise By-law does not currently have any regulations regarding noise decibel readings for residential air conditioners."

The Complainant responded to the above email querying what was meant by the City not having regulations regarding noise decibel readings. S.O. responded on July 6, 2018, stating:

"The current by-law does not have enforcement regarding the decibel level. We can inspect to see if the noise is being caused by a maintenance issue (ex. Work belt) and if we find an issue can order it to be repaired."

There was further email correspondence sent by the Complainant to By-Law Enforcement Officer S.O. over the following several days, regarding the attendance of J.P., and also about concerns she had regarding her neighbour's conduct and the possibility of her neighbour seeking retribution for the Complainant having reported the Air Conditioner noise.

Then, on July 11, 2018, the Complainant wrote again by email to S.O. regarding the Air Conditioner as follows:

"The AC went back on at 6pm this evening. Still the same issue. I am not sure what [J.P.] asked the neighbour to do. There was a Reliance truck here, so I thought perhaps the unit was being repaired.

However, the unit is still making the same noise. I can still here [sic] it throughout the house."

Having not received a response, the Complainant wrote to her municipal Councillor by email on July 16 setting out her complaint that the City's Noise By-law was not being properly enforced to the provincial standards of noise control referenced therein, being NPC-216. She set out the following, in part:

"[...] After careful reading of Bylaw 19-2003 and Publication NPC-216, I felt confident that the bylaw would be able to take action

and it would be worth the risk to put in a formal complaint. However, the bylaw office is communicating a different investigation and resolution than what is stated in the bylaw. I am being told that they do not do anything with decibels and only deal with maintenance. If this is the standing operating procedure of the bylaw office, then the bylaw needs to be amended accordingly. Otherwise, until then, the bylaw should be upheld as it is presently written.

Noise and Nuisance Bylaw 19-2003

Definitions, 3, page 2

(19) "Noise" means unwanted sound

(21) "Nuisance" means anything that injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property

[...]

Limitations on Sound Emissions [...]

No person shall emit or cause or permit the emission of any sound:

(3) from any air conditioning device of the type referred to in Schedule 4 – Publications, Publication NPC 216, unless:

- a) the device was put into use prior to January 1, 1979;
or
- b) the device bears a label affixed by the manufacturer or distributor which states;
 - (i) the year of manufacture, and
 - (ii) that the device complies with the sound emission standard set out in Schedule 4 – Publications, Publication NPC-216, as applicable to that type of device and date of manufacture; or

c) the owner, operator, manufacturer or distributor provides proof that the device complies with the sound emission standard set out in Schedule 4 – Publications, Publication NPC-216, as applicable to that type of device and date of manufacture.

Residential Air Conditioning Devices Publication NPC-216

4. Sound Level Limits for Air Conditioning Devices, page 3

(1) General Sound Level Limit

The general sound level limit (shown in Table 216-1 and determined in accordance with Section 4.(2) is 5dBA greater than a one hour equivalent sound level (Leq) caused by road traffic at the point of reception during the period of 07:00 to 21:00 hours. The specific hour is to be determined by the noise control officer based on the assessment of annoyance by the complainant.

I have measured decibels as high as 76 dBA with the air conditioning unit on. This is 46dBA higher than with the unit off. The NPC-216 indicates that over 5dBA warrants action. [...]"

The Councillor replied indicating that the issue was highly technical, and so he copied the Manager of By-Law Enforcement, Licensing and Animal Services for the City (the "Manager"), as well as the Supervisor, and another City employee. The Manager replied to the Complainant that she should continue to work with By-law Enforcement Officer J.P. regarding her noise complaint.

The following day, on July 17, 2018, J.P. emailed the Complainant with the following information:

"There have been changes to the NPC publications listed in Schedule 4 and as such they can not be enforced until By-law 19-2003 has been amended to include them. In the meantime we do check for obvious mechanical noises or vibrations – in this case a professional Heating and Cooling service company has confirmed

that the AC system in question has been serviced and is in good working condition.

We do understand your concern that the bylaw should be amended and the revised bylaw will be written in a way to prevent this from re-occurring."

On or around July 20, 2018, the Manager called the Complainant to advise that By-law Officer J.P. had found the Air Conditioner to be operating per the manufacturer's specifications, and as such there was no noise violation to address.

On or around August 13, 2018, the Complainant emailed the Mayor of Burlington directly and through an "Ask the Mayor" online submission form for assistance regarding her noise complaint, though no response was forthcoming.

On or around August 29, 2018, the Complainant attended City Hall with copies of the above noted correspondence she sent to the Mayor. She spoke with a clerk at the Information Desk who advised her she would receive a response by the end of the day. With no response forthcoming, the Complainant followed up again on August 31, 2018.

On or around September 19, 2018, the Manager spoke with the Complainant over the telephone and explained his understanding that NPC-216 was replaced by NPC-300. He followed the telephone call with email correspondence on September 20, 2018, in which he communicated the following information:

"In NPC-216 it speaks to residential air conditioning installation, in NPC-300 which is a newer regulation, it speaks to the following in regards to residential air conditioning:

C7.8 Air Conditioning

Air conditioning in itself is not a noise control measure. The use of air conditioning allows windows and doors to remain closed, and thereby reduce the indoor sound levels. Consequently, the requirement for air conditioning is a requirement for closed windows to achieve an acceptable indoor acoustic environment. Furthermore, caution must be exercised in the implementation of air conditioning devices because their use may increase the outdoor sound levels.

C7.8.1 Air Conditioning and Transportation Sources

However, it is common practice for high-rise multi-unit buildings to incorporate some form of central air conditioning either for the building as a whole or for individual suites.

Air conditioning systems also need to comply with Publication NPC-216, Reference [32], and/or any local municipal noise by-law that has provisions relating to air conditioning equipment.

C7.8.2 Air Conditioning and Stationary Sources

Air conditioning is not considered appropriate or relevant in a Class 1, 2 or 3 area because the sound level limits for stationary sources apply to the outdoor planes of windows and windows are assumed to be open.

In Class 4 areas, where windows for noise sensitive spaces are assumed to be closed, the use of central air conditioning may be acceptable if it forms an essential part of the overall building designs.

Our enforcement of air conditioning is that the air conditioning must be working as per the manufactures (sic) guidelines and that property owners shall maintain their and conditioning units. We do not measure decibel readings of residential air conditioning units.

Below are the guidelines that we use to enforce air condition units in our noise bylaw.

<https://www.ontario.ca/page/environmental-noise-guideline-stationary-and-transportation-sources-approval-and-planning>

Publication NPC-300

This guideline replaces the following four publications:

Publication LU-131-Noise Assessment Criteria in Land Use Planning, October 1997;

Noise Assessment Criteria in Land Use Planning: Requirements, Procedures and Implementation. October 1997;
Publication NPC-205-Sound Level Limits for Stationary Sources in Class 1 and 2 Areas (Urban). October 1995; and
Publication NPC-232-Sound Level Limits for Stationary Sources in Class 3 Areas (Rural). October 1995.

Sources not considered as stationary sources

The following are examples of sources, activities, equipment or facilities that are not considered as stationary sources in the context of Part B and Part C of this guideline:

[...]

- residential air conditioning devices including air conditioners and heat pumps;

[...]

The Complainant was not satisfied with this explanation and has since raised this issue with the Ontario Ombudsman, the City Clerk's office (which told her they do not deal with by-law issues) and with the ADR Chambers Municipal Ombuds Office. The matter was referred back to the City by the ADR Chambers Municipal Ombuds office by way of a letter from the Deputy Ombudsman dated March 29, 2019.

The By-law Enforcement office again investigated the Air Conditioner in July 2019, but, as it had done in 2018, limited the scope of its investigation to whether the Air Conditioner was in good repair per the manufacturer's specifications. Again, no violation was found on that basis. Consequently, the Complainant requested that her Complaint to the ADR Chambers Municipal Ombudsman be re-opened.

During her investigation interview, the Complainant described the effects of the noise on her well-being, advising that it penetrates her home even with all windows and doors closed, and prevents her from enjoying the use of her property, including, but not limited to the extent that it disturbs her sleep. She claimed that visitors to her property have remarked on the noise. The Complainant further claimed to have measured the noise level emanating from the neighbour's Air Conditioner herself using a decibel measuring tool on her smart phone. This measurement showed an increase in decibel level beyond ambient background noise as high as 46 decibels (with readings as high as 76 decibels in total).

For reference, the Complainant noted (as she had in her email to her Councillor, which is noted *supra*) that By-law 19-2003 references the standards set out in NPC-216. According to NPC-216, a 5 decibel increase over ambient noise is the upper limit of acceptable noise from a stationary air-conditioning unit.

The Complainant disputes the City's stance that NPC-300 now applies, and that therefore the City can no longer enforce the provisions of NPC-216 (pursuant to By-law 19-2003). She seeks this investigation to determine what the correct application of the law should be.

Facts and Issues in the Complaint - Statements and Documents of the Respondent

During his investigation interview, the Supervisor set out the chronology of the investigations into the Air Conditioner, and also provided an explanation of the Manager's position regarding NPC-216 and NPC-300, and the resulting inability of the City, in their view, to enforce By-law 19-2003 as written. The general chronology of events does not differ from that provided by the Complainant (*supra*).

The Supervisor acknowledged that By-law 19-2003 is the current by-law. However, he noted that the City's By-law Enforcement Office does not conduct decibel readings due to the change from NPC-216 to the newer NPC-300, which his office interprets as having removed residential air conditioning units from the list of things considered "stationary sources of sound". He stated that this change of guidelines eliminates the ability of by-law enforcement officers to test air conditioners for noise, apart from ensuring an air conditioning unit is in proper working condition and compliant with property standards, which it did in this case. He noted that a professional company inspected the Air Conditioner to ensure it was in proper working order, while a by-law enforcement officer also investigated as to whether the A/C meets property line set-back requirements, finding that it exceeded such requirements.

The Supervisor further noted that the City's By-law Enforcement Office lacks the proper equipment to take court-admissible decibel readings, stating that the Prosecutor will not accept mobile telephone app decibel readings due to their unreliability due a lack of scientific rigour. He also stated that only the Manager is property trained in sound measurement science to the standard of training required in By-law 19-2003. Only a properly trained person using suitable, professional grade measuring equipment can take measurements that are reliable enough as evidence to be used a case to enforce the Noise By-law.

The Supervisor provided documentation regarding the 2019 By-law Enforcement investigation into the Air Conditioner, including the notes of the attending by-law enforcement officer and the HVAC technician who inspected the unit. Two important points are referenced in these materials.

First, the By-law Enforcement officer noted that the unit made:

"[...] no obvious noises that would suggest A/C in disrepair. (No banging, clicking, clanging, etc.) Fairly loud unit, could be heard from approx 5m away from fence. Once standing at the street in front of the dwelling ID could no longer hear the unit."

Second, the HVAC technician's hand-written notes indicate:

"This unit is running as well as it has from day 1. [...] all well within manuf[acturer's] specs. [...] No issues found."

Facts and Issues in the Complaint – The Law

Both the Complainant and Respondent have cited By-law 19-2003, NPC-216 and NPC-300 in their statements and evidence. Most of the relevant portions of each has already been referenced in the *Statements and Documents* sections above. However, there are additional portions which should be included in the examination of this matter.

The Ministry of Environment and Energy provides information online regarding "Noise in Our Environment". With respect to municipal noise by-laws, the Ministry states:

Municipal noise bylaws

Municipalities can prohibit noise that is likely to disturb the peace, rest and quiet living spaces of residents. Municipalities have the authority to create and enforce bylaws that control or prevent noise disturbances.

Some common types of noise that can be controlled by municipal bylaw enforcement officers include:

- construction during prohibited times
- loud residential machinery (for example, **residential air conditioners**) [emphasis mine]

- disturbances caused by businesses (for example, entertainment establishments)

We do not have jurisdiction over municipal bylaws. **However, if a municipal bylaw conflicts with guidance provided by the Environmental Protection Act (EPA), the EPA guidance prevails.**
{emphasis mine]

[...]

NPC-300 provides a list of other documents to which it refers:

A4 References

The current version of each referenced publication is listed below. All the referenced publications may be replaced with updated or amended versions from time to time. Consult the MOE website for the latest versions of the reference documents and other applicable guidelines issued by the MOE.

[...]

Residential Air Conditioning Devices - Publication NPC-216. 1993.
Ontario Ministry of Environment and Energy.

[...]

Analysis

The Complainant has put forth the argument that the City of Burlington is in non-compliance with its own By-law 19-2003, which uses NPC-216 as the standard for noise control with respect to residential air conditioning units. She furthermore noted that NPC-300 itself references NPC-216 as a standard of noise control for residential air conditioners.

Conversely, the City of Burlington has put forth the argument that NPC-216 has been replaced by NPC-300, which specifically excludes residential air conditioning units as stationary sources of noise. Though the City's By-law 19-2003 cites NPC-216, the City states that it is not up to date with the new provisions of NPC-300. According to the Ministry, its noise guidelines prevail over local by-laws when the two laws are in conflict (as noted, *supra* at page 11). As such, the City is only enforcing maintenance-

and property-standards related issues with respect to residential air conditioners and is not enforcing non-maintenance noise issues because it no longer considers residential air conditioners as stationary sources of sound.

There is, therefore, a dispute over the correct Provincial standard to be applied in this case, which informs the question as to whether the relevant provisions in the existing Noise By-law remain in force or are otherwise annulled by a newer superior legal authority.

Questions to be Addressed

The questions to be addressed in this investigation and report are therefore:

1. What Provincial guideline ought to be used to measure and enforce noise control with respect to residential air conditioners?
2. Pursuant to the answer in the above question, does the City's By-law 19-2003 still apply?

What is the correct Provincial guideline?

The City has advanced the argument that NPC-300 replaces the older NPC-216, and as a result, residential air conditioning units are now excluded as stationary sources of sound. There is, however, no evidence to support the City's position. There is, on the other hand, significant evidence to the contrary.

First, NPC-300 states at the outset under the section entitled **Part A Background** which earlier guidelines it replaces. The replaced guidelines are listed in this Report (*supra* at page 8). NPC-216 is not one of the replaced guidelines.

Second, as noted (*supra* at page 11) the section of NPC-300 entitled **A4 References** lists NPC-216 as a current guideline. There is no reference in NPC-300 that NPC-216 has been replaced or annulled or that it is otherwise considered invalid.

Third, while NPC-300 section A5 (subsection 5) lists residential air conditioners as being excluded from the list of stationary sources of sound (which is the position advanced by the City in determining it can no longer regulate sound from working air conditioners), it must be noted that list of exclusions is specifically related to sources regulated by NPC-300, not to sound sources regulated by other guidelines. It states:

"The following are examples of sources, activities, equipment or facilities that are not considered as stationary sources **in the context of Part B and Part C of this guideline.**" [emphasis mine]

[...]

- residential air conditioning devices including air conditioners and heat pumps;

[...]

As noted, (*supra*) NPC-300 has not replaced NPC-216, and in fact, it defers to NPC-216 within its own provisions. Accordingly, it must be concluded that section A5 (sub 5) is not intended to universally eliminate air conditioners as stationary sources of sound; rather, it is intended to limit the scope of NPC-300's own provisions, thereby continuing to defer to NPC-216 on the matter of residential air conditioning noise.

Fourth, in discussing the use of Air Conditioning systems as a noise control measure (that is, a means of controlling noise from other sources that it does regulate), NPC-300 section C7.8 (and its subsections) state that air conditioners are not noise control measures in and of themselves, but rather, that they allow for closed windows, which is a noise control measure under certain circumstances. Moreover, this section states unambiguously that air conditioners need to comply with NPC-216 and/or municipal by-laws (*supra* at page 7). As such, this section cannot be correctly interpreted to mean that air conditioners are not sources of sound nor that they cannot be measured as such.

Fifth and finally, I note for comparison that some neighbouring municipalities still refer to NPC-216 in their noise by-laws as the governing authority for residential air conditioners, including Milton and Toronto. Further examples are found in the the Town of Wasaga Beach, which updated its noise by-law in 2016, much later than the publication of NPC-300, and it references NPC-216 as the authority with respect to residential air conditioner noise. The City of Guelph likewise updated its Noise Control Guidelines in 2018. Guelph's guideline states:

[...] where central air conditioners, heat pumps or other similar devices are required to be installed, the final installation shall comply with the provincial criteria "Residential Air Conditioning Devices, Publication NPC-216, 1993", or any subsequent revisions".

Though it is not a requirement that municipalities specifically reference the guidelines by name in their by-laws, but it is notable that some still do.

In view of the above, I am of the conclusion that NPC-216 remains the correct guideline for regulating residential air conditioner noise, and that it has not been replaced by NPC-300 as the City of Burlington asserts. This latter guideline (NPC-300) consolidates other previous guidelines (i.e. NPC-205, NPC-232, and LU-131, and a guideline entitled "Noise Assessment Criteria in Land Use Planning: Requirements, Procedures and Implementation") which dealt with various stationary sources of sound not uniquely defined in alternative sound-source specific guidelines (e.g. NPC-216).

Does By-law 19-2003 still apply?

The City has advanced the position that the Ministry guidelines had changed so as to eliminate its ability to regulate noise from residential air conditioners pursuant to its By-law 19-2003. As noted, this is not a correct reading of NPC-300. Therefore, with respect to the issues considered in this Investigation and Report, I conclude that the provisions of NPC-216 are still in force, and as such By-law 19-2003 remains a valid and enforceable by-law as written.

Conclusion(s) and Recommendation(s)

Having reached the conclusion that By-law 19-2003 is still enforceable with respect to the NPC-216 guidelines, this Investigation and Report must consider the correct remedy for this Complaint.

First, it is my general recommendation that the City of Burlington's By-law Enforcement Office return to enforcing residential air conditioner noise guidelines as set out in By-law 19-2003 and NPC-216.

Specifically to this Complaint, I recommend that the By-law Enforcement Office conduct an appropriate sound test to evaluate the noise from the neighbour's Air Conditioner at the earliest possible opportunity; and, if necessary (i.e. if the Air Conditioner is found to be in violation of the By-law's noise provisions, which are derived from NPC-216), that the By-law Enforcement Office take the appropriate enforcement steps to rectify the situation.

I would like to thank the Complainant and Respondent (particularly, the Supervisor and City Clerk) for their assistance and cooperation. I trust this report clarifies the matters at issue for the Parties and provides reasonable guidance through its conclusion(s) and recommendation(s).

All of which is respectfully submitted.

Yours very truly,

Michael L. Maynard
ADRO Investigator

References:

Environmental Assessment Act, R.S.O. 1990, c. E.18.

- NPC-205 - *Sound Level Limits for Stationary Sources in Class 1 and 2 Areas (Urban)*. 1995
- NPC-216 - *Residential Air Conditioning Devices*. 1993
- NPC-300 - *Environmental Noise Guideline - Stationary and Transportation Sources - Approval and Planning*. 2013

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The Corporation of the Town of Milton. *Bylaw No. 133-2012*. 2012.
<https://www.milton.ca/MeetingDocuments/Council/bylaws2012/133-2012%20Noise%20Control%20By-law%20and%20Repeal%20By-law%2016-84.pdf>

The Corporation of the Town of Wasaga Beach. *By-law no 2016-97, A By-law to Control Noise and Nuisance within the Municipality*. 2016.
<https://www.wasagabeach.com/Bylaws/2016-97%20Noise%20%20Nusiance%20By-law.pdf>

The City of Guelph. *Guelph Noise Control Guidelines*. 2018. <https://guelph.ca/wp-content/uploads/Guelph-Noise-Control-Guidelines.pdf>

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Acoustical Consultants. *Ear to the Ground Blog: NPC-300 brings major changes to Ontario's environmental noise guidelines*. 2013, <https://acoustical-consultants.com/built-environment/npc-300-ontario-new-environmental-noise-guidelines/>



ADDENDUM

Date: December 5, 2019

**Re: Complaint Reference Number MUN-347-0918
[Anon Complainant] and Burlington**

On October 29, 2019, the Complainant provided comments on the draft Investigation Report which had been provided to the Parties for their information and comment prior to its finalization and release in accordance with the protocols of this Office. In the result, and with the concurrence of the Ombudsman, it is my determination that no change to the draft Investigation Report is warranted, and such Report is accordingly confirmed as the Final Report in this matter, with the inclusion of this Addendum.

The following are the enumerated issues raised by the Complainant in her comments, and my response to each of those issues:

Issue #1

Pool Pump/Heater

Why wasn't the pool pump/heater of 2019 complaint addressed by the city or the ADR (p.2 and p.8) which is closer than the 60cm allowed to the fence. (sic)

This is causing terrible vibrations and noise that prevent me from enjoying my outdoor yard and indoor dwellings as well. I can't sleep because of it. I spoke with [City Staff] about this when I called him in July 2019. I was home when the by-law officer came to inspect the AC unit and he did not inspect the pool pump/heater. I realize that this was not in the 2018 original complaint to Ombuds Ontario and ADR but I had asked for it to be added in the re-opening of the complaint.

Response #1

This issue, though mentioned during the investigation interview, was not formally joined with the Complaint. We have not received a Complaint with respect to the pool pump. The City has stated that it has not received a formal complaint regarding this issue.

Issue #2

Duty of the City to Respond

1. Why didn't the current mayor and City Councillor, S.S., respond to the 2019 email complaint? I received a follow up email from [Mayor's Office Staff], 10 JUL 2019, stating that I would be assigned a CRM case number but never did? Please see PDF attached,
2. Why didn't the former mayor respond to multiple complaints in 2018 despite the assignment of multiple case numbers?
3. Why did the former city councillor, J.D., stop responding to complaint emails in 2018?
4. Why did the city clerk, [Clerk], not respond to the 2018 and 2019 complaint?

I feel that these four questions address the general lack of duty of City Hall. As a tax payer, I am entitled to a timely response. I was absolutely ignored. I would love to blame this on the former mayoral office, but I received the same treatment by the newly elected leaders. I can't afford to sue the city for misconduct, negligence, and so on.

Response #2

The primary issue in the Complaint is the noise issue related to the Complainant's neighbour's air conditioning unit. That matter has been investigated and a finding was made in the Complainant's favour, with appropriate recommendations being made to the City arising therefrom.

Under Item 16 of the Terms of Reference under which this Office is appointed as Ombudsman to the City, it states:

"The Ombudsman will not investigate complaints regarding [...] the conduct of City Councillors [...]"

As such, I do not have jurisdiction to address this issue as regards to the named City Council members.

Under Item 17 of the Terms of Reference it states:

"The Ombudsman may refuse to investigate a Complaint or to continue an investigation of a Complaint when the Ombudsman believes on reasonable grounds that:

[...]

e) having regard to all circumstances of the case, no further investigation is necessary; [...]

In our view, the matter at issue in this Complaint is whether the Bylaw Office of the City properly investigated the noise complaint. Following a thorough investigation of facts and law, a finding was made in the Complainant's favour, and appropriate recommendations were made to the City pursuant to such findings.

The Complainant had approached the named Members of Council and the Clerk's Office regarding the Air Conditioner noise issue, which has since been investigated by the office and resolved in the Complainant's favour. As such, it is the decision of this office that no further investigation is necessary or warranted.

Issue #3 (*Responses in Italics*)

Action Items

1. There needs to be the inclusion of the pool pump/heater issue (p.2 and p.8).

Please see response to Issue #1 (supra).

2. There needs to be a response as to why the mayor office ignored me in 2018 and 2019.

Please see response to Issue #2 (supra).

3. There needs to be a commitment from the city to a response to me from the current mayor and city councillor with regards to the 2018 complaint of air conditioning and 2019 complaint of air conditioning and pool pump/heater.

Please see Response to Issue #1 and Issue #2 (supra). It is further noted that this investigation took place because the Complainant was not satisfied with the response of the City to her issue. This Report details the findings in the Complainant's favour.

4. There needs to be a commitment from the city on how they are going to deal with the neighbour, who is going to take retribution on me as he already has. I cannot afford to sue the neighbour in court. I spent \$3,000 removing my deck and fence as well as planting a hedge in summer 2019 to try to mitigate the noise. He deliberately drained his chlorinated pool water along the hedge I had planted to mitigate the noise. The trees are slowly dying. The cost for him to remediate the noise had the city made him do so, would have cost somewhere between \$50 and \$500. I would have gladly bought him a quieter air conditioner or paid for the retrofitting with the \$3,000 I spent on landscaping.

This appears to be a civil matter between the Complainant and her neighbour. Furthermore, there is no Complaint before us with respect to the City's conduct in this regard.

5. There needs to be a commitment from the city on the rewriting or renewal of the noise bylaw.

This Office has made appropriate recommendations arising from the findings in this investigation. It is not within the jurisdiction of this office to compel a democratically elected municipal council to pass or amend any bylaw.

6. There needs to be evidence provided by Mr S. that the courts will not accept a decibel reading from an iPhone or iPad. These are commercial grade apps - it's just mobile technology. He asserts this is true but does not provide evidence of this nor does he provide the name and brand of an apparatus that would be (p.10). This is similar to the assertions that the NPC's did not apply - just assertions with supporting evidence.

The above noted statement was given by a member of City staff during the investigation. It was not a finding of fact and was not relevant to the conclusions in this Report.

Issue #4:

Editorial Correction

1. There needs to be a correction on p. 3., paragraph 3. It was July 11, 2018 not 2019

Noted, with thanks.