

By-law Surprise – Facts and Highlights

Key numbers and dates:

November 2010: Township receives first written complaint about vehicles on Karen's property.

January 2011-October 2014: Township's by-law enforcement officer visits property **50 times**.

Time logged by the by-law officer, billed to the township: **137.5 hours**.

Distance logged in mileage by the by-law officer, billed to the township: **5,345 kilometres**.

Number of times by-law officer tried to reach Karen by telephone in the summer of 2011: **7**.

Number of calls the by-law officer took from a complainant regarding Karen's property: **23**.

December 2012: Karen receives order to clean up property; no mention of accrued charges.

January 2013: Deadline for Karen to clean up the property passes, township takes no steps to clear the land or send any further communications.

December 2013: Township council votes to close Karen's file, no mention of costs.

May-October 2014: A new complaint about the property is resolved, council closes file again.

February 2015: After township reviews several files, Karen is billed for costs of by-law enforcement, plus a 10% administration fee – she receives an invoice for **\$11,700.63**.

October 2015: Township informs Karen the costs will be added to her property tax account.

February 2016: After attempting to negotiate a resolution, Karen complains to the Ombudsman.

July 2016: After several attempts to resolve the matter informally with the township and country, Ombudsman Paul Dubé notifies he is launching a formal investigation.

Background facts:

The county provides by-law enforcement services for the township.

The township has two by-laws that could have been applied in Karen's case – a property standards by-law and a "clearing of land" by-law. Compliance orders under the property standards by-law can be appealed; those under the clearing of land by-law cannot. In Karen's case, the officer opted to apply the clearing of land by-law. (Paragraph 16)

If municipalities wish to recover by-law enforcement and administrative costs, they must pass a by-law clearly authorizing those fees. Neither the township's clearing of land by-law nor its fees by-law mentions charges for inspections, enforcement or administration. (Paragraph 48)

Key findings by the Ombudsman:

The bill was unlawfully issued and the enforcement process is opaque and unreasonable.

The township's conduct in this case was unreasonable, unjust, wrong and contrary to law because:

It had no legal authority to bill Karen as it did.

It acted unfairly when, after four years, it sent her the bill out of the blue, with no prior warning that she might be liable for enforcement efforts that took place without her knowledge.

It failed to ensure that its enforcement arrangement with the county was stipulated in a formal agreement and that the charges for enforcement activities were fair, reasonable, accurate, properly recorded and regularly monitored.

The county's conduct was unreasonable, unjust and wrong because:

Its enforcement arrangement with the township lacks clarity and rigour – among other things, it charged unauthorized rates for enforcement and failed to ensure that enforcement charges were clear, predictable, consistent, accurate and justified through detailed record-keeping.

Recommendation highlights:

The township should:

- Expunge Karen's debt and apologize to her.
- Pass a bylaw that explicitly authorizes any fees, including for enforcement.
- Designate an employee to communicate with complainants about property issues.
- Create a written policy for public complaints relating to property-related matters.
- Report back to the Ombudsman on its progress in implementing his recommendations.

The county and township should enter into a formal agreement for bylaw enforcement services that:

- Sets out protocols and rates for calculating mileage and other expenses, and requirement for reporting on the status of cases.
- Sets requirements for by-law enforcement officers to give notice to owners about any infractions and enforcement costs.
- Establishes a dispute resolution mechanism.

Responses:

County of Lambton: The county accepted all of the Ombudsman's recommendations.

Township of St. Clair: The township accepted all but two: It did not agree to expunge Karen's debt or apologize, but it said council would consider a possible reduction of the charges.

Other jurisdictions mentioned in the report for best practices and useful guidelines:

- B.C. Ombudsperson's by-law enforcement guide (para 78)
- Township of Cramahe (para 90)
- City of Hamilton (para 64)
- Town of Lincoln (para 90)
- Town of Penetanguishene (para 90)
- City of Thunder Bay (para 64)
- Township of Woolwich (para 90)