

By-law Surprise

Investigation into the reasonableness and transparency of by-law enforcement and billing practices in the Township of St. Clair and the County of Lambton

OMBUDSMAN REPORT

Paul Dubé, Ombudsman of Ontario

April 2018



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By-law Surprise

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Executive Summary

- 1 Karen, a working single mother, was stunned when she opened her mail one day in February 2015 and found a bill from the Township of St. Clair for **\$11,700.63** for “property standards charges.”¹ The bill covered the township’s expenses for enforcing a by-law with respect to land she owns across the road from her rural home. Karen had never received any notice that a by-law enforcement officer had visited the property 50 times between January 2011 and October 2014, much less that she would be on the hook for the costs of these visits and other related charges. She had no means to pay, and eventually the debt was added to her tax bill.
- 2 Karen’s plan when she bought the property, containing an old farmhouse and outbuildings, was that she would eventually renovate the farmhouse and move across the road to live there. In the meantime, Karen’s former spouse began using the property for his hobby of restoring and repairing vehicles. In December 2012, Karen received an order from the township cautioning that some vehicles had to be cleared from the land by a specified date or the township could clear the land at her expense. Karen’s former spouse undertook to remedy the situation. When she didn’t hear anything more from the township, she’d assumed everything had been straightened out. Then, more than two years later, the unexpected bill arrived.
- 3 Municipalities are entitled to pass property maintenance by-laws under the *Municipal Act, 2001* and to enforce them against property owners. In some situations, they are also authorized to pass the costs of enforcement on to property owners. However, when Karen complained to my Office, I was concerned about the manner in which the by-law was enforced in her case, and the subsequent bill. After attempts to informally resolve the situation, I initiated an investigation into the reasonableness and transparency of the township’s by-law enforcement and billing practices. My investigation included consideration of the County of Lambton’s practices as well, as the county provides by-law enforcement services to the township.
- 4 My investigation revealed that the Township of St. Clair had no legal authority to recoup its enforcement expenses from Karen under the terms of its clearing of land by-law. As it warned Karen in December 2012, the township could have cleared the land itself and billed her for this expense. But it could not simply let the situation linger unresolved, repeatedly inspect the property without Karen’s knowledge, and then stick her with the bill. The township also failed to ensure that enforcement charges and activities were fair, reasonable, accurate, properly

¹ The name Karen is a pseudonym to protect the individual’s privacy.

recorded and regularly monitored, and that sufficient notice of enforcement and its potential consequences was given.

- 5 The township and the county had never entered into any formal agreement about enforcement services, and we found that the county had, at times, charged unauthorized rates and failed to ensure that charges for its services were clear, predictable, consistent, accurate and justified through detailed record-keeping.
- 6 Under the circumstances, I have determined that the township acted in a manner that was unreasonable, unjust, wrong and contrary to law and that the county's conduct was unreasonable, unjust, and wrong. Accordingly, I have recommended that the township immediately extinguish Karen's debt. I have also made several recommendations addressed to the township and the county directed at improving the procedural fairness, accountability, and integrity of their by-law enforcement and billing processes.

Complaint

- 7 As of January 1, 2016, the Ontario Ombudsman has the authority to carry out impartial and independent reviews and investigations of complaints concerning the administrative conduct of municipalities, including municipal councils, local boards and municipally-controlled corporations.
- 8 The Township of St. Clair is home to just over 14,000 residents. It sits to the east of the St. Clair River, south of Sarnia in the County of Lambton. The County of Lambton has a population of more than 126,000. It encompasses 11 lower-tier municipalities, including the Township of St. Clair. The County of Lambton provides by-law enforcement services to eight lower-tier municipalities, including the township.
- 9 In February 2016, Karen complained to my Office about how the township and the county handled enforcement of the township's "clearing of land" by-law, which resulted in her receiving a bill in February 2015 for \$11,700.63. The bill was for the costs of 50 visits to her property, including mileage. Karen questioned the fairness of the enforcement and billing process, noting that she hadn't received notice that significant enforcement expenses were accruing over the course of several years or that she would be responsible for paying them. She had already raised her concerns with the township, but council had twice denied her request to reduce the bill. Karen told us that, as a result of her debt to the township, she was unable to secure a mortgage from the bank for improvements to the property and had to take out a private mortgage at a significantly higher interest rate.

Investigative Process

- 10 We attempted to resolve Karen's concerns informally, in accordance with our Office's general approach to municipal complaints. We had five telephone discussions with senior staff from the Township of St. Clair about her situation. We noted that Karen was unaware of the mounting enforcement costs and we questioned the substantial expenses incurred and charged to her. Staff told us that the township had recently changed its practices relating to property standards enforcement. However, they maintained that nothing could be done about Karen's bill, as the township had already paid the county for enforcement services, and council had considered and rejected her request for reduction of the bill.
- 11 We also contacted the township's Mayor twice and discussed our concerns about the reasonableness and transparency of the enforcement process. The Mayor agreed to raise the matter again with council, and did so, but it remained unresolved. On July 27, 2016, I notified the Township of St. Clair and the County of Lambton that I would be investigating the reasonableness and transparency of their enforcement and billing practices.
- 12 The investigation was conducted by four investigators, assisted by members of our office's Legal team. Investigators obtained and reviewed relevant documentation. They also travelled to the County of Lambton to interview six current and former staff members and officials from the township and county, as well as Karen and her former spouse. They reviewed the by-law enforcement practices of other Ontario municipalities to identify best practices, as well as best practices from other jurisdictions.
- 13 The township and county co-operated with our investigation by providing requested documents and making staff available for interviews.

By-law Enforcement and Clearing of Land

- 14 In Ontario, provincial legislation gives municipal councils the authority to pass by-laws on a variety of subjects and enforce them, as appropriate, through inspection, issuing compliance orders, or prosecution.² When a person fails to obey a compliance order under a municipal by-law, the municipality has the option, if it has given itself this power through by-law, to remedy the violation

² *Ontario Municipal Act*, SO 2001, c 25, s 425. Prosecution is permitted if the by-law specifies that contravention constitutes an offence.

directly and recover its costs of doing so.³ Remedial expenses can be added to the tax roll and collected as if they were property taxes.⁴

- 15 Municipalities may take different approaches to setting standards for the condition of local properties. They may pass a by-law establishing property standards for buildings and land under s. 15.1 of Ontario's *Building Code Act*. They may also pass a by-law under s. 127 of the *Municipal Act* requiring owners or occupants to clean and clear land or clear refuse or debris from land. Unlike property standards by-laws, clearing of land by-laws do not extend to buildings.
- 16 The Township of St. Clair has both a property standards by-law and a clearing of land by-law.⁵ The two by-laws set out different standards for the condition of properties, different inspection and enforcement processes, and different available remedies. Compliance orders made under the St. Clair property standards by-law can be appealed to the township's property standards committee, but there is no right to appeal an order made under the clearing of land by-law.⁶
- 17 Employees of the County of Lambton enforce the township's property standards and clearing of land by-laws through an informal arrangement. The township has enacted a by-law appointing specific county officials as its municipal by-law enforcement officers.⁷ The township told us that when a property-related complaint is referred to one of the county by-law enforcement officers, the officer has discretion to choose whether to proceed under the township's property standards by-law or the clearing of land by-law.

"Clearing of land" by-law

- 18 The township's clearing of land by-law requires owners to clear their land of refuse and defines an "owner" as including an occupant, lessee, tenant, and

³ *Ibid*, s 446.

⁴ *Ibid*, s 398.

⁵ Township of St. Clair, by-law, No 3, *By-law to Provide for Standards of Maintenance and Occupancy* (5 January 2015); Township of St. Clair, by-law, No 14, *By-law for Requiring and Regulating the Filling up, Draining and Cleaning of Land and Clearing of Land of Waste* (6 April 2009).

⁶ *Building Code Act*, 1992, SO 1992, c 23, s 15.3(1). Section 15.3 (1) of the *Building Code Act* provides for a right to appeal orders made under a property standards by-law to a property standards committee.

⁷ Township of St Clair, by-law, No 49, *By-law to appoint a Chief Building Official and Municipal Law Enforcement Officers for the Township of St. Clair* (5 December 2011). The Township's By-law No. 49 of 2011, appoints the County's Chief Building Official or designate as the Chief Building Official for the township and appoints two county employees as municipal law enforcement officers for the township.

mortgagee, or any other person in charge of land.⁸ The by-law defines refuse as including different forms of domestic and industrial waste. Motor vehicles are considered to be waste if, by reason of age, appearance, mechanical condition or lack of current validated licence plate, they appear to be inoperative.⁹

- 19** Under the by-law, the Chief Building Official or their designate is responsible for inspecting the condition of land to determine compliance. If the inspector finds there has been a contravention, the owner must receive written notice. Notice may be delivered to the owner in person, posted on the land and/or sent by prepaid registered mail. As long as written notice has been given, the inspector can require the owner “to take such actions and do such things” within a specified time period as necessary to bring the land into compliance.
- 20** If the owner fails to comply, the township has the option of prosecuting the infraction as an offence under the by-law.¹⁰ In the alternative, the inspector may direct that the required remedial steps be taken at the owner’s expense.¹¹ The township may then dispose of anything removed from the property, and recover its expenses of remedying the breach through a court action or in the same manner as municipal taxes.

The Lay of the Land

- 21** Karen grew up in Sarnia. Around 2008, she and her husband moved with their two children to the Township of St. Clair. In April 2010, after she and her husband separated, Karen purchased a property across the road from her home. She planned to eventually renovate the property and move in. The property contained an old farmhouse and outbuildings, but was essentially vacant, and she allowed her former spouse to use it to store various cars that he repairs as a hobby.

By-law enforcement steps, 2010-2013

- 22** According to municipal records, in November 2010, the Township of St. Clair received a written complaint that Karen’s vacant property was being used to improperly store vehicles. As the township relies on the County of Lambton to

⁸ Township of St Clair, by-law, No 14, *By-law for Requiring and Regulating the Filling Up, Draining and Cleaning of Land and Clearing of Waste* (6 April 2009), s 2(a).

⁹ *Ibid*, ss. 1(b)(ix), 1(c)(iv).

¹⁰ *Ibid*, s. 7.

¹¹ The Township must provide at least five days advanced written notice before remedying the contravention itself according to, By-law 14 of 2009 *supra* note 8, s. 6(5).

enforce its by-laws, council referred the matter to the county's Property Standards / Bylaw Enforcement Officer at a meeting on December 3, 2010.

- 23** The county's by-law enforcement officer told us that in cases of improper storage of vehicles in the township, she can choose to apply the clearing of land by-law or the township's property standards by-law. She explained that if a complaint relates to vehicles or long grass, she often chooses to proceed under the clearing of land by-law. She noted that the clearing of land process is usually shorter because of the lack of a statutory appeal mechanism.¹² In Karen's case, the officer told us that she decided to apply the clearing of land by-law.
- 24** The by-law enforcement officer met Karen's former spouse when she first inspected the property in January 2011. Her notes indicate that there were "numerous derelict vehicles," along with four plated vehicles, on the site, but there are no additional details written about the number or condition of vehicles. The notes record that the man she met on the property claimed to be the property owner, said he and his wife lived across the road, and explained that they planned to fix up the property. The officer wrote that she suggested he move some of the vehicles into a garage and put others behind the garage, to which he agreed. She said she would give him until spring to comply due to the snow.
- 25** The officer's notes state that she told him her involvement would be billed to the property. When we interviewed Karen's former spouse, he told us the officer only said that, if the problem were not addressed, the township could have the cars towed at the property owner's expense. He said he did not tell Karen about the complaint or his discussions with the officer, believing he could take care of the township's concerns without having to worry her.
- 26** A few weeks after her first visit to the property, in February 2011, the by-law enforcement officer accessed a database of properties maintained by the province, which showed that Karen is the sole property owner. She attempted to reach Karen by phone three times in February, and again in June, July, August, and September of that year. Her notes indicate that the calls were unanswered, with the exception of two calls in August and September that were answered by a young person who said that her mother was at work. On October 17, 2011, the officer's notes state, "Message left with [the former spouse's] wife. She advised he was ill." The notes do not indicate that the officer informed Karen about the complaints or violations, and the officer told us she does not recall having done so. Subsequent notes refer to Karen's former spouse as the property owner, and

¹² An order made under a property standards by-law can be appealed pursuant to s. 15.3 (1) of the *Building Code Act*, *supra* note 6. There is no requirement in the *Municipal Act* for clearing of land by-laws to provide appeal mechanisms and the Township of St. Clair's clearing of land by-law does not provide for any appeal of an officer's order.

suggest that the officer called him at least 38 times over the next three years with respect to the property.

- 27 Over the months that followed her first visit, the officer's notes indicate that she continued to drive out to Karen's property on a regular basis. She wrote that, by June 2011, the former spouse had taken steps to address the by-law violation by removing some of the vehicles and moving others to the back of the property. However, by September, the officer observed new vehicles on the site.
- 28 By December 2011, she had visited Karen's property 13 times. She wrote that the cars on Karen's property had been lined up neatly, though two still did not have valid plates. In March 2012, she noted that additional cars had been brought to the property, but by June, she wrote that cars had been removed and there was a "significantly lower number of vehicles." She recorded no change to the property over the summer of 2012.
- 29 Throughout this time, the person who had made the original complaint to the township called the officer repeatedly. The officer's notes indicate that the individual complained that there was no improvement and additional vehicles had been brought to the site. In a November 2012 file note, the officer said she went to the property after a call from the complainant, and found it did not look as bad as the complainant claimed. By this time, she had spoken on the phone with the complainant 18 times, including some calls that she noted as lasting for an hour.
- 30 By the end of November 2012, when the by-law enforcement officer made her 28th inspection of the property, there were still several vehicles on the site. She wrote a memo to the township clerk stating that, although the property owner appeared to be willing to comply with her informal direction, "additional vehicles arriving on site... does indicate a lack of willingness" to comply. She recommended issuing an order to the property owner under the clearing of land by-law. At a meeting on December 3, 2012, the township's council directed that the officer issue the order.
- 31 An order to remedy the violation under the clearing of land by-law, dated December 13, 2012, was posted on the property and sent by registered mail to Karen. The order included a schedule describing 11 vehicles with expired or missing licence plates. It required that these and any other derelict vehicles be removed or that valid licence plates with current validation stickers be attached by January 14, 2013. The order cautioned that if the violation wasn't remedied by that date, the township "may correct such violations by repair or clearance at the expense of the owner." The order did not indicate that Karen might be charged for anything else. It gave no indication that the by-law enforcement officer had been visiting her property for almost two years.

- 32** Karen told us that she was upset when she received the order. She explained that she spoke with her former spouse, who assured her that he would clean up the vehicles. They both told us that he moved some of the vehicles from the property and plated others. When the township took no action to clear any of the vehicles, and did not send any further correspondence, Karen assumed the matter had been resolved. She was mistaken.
- 33** On January 15, 2013, the officer reported to council that a few of the vehicles had been removed, but that the former spouse had asked for an extension to allow the ground to freeze before moving the rest. She recommended a 30-day extension, which was granted by council on January 21, 2013. In its resolution, council directed that, if the vehicles were not addressed by the extended deadline, the remaining derelict vehicles should be towed.
- 34** However, the 30 days came and went. While the officer regularly communicated with the township's clerk, no further reports were made to council until November of that year. No cars were ever towed. The officer told us she remembers calling towing companies, but didn't get quotes because, given the snow conditions, the companies were reluctant to come out.
- 35** The officer's notes indicate that some vehicles had been removed by February 2013, but the others remained on the property. In August, she recorded that two more vehicles had been removed, but a new car without plates had appeared on the site. In September, she wrote that one vehicle remained with an expired sticker. In a November 27, 2013 note to file, the officer wrote that all the remaining vehicles in the driveway had valid plates and stickers. At a December 2, 2013, meeting, council accepted the officer's recommendation to close the file. Council did not address billing or cost recovery when it directed staff to close the file.

By-law enforcement steps in 2014

- 36** On May 21, 2014, the township received a new written complaint about Karen's property. According to the complaint, old cars without plates were again being brought to the property, where they were left to "sit there and rot." Council referred the complaint to the county's by-law enforcement officer at a meeting on June 2, 2014. The officer visited the site on June 12, noting that there were a "number of unplated vehicles" in the driveway. She checked the property again the next day, and spoke with Karen's former spouse about the vehicles. Her notes indicate that she gave him an informal three-week deadline to remove the cars.

37 However, by July 15, the officer recorded that there were four unplated cars on the site. They were still there on August 25, but no order was issued by the township and the cars were not towed. The officer's notes indicate that two unplated cars remained on the site on September 25, but that by September 30, the property was in compliance with the by-law. On the recommendation of the officer, council voted to close this second file on October 6, 2014. Again, the council minutes do not include any direction to staff about sending a bill to the property owner.

Paying the Enforcement Price

- 38 In February 2015, the township sent Karen a bill for \$11,700.63 for "property standards charges." The township Clerk, who assumed that role in May 2014, told us that the former Clerk did not invoice property owners for property standards costs. However, sometime in the fall of 2014, the township's treasury department identified that several property standards cases had not been billed to property owners. Accordingly, the current Clerk began to review old property standards files and send out invoices, including the one sent to Karen. The Clerk also included a 10% administration fee on the invoice to cover the township's administration costs.
- 39 When she received the bill in February, Karen told us she was shocked and did not know how to respond. The original invoice listed the enforcement officer's hours (137.5) and kilometres driven (5,345), and referenced a title search, but provided no other details of the charges, so Karen contacted the township. The Clerk sent her a record by email on March 25, 2015, showing the dates associated with the by-law enforcement officer's hours and mileage.
- 40 On October 30, 2015, the municipality's treasury department sent Karen a letter notifying her that because the invoiced amount had not been paid, \$11,700.63 had been added to her tax account.¹³
- 41 By this time, Karen told us that she had learned that the house she had hoped to renovate and move into was not salvageable. She would have to have it removed and build a new home. However, she explained that because of her debt to the township, she was unable to get a mortgage from the bank.

¹³ Although the February 2015 invoice referred to interest charges for late payment, no interest was apparently added to the amount due.

- 42 Township records indicate that Karen phoned township staff on November 5 to dispute the bill. She also contacted the township by email on November 24 asking for the debt to be temporarily removed to allow her to secure a mortgage. The Mayor responded in a December 2 email that he did not believe the township had the authority to suspend the debt. Council later considered the matter at a December 7 meeting. According to the minutes, it voted to confirm the full amount invoiced, but directed staff to allow Karen's mortgage to take priority over the debt to the township, as long as the debt was not removed from title. In the end, no agreement relating to the debt was ever reached.
- 43 Karen twice tried to negotiate with the township to pay a reduced amount. On January 4, 2016, council considered, in camera, an offer from Karen's lawyer to pay \$2,000, if the township waived the rest of the bill. Council declined the offer. On January 14, 2016, Karen wrote to council, offering to pay \$2,100 upfront, followed by monthly payments of \$50 for two years. Council considered the matter in camera on January 18, and again voted to reject the offer. The Clerk wrote to Karen on January 19, confirming that council rejected her offer, as it would set a bad precedent for other properties.
- 44 In September 2016, Karen was finally able to secure private financing to continue to build a new house on the property, but she told us that it came at a much higher interest rate than she would have received from the bank.

Observing the Legalities

- 45 Karen's case raises several issues relating to the reasonableness and transparency of municipal by-law enforcement. However, the first question that must be answered is whether the township acted within its legal authority in billing her more than \$11,000 for its costs in enforcing the clearing of land by-law. In determining whether a municipality has the authority to charge fees, relevant statutory and by-law provisions must be considered.
- 46 Township staff told us they had no choice but to bill individual property owners for enforcement costs. They explained the township had already paid the county for the enforcement and it would be unfair to pass the costs associated with one property on to all taxpayers. They also repeatedly said Karen was responsible for fully covering the township's enforcement expenses, plus a 10% administration fee, in accordance with its property standards by-law. Although the township's property standards by-law refers to collection of enforcement costs and an administrative fee, in Karen's case, the relevant township by-law is actually the clearing of land by-law.

- 47 The township had the authority to issue the clearing of land by-law under the *Municipal Act, 2001*.¹⁴ In accordance with that Act and the terms of the by-law, the township also had the ability to recover the costs of direct enforcement, in cases where it carried out remedial work to bring a property into compliance.¹⁵ For instance, if the by-law enforcement officer had arranged, as she considered doing at one point, for the towing and disposal of the offending vehicles from the property, Karen would have been responsible for these costs. However, the clearing of land by-law does **not** address recovery of any costs of enforcement unrelated to direct enforcement. Accordingly, the municipality can **only** flow these costs through to Karen if it can rely on some other authority to do so.
- 48 Under s. 391 of the *Municipal Act*, a municipality can “impose fees or charges on persons... for services or activities provided or done by or on behalf of it,” as well as “for costs payable by it for services or activities provided or done by or on behalf of any other municipality”.¹⁶ Administrative or enforcement costs may also be included in such fees or charges.¹⁷ However, municipalities can only exercise their powers under the Act by passing by-laws.¹⁸ In order to charge a fee under s. 391, the municipality must have a by-law establishing the fee. The Township of St. Clair has a fees by-law,¹⁹ but it makes no mention of charges for inspections, enforcement or administration.²⁰
- 49 The county has a services and fees by-law that provides for an hourly fee for building services, including building inspections and special inspections.²¹ However, the township has not incorporated the county’s fees into a township by-law and cannot rely on the county’s by-law as authority to charge a fee.

¹⁴ Section 5(3) of the *Municipal Act*, *supra* note 2, requires that a municipal power be exercised through by-law. Section 127 of the *Municipal Act* provides that a municipality may require an owner or occupant to clean and clear land, and can regulate when and how that is to be done.

¹⁵ *Supra* note 8, s. 6; *supra* note 2, s. 446(1).

¹⁶ *Supra* note 2, ss. 391(a – b).

¹⁷ *Ibid*, s. 391(3).

¹⁸ *Ibid*, s. 5(3).

¹⁹ Township of St. Clair, by-law, No 20, *By-law to impose user fees and charged within the Township of St. Clair and to amend Township of St. Clair By-Law Number 64 of 2009* (15 March 2010). Note: The by-law refers to section 220.1 of the *Municipal Act* for its authority to charge fees, a provision that was repealed in 2003.

²⁰ There may also be some question of whether a municipality can charge fees for non-voluntary services under s. 391. For instance, under a previous version of this section of the *Municipal Act* courts interpreted the phrase “fees and charges” as limited to a transactional, elective payment to defray the costs of a service received (such as a user fee); see *Ontario Private Campground Assn v. Harvey (Township)*, 33 OR (3d) 578, [1997] OJ No 1876; see also *Carson’s Camp Ltd. V. Amabel (Township)*, 159 DLR (4th) 180, 1998 CarswellOnt 1852.

²¹ The County of Lambton’s Building Services Department administers the by-law enforcement services provided to the lower tier municipalities.

- 50 Neither the township's clearing of land by-law or its fees by-law authorize the collection of expenses relating to the enforcement services provided by the county in Karen's case. Accordingly, the township cannot legally require Karen to pay enforcement and administration charges associated with its efforts to enforce the clearing of land by-law on her property. The township acted beyond its legal authority in issuing the bill to Karen and in adding the debt to the tax rolls. Under the circumstances, the township should immediately extinguish the debt, remove it from the tax rolls, and return any payments Karen has already made on the principal and interest associated with the debt.

Recommendation 1

The Township of St. Clair should immediately expunge Karen's debt relating to property standards charges, remove it from the tax rolls and refund any payments already made towards this debt and any associated interest charges.

- 51 The township's unauthorized attempts to recoup its enforcement costs from Karen have resulted in personal distress and inconvenience to her. Accordingly, the township should also apologize to Karen for its conduct.

Recommendation 2

The Township of St. Clair should apologize to Karen for imposing charges and attempting to collect them without lawful authority.

Clearing up the clearing of land by-law

- 52 I recognize that property owners are responsible for complying with local by-laws and that the township has a legitimate interest in seeking to defray by-law enforcement expenses. However, the township must observe legal requirements before attempting to recover inspection and other costs from individual property owners. Accordingly, if the township wishes to collect its clearing of land by-law enforcement costs in future, this should not be done in an arbitrary manner. The township should pass a by-law clearly authorizing this recovery.
- 53 Consistent with the law and to ensure transparency and fairness, any by-law authorizing recovery of enforcement fees should set out the circumstances in which an inspection or other fee will be charged and provide some indication of the amount of the fee. Generally, in order to be considered a fee and not a tax, a

municipal fee must roughly correspond with the cost of providing the service.²² Some municipalities have passed by-laws that set an hourly rate for inspections, while others prescribe a flat rate. For example, the City of Thunder Bay charges a \$100 fee for re-inspections required under its yard maintenance by-law, and a flat rate of \$50 when it issues a final compliance notice.²³

- 54 In Karen's case, the mileage charges she was required to pay for the by-law enforcement officer's visits to the property varied significantly. The officer drove to her property 50 times over the course of four years. She averaged 106.9 kilometres per visit, for a total of 5,345 kilometres. The mileage recorded ranged from 40 km to 130 km per trip, with no detailed justification for the variances. During an interview, the officer speculated that the variance might reflect that she:
- Visited multiple properties on the same trip, splitting the mileage between them;
 - Visited the property twice on the same day;
 - Went to the township office as well as the property; or
 - Included a trip into town for lunch or to use the washroom.
- 55 Enforcement costs should be relatively predictable and not fluctuate, as in Karen's case, based on a by-law enforcement officer's travel itinerary or breaks on any given day. As a best practice, and to avoid unfairly catching property owners by surprise, the township should prescribe specific fee amounts for enforcement steps.

Recommendation 3

If the Township of St. Clair intends to recover the costs of enforcing its clearing of land by-law, beyond remedial expenses, it should pass a by-law:

- **Specifically authorizing recovery of enforcement and administrative costs;**
- **Setting out the circumstances under which inspection and other fees will be charged; and**

²² *Urban Outdoor Trans Ad v. Scarborough (City)*, 52 OR (3d) 607 at para 31, [2001] OJ No 261 (CA); see also *Angus v Corporation of the Municipality of Port Hope*, 2016 ONSC 3931, 2016 CarswellOnt 9623.

²³ City of Thunder Bay, by-law, No 13/2017, *A By-law to amend By-law Number 028-2—7, being a by-law to set fees and charges imposed for various Municipal Services, Schedule C*, (6 March 2017).

- **Prescribing specific fee amounts for enforcement steps.**

Costs to the County

- 56** As the township relies on the county for enforcement services, it makes sense for it to consider what the county charges and how it establishes enforcement rates. We considered this question in the context of Karen's case.
- 57** The County of Lambton bills each lower-tier municipality where it provides enforcement services on a full cost recovery basis. County staff told us that the by-law enforcement officer tracks her activities in a journal and excel spreadsheet. An assistant tallies the kilometres she drives and hours she has worked with respect to each property, and attributes the hours and kilometres to the appropriate municipality. Then, once a month, the county sends each lower-tier municipality a bill, including an amount representing the officer's hourly wage and mileage driven for properties in that municipality.
- 58** The county's bills to the Township of St. Clair do not contain details about the enforcement activities undertaken. Issued monthly to the township, they list the number of hours spent and kilometres driven by the by-law enforcement officer with respect to each township property that month. The total mileage for the month and total hours spent are each multiplied by a rate set by the county, and the two resulting totals are added together to arrive at a total amount due. Appended to each invoice is a statement of expenses for the month. It lists the date, number of hours, number of calls and kilometres driven, and the relevant property addresses.
- 59** The county amends the rates for mileage annually on July 1st to reflect the reimbursement rate for travel in Ontario set in a travel directive issued by the Treasury Board of Canada Secretariat.²⁴
- 60** The hourly rate charged for the by-law enforcement officer's time is also set by the county on an annual basis in a schedule to the county's services and fees by-law. The county's Chief Building Official explained to us that the hourly rate changes annually depending on union agreements and pension rates, as well as other costs associated with delivering the service. However, our examination of the bills issued to the township in Karen's case revealed that the county's bills were not always accurately calculated. Although the service rate is approved by

²⁴ At a council meeting on October 5, 2005, council for the county passed a resolution approving a recommendation by the Corporate and Community Services Committee with respect to the reimbursement rate for mileage.

council through its services and fees by-law, during the years reviewed by our Office, county staff began to charge new rates months before they were actually approved.

- 61 County staff told us they began to charge new enforcement rates as of July 1st because they were proposed in staff reports relating to annual budgets, which council approved. However, in the years we reviewed, the actual rates were not specified in the by-laws approving the budgets, and legally they did not come into effect until council approved a new Services and Fees By-law and set the date on which they would come into force. For example, as of July 1, 2011, the county began to charge the township an hourly rate for enforcement services that was not approved by council until November 30, 2011, and did not come into effect until January 1, 2012. This resulted in the county overcharging the township for six months. The township was undercharged between July 1, 2013 and February 12, 2014, but again overcharged from July 1, 2014 to February 4, 2015. In each case, the county applied a new rate before it was effective. In Karen's case, the net impact to the township appears to be an overcharge of about \$155.²⁵
- 62 In future, the county should ensure that it does not charge an hourly rate for enforcement services unless it has been specifically authorized by by-law.

Recommendation 4

The County of Lambton should ensure that it does not charge any fee for enforcement services that is not first set by by-law, as required by the *Municipal Act*.

- 63 The county sets the by-law enforcement officer's hourly rate in its services and fees by-law in a section titled "Building Services Department." The rate is referred to as "Building Inspection – Chargeable Rate". The by-law also references "Special Inspections," and notes that the fee for these will be the chargeable rate plus the mileage rate set by council. However, the by-law does not specifically indicate that the building department's chargeable rate will be applied to property standards or other by-law inspections or related activities.
- 64 Some municipalities use clearer language when setting similar fees. For example, the City of Hamilton's user fees by-law sets out "fees charged for inspections carried out by the City resulting from noncompliance with any City by-

²⁵ This calculation is based on the information available about Karen's case. We did not consider the financial implications for other enforcement conducted by the county for the township or other municipalities served by the county, as this was beyond the scope of our investigation.

law.”²⁶ The City of Thunder Bay’s fees by-law provides for a \$100 fee for re-inspection as provided for in specific by-laws, including its yard maintenance by-law.²⁷

- 65 By clearly identifying the nature and purpose of each fee in its by-law, the county can improve transparency and help prevent surprises for residents and lower-tier municipalities.

Recommendation 5

The County of Lambton should clearly identify the nature of fees set by by-law, including any fees associated with by-law inspections.

Monitoring enforcement costs

- 66 The Township of St. Clair did not identify the county’s billing errors. In Karen’s case, significant enforcement costs accumulated over four years without the township questioning the basis for the charges. The township Clerk told us no one was monitoring the county’s enforcement bills. The bills were just paid as they arrived. In future, the township should be vigilant in scrutinizing enforcement costs in individual cases. While the county is responsible for ensuring that it charges the correct rates for by-law enforcement activities, the township is also accountable to its citizens to review invoices it receives and confirm the accuracy of the rates charged.

Recommendation 6

The Township of St. Clair should review invoices for enforcement services it receives from the County of Lambton to ensure that it is charged at the rates in force at the relevant enforcement dates.

Formalizing the By-Law Enforcement Arrangement

- 67 The absence of a written agreement between the township and the county around enforcement services and charges is concerning and has contributed to a situation in which inaccurate invoices have been issued and paid as between the county and the township, and residents have been left in the dark. To ensure

²⁶ City of Hamilton, by-law, No 17-137, *A By-law to Establish Certain 2017 User Fees and Charges for Services, Activities or the Use of Property* (14 July 2017).

²⁷ *Supra* note 23.

greater accountability and transparency, the township and the county should enter into a formal agreement, which should be publicly posted so residents know what to expect when it comes to enforcement services and costs.

Recommendation 7

The Township of St. Clair and the County of Lambton should enter into a formal agreement regarding enforcement services, which should be publicly posted.

- 68 My investigation revealed several issues that could be addressed in an enforcement services agreement to increase fiscal predictability, as well as the effectiveness and reasonableness of by-law enforcement and billing.

Setting rates

- 69 It should be clear to both the county and the township what rates will be charged for enforcement services at any given time and how they are determined. While the county sets the rates for its services, the township should have advance notice and the ability to plan for any future rate increases and revise relevant by-laws accordingly. A formal agreement should include reference to what enforcement services will be covered, the applicable service and mileage rates, and the process for calculating and providing notice of rate changes. Having greater certainty relating to rates will increase financial accountability and enable the township to review invoices effectively against set standards.
- 70 Mileage rates and apportionment of mileage costs amongst municipalities should also be standardized to limit arbitrary fluctuations based on a by-law enforcement officer's schedule and choice of route. Currently, the county's officer is based at its offices in the Town of Plympton-Wyoming. She explained to us that she begins and ends most trips at that office and charges are calculated accordingly. Municipalities are billed less for inspections of properties closer to the county office than those in remote locations, both because the mileage charges are lower and because the officer spends less time driving to closer sites. In the case of more distant properties, municipalities are often charged mileage and wages for the officer's lunch and washroom breaks. The kilometres tallied in connection with a property may also fluctuate depending on where else the officer chooses to drive on a given day. The officer told us that if she visits more than one property on a trip, she approximates how to apportion the mileage between the properties based on the relative distance to each from the county office.

- 71 The county and the township should establish expectations for mileage calculations and other travel costs through a formal agreement, increasing the predictability and reasonableness of mileage charges.

Recommendation 8

The Township of St. Clair and the County of Lambton should establish through formal agreement:

- **Rates for specific enforcement services and mileage;**
- **A process for changing annual rates, including advance notice to the township; and**
- **A method for calculating mileage and associated travel costs that is not dependent on the by-law enforcement officer's varying property inspection and break schedule.**

Dispute resolution

- 72 When our Office made inquiries with the township and the county about the possibility of waiving or altering Karen's bill, county staff said they had no authority to do anything because the township issued the bill. The township, in turn, told us that only the county could alter the billing. When we spoke with the township's Mayor, he said that the by-law enforcement officer has "carte blanche" with respect to billing because the work is contracted, and the township cannot question the work of a county employee. At present, failure to clarify the respective roles, responsibilities, and rights of the township and the county leads to inertia and an inability to effectively address legitimate issues relating to invoices for enforcement services. The county, the township and its residents would benefit from clear definition and formalization of the county's and township's roles, responsibilities, and rights relative to by-law enforcement.
- 73 The township should have express authority to inquire with the county about individual bills, and obtain detailed accounts of enforcement efforts, including in response to disputes from affected property owners. Finally, there should be some formal dispute resolution mechanism to address concerns from the township about invoice calculations and other issues, including matters raised by those affected by by-law enforcement. Both the township and the county should also establish a complaint process to address concerns relating to enforcement services and bills.

Recommendation 9

The Township of St. Clair and the County of Lambton should establish through formal agreement:

- **Their respective roles, responsibilities, and rights relating to by-law enforcement, including the township's right to request and receive detailed accounting of individual bills and enforcement steps; and**
- **A dispute resolution process for the township and affected residents relating to enforcement services and bills.**

Guiding enforcement

- 74** In the absence of a formal agreement between the township and the county, and with no by-law enforcement policy established by the township, the county's by-law enforcement officer has no specific guidance relating to the enforcement of the township's by-laws. Under the township's current process, once council decides to refer a complaint to the officer, the township defers to the officer's discretion with respect to the enforcement process. The officer determines how often and when to visit the property, and based on their assessment, which township by-law to apply. The officer is also given discretion with respect to when to report back about a specific case to township staff or council. The officer determines how and when to make contact with the property owner. For instance, in Karen's case, the officer knew that Karen was registered on title as the sole property owner, but chose not to contact her in writing for almost two years.
- 75** The township explained to us that it has certain expectations of the officer. For instance, it expects that the officer will contact the owner on title to a property and explain the enforcement process during an inspection. However, these expectations are not set out in writing, and clearly were not followed in Karen's case. Instead, the by-law enforcement officer repeatedly dealt with Karen's former spouse, who was not ultimately responsible for ensuring compliance or expected to pay any costs relating to enforcement. The by-law enforcement process also proceeded in fits and starts over the course of four years, as significant costs accumulated against an unsuspecting Karen with only periodic reporting to the township's council.
- 76** There are also no requirements relating to the by-law enforcement officer's record-keeping. In Karen's case, the officer's enforcement records consist of notes in a journal and an Excel spreadsheet. They are sparse, and hours and

miles traveled are recorded without any explanation of associated activities. For example, the by-law enforcement officer recorded in her file that she spoke with the township's Clerk 34 times over the course of the four years that she inspected Karen's property. However, the notes do not include information about the content of those discussions, or distinguish between phone calls and in-person meetings. Further, when the officer completed more than one task related to Karen's property on a single day, she recorded only the total time spent, rather than the time taken on each activity. As a result, for days when she visited the property and spoke with the Clerk, we cannot determine the length of the calls or visits.

- 77** When the officer recorded kilometres driven with respect to Karen's property, she did not indicate whether the distance included a trip to the municipal office or into town for lunch. The notes do not record whether the distance was split between two or more properties, or whether the officer had to make two trips to Karen's property in one day. As a result, the distances charged varied widely from day to day, and the officer could only speculate as to the potential reasons for the variation.
- 78** In its by-law enforcement guide, the British Columbia Ombudsperson, which has had oversight of municipalities since 1995, recommends that by-law investigators document all significant steps taken, including the time taken for each individual activity. The guide says the file record should also include the evidence collected, its source, and the date collected. In addition, the record should reflect significant decisions made and the rationale for those decisions, as well as reference to applicable by-laws, legislation and policies.²⁸ This is a sound approach for by-law enforcement and should be adopted in Ontario.
- 79** The township and the county should clarify the respective roles of township council, staff, and the county's by-law enforcement officer. The township should also ensure that it sets expectations for enforcement of its by-laws by the county's by-law enforcement officer, including with respect to contact with the individual(s) on title to a property and record-keeping. In addition, the township should establish a process governing the timing, content, and method of the by-law enforcement officer's reports to council on the status of investigations. The township can do so as part of a formal agreement with the county, either by specifically setting out requirements in the agreement or by incorporating a requirement that the officer follow a specific township by-law enforcement policy

²⁸ Office of the Ombudsperson of British Columbia, *Bylaw Enforcement: Best Practices for Local Governments*, Special Report No. 36 (March 2016) at 29, online: <<https://www.bcombudsperson.ca/documents/bylaw-enforcement-best-practices-guide-local-governments>>.

and/or by-law incorporating these features when providing services to the township.

Recommendation 10

The Township of St. Clair and the County of Lambton should establish through formal agreement:

- **The township's, county's and by-law enforcement officer's roles relating to enforcement of by-laws;**
- **Specific guidance for the county's by-law enforcement officer for enforcing township by-laws, including with respect to contact with property owners and record-keeping; and**
- **Requirements for reporting on the status of by-law enforcement.**

Complainant communication

- 80** In Karen's case, the by-law enforcement officer spoke with the complainant 23 times. The township was charged for these calls, and the expense later added to Karen's bill. While the officer's notes are not detailed enough to determine the length of each of the phone calls, we determined that in at least three instances, the county charged the township for an hour of the officer's time in speaking with the complainant. The county's by-law enforcement officer told us that if a chatty complainant calls her, she has no choice but to listen and charge the township for the time.
- 81** There will inevitably be situations in which a complainant speaks with the county's by-law enforcement officer. However, in order to minimize the potentially significant and unpredictable cost to the township and property owners associated with complainant communications, the township should consider whether it is more economical and effective to designate a member of township staff as having primary responsibility for speaking with complainants directly.

Recommendation 11

The Township of St. Clair and the County of Lambton should consider designating through formal agreement a township official with primary responsibility for communicating with individuals complaining about by-law infractions.

Ensuring no surprises

- 82** The bill Karen received was unlawfully issued. The enforcement process leading up to the bill was also opaque and unreasonable.
- 83** Effective enforcement depends on the offending person knowing they are in contravention and the costs of non-compliance. The township's clearing of land by-law says that, when an inspector finds a by-law contravention, they must notify the owner of the land in writing. However, "owner" is defined broadly in the by-law and includes various occupiers of a property, not just the legal owner. In Karen's case, although the by-law enforcement officer had determined in 2011 that the condition of her property contravened the by-law, Karen did not receive written notice for almost two years. In the intervening period, the officer inspected her property **29** times, racking up **3,275** kilometres in mileage and spending **85.5** hours on the file. The December 2012 order Karen received made no mention of these activities or that she might be billed for them. After the order was issued, enforcement costs continued to mount over the next two years until the total exceeded **\$11,000**, without any further notice to Karen. Only minimal attempts were made to contact Karen directly. In the end, Karen, who was legally responsible for complying with the by-law, was caught off guard.

Some positive steps

- 84** The township told us that in recognition of previous problems with the cost and transparency of by-law enforcement, it made improvements to its practices in 2015. Under its new process, it does not automatically refer all property-related by-law complaints to the county. Now, when someone complains that a property may be in violation of a by-law, council directs the Clerk to visit it and view its condition first. The Clerk looks for potential by-law violations, either from the road or by knocking on the door. If the Clerk thinks there may be a by-law infraction, the township delivers a letter – by hand, or by registered mail – to the owner registered on the title to the property. The letter identifies the potential infraction and cautions that the owner will be charged for all costs associated with the services of a by-law enforcement officer, if their services are required. The township then gives the owner 30 days to remedy the potential violation. After 30 days, the Clerk visits the property again. If the property owner co-operates, the township may continue to work with them to remedy the violation; if not, the Clerk refers the matter to the county and charges begin to accrue.
- 85** Township staff acknowledged that the new process is more successful. It has improved the degree of by-law compliance and reduced costs to the township and property owners. The township now refers fewer cases to the county for by-law enforcement. In the past, it referred some 15-20 cases a year, while it now

refers five or fewer. In cases where a complaint is referred to the county, township staff told us that bills are now sent to property owners for enforcement charges on a monthly basis. In addition, the Clerk told us that the township now sends letters to owners to inform them when their files are closed, and to confirm any associated outstanding charges.

Improving on improvements

- 86** The township's process improvements are positive steps in the right direction. However, although they address some of the problems we identified, particularly with respect to notice to property owners, the process remains informal and not set out in writing in any township by-law or policy.
- 87** There is also no mechanism for property owners to dispute the specific application of the clearing of land by-law. In Karen's case, the by-law enforcement officer chose to apply the clearing of land by-law instead of the property standards by-law, in part because the clearing of land by-law does not provide a right of appeal. This is a rather arbitrary distinction and, as Karen's case demonstrates, absence of a right to appeal does not necessarily reduce the time associated with enforcement.
- 88** In order to enhance the consistency, transparency, and fairness of the township's by-law enforcement process, the township should formalize its new graduated enforcement process for property-related by-law complaints, and incorporate a right of appeal for its clearing of land by-law. In doing so, it should require that a title search be undertaken to confirm the identity of the registered owner and that the registered owner be notified in writing of any infraction and enforcement costs as soon as possible. It should also consider incorporating best practices for enforcement used in other municipalities and jurisdictions. Through agreement with the county, it could require the county's by-law enforcement officer to abide by this by-law when providing services to the township.
- 89** The City of Thunder Bay has established a graduated process designed to encourage compliance with its property-related by-laws. A combination of the city's Yard Maintenance By-law,²⁹ fees and charges by-law,³⁰ and enforcement policy provide for the following enforcement sequence, which includes a right to appeal:
1. The first notice is delivered, indicating the by-law violations and required actions, and stating that if the property is not brought into compliance by a

²⁹ City of Thunder Bay, by-law, No 68-2008, *Yard Maintenance By-law*, (9 June 2008).

³⁰ *Supra* note 23.

specified date, the owner will receive a final notice and be charged a \$50 fee as provided for in the city's fees by-law;

2. If the first notice does not result in compliance, a final notice is delivered and the owner is charged the \$50 fee. The final notice states the violations and actions required, and notes that if the owner does not comply by a specified date, the city may cause the work to be done at the expense of the owner, plus a \$100 administration fee;
3. The final notice states that if the recipient disagrees with the notice, they can contact the manager of Licensing and Enforcement within 10 days; and
4. If the recipient still disagrees after speaking with the manager, they can appeal the final notice to the city's Property Standards Committee.

Recommendation 12

The Township of St. Clair should formally incorporate its new graduated approach to property-related by-law enforcement through by-law amendments, including a requirement that a title search be conducted to confirm the registered owner of the property, and that the registered owner be notified in writing of the infraction and any enforcement costs as soon as possible.

Recommendation 13

The Township of St. Clair should amend its clearing of land by-law to include a right of appeal.

Setting enforcement expectations

- 90** In addition to amending its by-law to reflect its revised approach to property-related by-law enforcement, the township should consider developing a by-law enforcement policy. Several municipalities in Ontario have enacted enforcement policies that help explain to residents how staff respond to by-law related complaints and exercise their discretion with respect to enforcement. For example:

- The Township of Cramahe adopted a by-law enforcement policy in May 2017 that sets out how complaints are to be submitted and establishes a classification system for infractions.³¹
- The Township of Woolwich's by-law enforcement policy defines and addresses vexatious or repeated complaints from the same individual, and establishes a two-step enforcement process. It also confirms that staff can exercise discretion when responding to by-law complaints, while setting out factors to be considered in their decision-making.³²
- The Town of Lincoln has a by-law enforcement policy that identifies in detail the steps to be taken by the town's staff in response to a complaint.³³
- The Town of Penetanguishene's by-law enforcement policy and procedure manual refers to its expectations with respect to note taking, and includes detailed flow charts of the investigation process, including when notices of contravention are to be sent to the owner registered on title.³⁴

91 The British Columbia Ombudsperson's by-law enforcement guide recommends that municipalities adopt a by-law enforcement policy that defines the distinct roles of council and staff with respect to by-law enforcement.³⁵ The guide also recommends setting out through policy how staff are to exercise their discretion at all stages of the process, including when deciding whether to investigate a complaint, whether to send a letter to the property owner, and whether to refer a complaint to a by-law enforcement officer.³⁶

92 As a best practice, the Township of St. Clair should develop its own enforcement policy providing those who apply it with the flexibility required to respond to each complaint on the basis of the facts, but also establishing guiding factors to ensure consistency across complaints. Such an approach would assist with the decision-making process and in explaining how enforcement decisions are reached. If the

³¹ City of Cramahe, policy, *Enforcement of By-laws Policy* (2 May 2017), online: <<http://www.visitcramahe.ca/sites/cramahe.civicwebcms.com/files/media/oldimgs/Bylaw%20Enforcement%20Policy.pdf>>.

³² Township of Woolwich, policy, *By-law Enforcement Policy* (26 November 2013), online: <<https://www.woolwich.ca/en/township-services/resources/By-law-Enforcement---By-law-Enforcement-Policy.pdf>>.

³³ Town of Lincoln, policy, No CS-2003-01, *Municipal By-law Enforcement Policy* (2 June 2003), online: <<https://lincoln.civicweb.net/document/45441/By-law%20Enforcement%20Policy.pdf?handle=9B0A9953C41B4B938C1DAFC669332A93>>.

³⁴ Town of Penetanguishene, Policy Manual, *Municipal Law Enforcement Policy and Procedure Manual* (7 October 2013) online: <<https://penetanguishene.civicweb.net/filepro/documents/13972?preview=14168>>.

³⁵ *Supra* note 28.

³⁶ *Ibid.*

township takes this route, it could, through agreement with the county, require that the county's by-law enforcement officer observe the policy when providing services for the township.

Recommendation 14

The Township of St. Clair should develop a written policy for addressing property-related complaints reflecting enforcement best practices, which should be adopted by council and include:

- **Reference to the distinct roles of council and staff with respect to by-law enforcement;**
- **How complaints are to be received and documented;**
- **The steps to be taken in response to a complaint, including when the registered owner is to be notified and how;**
- **Guidelines for staff exercising discretion at each stage of the by-law enforcement process; and**
- **Direction to township staff about how and when council is to be updated on the status of an investigation.**

Complaints policy

- 93** Inevitably, municipalities receive complaints about by-law enforcement from residents who are concerned that enforcement is too rigorous, as well as from those claiming enforcement is too lax. I always encourage municipalities to develop a general policy to address complaints from the public. In my view, concerns about municipal administration are best addressed at the local level and municipal complaint procedures should be tailored to reflect the specific needs and context of the local community. The township should ensure that it has a complaint policy that can be used to address a range of matters, including concerns about the quality of by-law enforcement. My Office has developed resources to assist municipalities in preparing complaint policies.³⁷ The Association of Municipal Managers, Clerks, and Treasurers of Ontario also has a search resource on its website that can be used to locate complaint policies from Ontario municipalities.³⁸

³⁷ Ombudsman of Ontario, *Tip Cards for Municipalities and Tips for Municipal Complaint Resolution*, online: <https://www.ombudsman.on.ca/Resources/Brochure.aspx#Tips_Cards_for_Municipalities>.

³⁸ AMCTO Municipal Google Search, <<https://www.amcto.com/amcto/googlesearchpage.html>>.

Recommendation 15

The Township of St. Clair should develop a written policy for addressing complaints from members of the public.

Opinion

- 94 My investigation confirmed that the Township of St. Clair acted without legal justification when it sent Karen a bill for **\$11,700.63** and added that debt to the tax rolls. It also acted unfairly when, after four years of sporadic enforcement, it sent her the bill out of the blue, with no warning that she might be liable for enforcement efforts that took place without her knowledge. In addition, the township failed to ensure that:
- Enforcement arrangements with the county were subject to formal agreement;
 - Enforcement charges and activities were fair, reasonable, accurate, properly recorded and regularly monitored; and
 - Sufficient notice of enforcement and its potential consequences was provided to Karen.
- 95 It is my opinion that the township's conduct was unreasonable, unjust, wrong, and contrary to law in accordance with s. 21(1)(a), (b) and (d) of the *Ombudsman Act*.
- 96 The township is accountable for by-law enforcement involving its residents. It cannot escape blame by simply delegating enforcement authority to the county. However, the County of Lambton bears some responsibility in this case. It failed to formalize the enforcement arrangement with the township, resulting in a process that lacked clarity and rigour. It charged the township unauthorized rates for enforcement services and failed to ensure that enforcement charges were clear, predictable, consistent, accurate and justified through detailed record-keeping. Under the circumstances, I find that the county's conduct was unreasonable, unjust, and wrong in accordance with s. 21(1)(b) and (d) of the *Ombudsman Act*.
- 97 It is important for the public sector bodies we investigate to be transparent about their efforts to implement my recommendations. Accordingly, they should report publicly and to my Office on their progress.

Recommendation 16

The Township of St. Clair should report publicly, and to my Office, in six months' time on its progress in implementing my recommendations, and at six-month intervals thereafter until such time as I am satisfied that adequate steps have been taken to address them.

Recommendations

- 98 To address the concerns that I have identified in my investigation, I make the following recommendations:
1. The Township of St. Clair should immediately expunge Karen's debt relating to property standards charges, remove it from the tax rolls and refund any payments already made towards this debt and any associated interest charges.
 2. The Township of St. Clair should apologize to Karen for imposing charges and attempting to collect them without lawful authority.
 3. If the Township of St. Clair intends to recover the costs of enforcing its clearing of land by-law, beyond remedial expenses, it should pass a by-law:
 - Specifically authorizing recovery of enforcement and administrative costs;
 - Setting out the circumstances under which inspection and other fees will be charged; and
 - Prescribing specific fee amounts for enforcement steps.
 4. The County of Lambton should ensure that it does not charge any fee for enforcement services that is not first set by by-law, as required by the *Municipal Act*.
 5. The County of Lambton should clearly identify the nature of fees set by by-law, including any fees associated with by-law inspections.
 6. The Township of St. Clair should review invoices for enforcement services it receives from the County of Lambton to ensure that it is charged at the rates in force at the relevant enforcement dates.

7. **The Township of St. Clair and the County of Lambton should enter into a formal agreement regarding enforcement services, which should be publicly posted.**
8. **The Township of St. Clair and the County of Lambton should establish through formal agreement:**
 - **Rates for specific enforcement services and mileage;**
 - **A process for changing annual rates, including advance notice to the township; and**
 - **A method for calculating mileage and associated travel costs that is not dependent on the by-law enforcement officer's varying property inspection and break schedule.**
9. **The Township of St. Clair and the County of Lambton should establish through formal agreement:**
 - **Their respective roles, responsibilities, and rights relating to by-law enforcement, including the township's right to request and receive detailed accounting of individual bills and enforcement steps; and**
 - **A dispute resolution process for the township and affected residents relating to enforcement services and bills.**
10. **The Township of St. Clair and the County of Lambton should establish through formal agreement:**
 - **The township's, county's and by-law enforcement officer's roles relating to enforcement of by-laws;**
 - **Specific guidance for the county's by-law enforcement officer for enforcing township by-laws, including with respect to contact with property owners and record-keeping; and**
 - **Requirements for reporting on the status of by-law enforcement.**
11. **The Township of St. Clair and the County of Lambton should consider designating through formal agreement a township official with primary responsibility for communicating with individuals complaining about by-law infractions.**
12. **The Township of St. Clair should formally incorporate its new graduated approach to property-related by-law enforcement through by-law amendments, including a requirement that a title search be conducted**

to confirm the registered owner of the property, and that the registered owner be notified in writing of the infraction and any enforcement costs as soon as possible.

13. The Township of St. Clair should amend its clearing of land by-law to include a right of appeal.
14. The Township of St. Clair should develop a written policy for addressing property-related complaints reflecting enforcement best practices, which should be adopted by council and include:
 - Reference to the distinct roles of council and staff with respect to by-law enforcement;
 - How complaints are to be received and documented;
 - The steps to be taken in response to a complaint, including when the registered owner is to be notified and how;
 - Guidelines for staff exercising discretion at each stage of the by-law enforcement process; and
 - Direction to township staff about how and when council is to be updated on the status of an investigation.
15. The Township of St. Clair should develop a written policy for addressing complaints from members of the public.
16. The Township of St. Clair should report publicly, and to my Office, in six months' time on its progress in implementing my recommendations, and at six-month intervals thereafter until such time as I am satisfied that adequate steps have been taken to address them.

Responses

- 99 As is the practice in all of our formal investigations, we provided the township and the county with a preliminary version of this report, and offered them the opportunity to respond. I have considered their responses in preparing this final report.

County of Lambton

- 100 All of the recommendations that I directed to the county were accepted (**Recommendations 4, 5, 7, 8, 9, 10 and 11**). In a letter on behalf of the county, its Warden noted that **Recommendation 4** has already been implemented, as the county's fees bylaw is now updated immediately when fees are changed. He noted that the county has also begun to update its service agreements, and will take my recommendations into account as it drafts new ones. "We are committed to improving," he wrote.
- 101 I commend the county for its commitment to implement my recommendations to enhance the transparency and accountability of its by-law enforcement services in the interests of its residents.

Township of St. Clair

- 102 The Mayor, Chief Administrative Officer (CAO), and external legal counsel all provided comments on behalf of the Township of St. Clair. After the Mayor and counsel sent their responses, which commented on the investigation as a whole but did not specifically respond to my recommendations, the township requested and was given a second opportunity to review the preliminary report and provide additional comments. The second response was provided by the CAO.
- 103 The township accepted most of my recommendations, including those that will involve entering into formal service agreements with the county. These will go a long way to improving services, to the benefit of local residents and officials alike. However, the township did not accept two key recommendations, and raised some broader concerns that I want to address here, in the hope that they might shed some light on our process and objectives, not just in this case, but in general.
- 104 As Ombudsman, my role is to assess and investigate complaints about administrative problems and propose solutions, if I find evidence that the actions

of a public sector body are – to use the terminology of the *Ombudsman Act* – unjust, unreasonable, improperly discriminatory, wrong, or contrary to law. My Office is an impartial, independent body that does not take the side of complainants or public sector bodies. What we do is advocate for fairness and good governance.

First response

- 105** In this case, our key finding was that the township had **no legal authority** to bill Karen as it did. Unfortunately, the initial responses we received from the Mayor and legal counsel focused on issues unrelated to this point.
- 106** The Mayor stressed that Karen’s property “continues to be in contravention of the applicable by-laws.” He also argued that Karen “benefitted” from a change to previous township policy:
- We would note that at one time, in an effort to discourage people from contravening the by-law, the municipality rather than charge a 10% administration charge on top of our costs, charged a 100% administration fee.
- 107** This response ignores the fact that the township had no legal authority to charge Karen; it was also not permitted to charge an administrative fee, regardless of percentage.
- 108** The Mayor also submitted that our investigation “raised concerns with respect to the time it took to invoice Karen for the charges against her property,” and noted: “In this regard, our staff was following an approved policy of council...that states that charges should be billed out as soon as final costs are determined.”
- 109** However, this assertion is not supported by the facts. The township first closed Karen’s file on December 2, 2013. No bill was sent until after a second complaint had been opened and closed, in February 2015. And in any event, my investigation did not focus on the time it took to send Karen a bill, but the fact that she was never given notice that charges were accruing, much less that they would amount to more than \$11,000.
- 110** The solicitor commented that “the characterization [in the report] of the owner as an innocent victim is mistaken and misleading,” and “the township feels an apology to the owner is unwarranted in light of the owner’s continued disregard of property standards by-laws and council’s restraint in pursuing further enforcement.” He also stressed that the township “is proud of its practice to work with property owners to resolve property standards issues rather than entering

onto private property to take remedial steps on its own,” but noted that in this case, “in hindsight,” it should have taken remedial action.

- 111 Although I understand the township’s frustration with the situation, the state of Karen’s property does not justify a local government acting outside the law. The township should take responsibility for its errors and ensure it has by-laws and policies in place that allow it to respond in a fair and legal manner.

Second response

- 112 The follow-up response by the CAO, which specifically addressed my recommendations, was more constructive. He acknowledged:

Throughout this process, council was under the impression the clearing of land by-law had the same cost recovery for enforcement that the property standards by-law has; which is why council endorsed using this by-law when it was recommended by the property standards officer.

He said the township therefore agreed to **Recommendation 3**, and would make by-law amendments “to clearly identify that all costs associated with its enforcement will become the responsibility of the property owner.”

- 113 The township also agreed to formalize its new graduated approach to property related by-law enforcement and develop a written enforcement policy consistent with my **Recommendations 12 and 14**. And it undertook to consider my **Recommendation 15**, to develop a general complaints policy.

- 114 Nevertheless, the township still did **not** accept my **Recommendations 1 and 2**, to eliminate Karen’s debt and apologize to her. The CAO wrote that to expunge Karen’s debt “optically suggests the property was not in contravention of the by-law, which is not the case.”

- 115 He did, however, add that the township would consider reducing Karen’s debt:

The township is prepared to consider a reduction based on the findings of this report, but is not prepared to expunge the entire charge. That reduction has not been determined by council at this time.

- 116 As for apologizing, the CAO stated that the township council and staff “were of the opinion that we had the authority to charge Karen for our costs associated with the enforcement of our by-laws,” and stressed that she has still not cleaned up the property:

Perhaps she should be apologizing to her neighbours, who have had to put up with the state of her property and have become frustrated by her lack of action and her disregard for the municipal by-laws, because although the Ombudsman has questioned the authority of the municipality to recover our costs, there has been no suggestion that the by-law itself is invalid or that Karen does not have an obligation to comply.

- 117 Again, I am not suggesting that the township deliberately acted contrary to law, or that it is not entitled to take steps to ensure that residents and property owners comply with prescribed property standards. By its own CAO's acknowledgement, it may very well be that Karen was not the only party in this case to be taken by surprise by the repercussions of this by-law. Still, the township has an obligation to understand and follow its own by-laws. I continue to encourage the township to implement **Recommendations 1 and 2**.

Formal agreement

- 118 The good news is that, in accepting the rest of my recommendations, the township agreed to make changes to avert future problems. To address **Recommendations 3 and 13**, the CAO said it will either amend the clearing of land by-law or repeal it and add provisions to its property standards by-law.
- 119 With regard to entering into a formal agreement with the county on enforcement services (**Recommendations 7 to 11**), the township was generally receptive. The solicitor pointed out that there were written agreements between the county and township's predecessors dating back to 1985, however, these arrangements are not relevant to the issues examined in our investigation, as they do not apply to the enforcement of the clearing of land by-law. Still, both the solicitor and the CAO acknowledged the need for a new agreement, as we recommended. Wrote the CAO:

The township absolutely agrees with this recommendation [7] and has already begun a draft which we will continue working on until an agreement is reached.

He also noted that an agreement clarifying the process for charging mileage expenses from the county to the township "would be an absolute improvement in transparency."

- 120 However, he raised reservations about establishing a process to resolve billing disputes (**Recommendation 9**) because "we do not believe it is the role of the township to audit invoices provided by outside contractors used to bring

properties into compliance.” The township made a similar comment regarding my **Recommendation 6** about monitoring invoices from the county.

- 121** To put it bluntly, the township should know what it is paying for in all transactions, even those involving another level of government, to ensure it is managing public resources in a competent manner. I continue to recommend that the township and county develop a robust and effective dispute resolution process to ensure billing accuracy and, ultimately, appropriate expenditure of public funds. The township expressed interest in seeing examples of dispute resolution processes, and I encourage its officials to consult those available via the Association of Municipal Managers, Clerks and Treasurers of Ontario’s online resources.³⁹
- 122** In responding to **Recommendation 11**, the township noted that its Clerk is now responsible for initial communications with property owners alleged to be in non-compliance with by-laws, to help control enforcement costs. I reiterate that an official should also be designated to communicate with complainants – given that in Karen’s case, the township was billed for 23 such contacts by the by-law enforcement officer.

Reporting back

- 123** Finally, the township raised concerns about my **Recommendation 16**, which calls on it to report back to my Office on its progress in implementing my recommendations. The CAO wrote:

The township will consider providing updates to the Office of the Ombudsman as new updates and policies are passed, but we are not prepared to agree to amend such bylaws and policies to your satisfaction, as that will remain the role of our council. The township appreciates your input and your desire to help us improve our policies and procedures and make them more transparent, but the decision on what to approve will still rest with our council, being our local elected body.

- 124** For the benefit of anyone reading this report, from municipal officials and councillors, to Ontarians of all walks of life, I want to take this opportunity to clarify the intent of this important recommendation.
- 125** I am often asked how, as Ombudsman, I can effect positive change in the public sector when I can only make non-binding recommendations. One of the ways I do this is by publishing reports like this one, in which I document the commitment

³⁹ AMCTO Municipal Google Search, online:
<<http://www.amcto.com/imis15/content/GoogleSearchPage.html>>.

of public sector officials to act on my proposals, and follow up on them with public updates on their progress, usually in my Annual Report.

- 126** My recommendation that the township report back to my Office “until such time as I am satisfied that adequate steps have been taken” to address my recommendations is a routine one: My Office has made this same recommendation in every major investigation of the past decade, always with excellent co-operation from the bodies we oversee – ranging from the Government of Ontario itself, to its many ministries, agencies and corporations, to (most recently) the Toronto District and Catholic District school boards. Our monitoring of the implementation of recommendations – and the reporting back by the public sector bodies implementing them – also allows us the opportunity to provide feedback on the impact of those changes. We are uniquely positioned to be able to inform public sector bodies on how well the changes are working.
- 127** These updates give public sector bodies the opportunity to demonstrate how they implemented improvements. They do not in any way usurp the role of elected officials, whether they are at the municipal, school board or provincial level. The decision to accept and implement my recommendations (or not) is always theirs alone. The fact is, our recommendations are almost always accepted. And when they are, our role is to monitor and report on how they are implemented.
- 128** I thank those who participated in this investigation for their efforts to improve the services they provide to county and township residents. I look forward to receiving and reporting on their updates.



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