

## SUBMISSION TO LAW AMENDMENTS COMMITTEE OCTOBER 31, 2016

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Thank You for the opportunity to speak today. In the next few minutes, I will provide you with an overview of how Halifax Water billed stormwater fees and demanded payment by threatening liens against property owners who were non-customers of the water utility in Halifax Regional Municipality (HRM). That's not good government.

There are three key terms I ask you to listen for: customer, service, and assumption.

According to Halifax Water's website, approximately 14,000 HRM properties receive stormwater service only. They do not receive any other service from the utility. These property owners maintain their own onsite septic fields and wells. We call it the "Ditch Tax".

In early 2014, 14,000 customer accounts were created in the names of commercial and residential property owners without permission or knowledge of the property owners. 14,000 customer accounts were secretly opened by Halifax Water.

The areas affected in HRM are: Upper Tantallon, Stillwater Lake, Hammonds Plains, Eastern Passage, Cow Bay, Middle Sackville, Beaver Bank, Wellington, Windsor Junction; these communities are on municipal roads. Road ownership defines the service boundary of Halifax Water. However, there are accounts of some properties on private roads receiving bills from Halifax Water.

Once we won the right to appeal, the water utility agreed not to charge interest or send to collections while accounts were in the appeal process.

More than 4000 appeals for the "Ditch Tax" have been issued by property owners. This number continues to rise as more people become aware of the option to appeal. There are many who have ignored the bills and not paid the fee because they never agreed to a service agreement with the water utility.

In 2015, close to 1100 additional exemptions were approved by Halifax Water since the appeal process started in 2014. This number demonstrates that the water utility billed properties on the assumption of a service delivered.

Property owners on provincial owned roads, such as Lake of the Woods subdivision in Hubble, on one side of Highway 103, do not receive a bill from the water utility. However, homeowners in Haliburton Heights on the other side of Highway 103, they do receive a bill from the water utility.

### PROTECTING CONSUMERS

**The definition of "customer" must be included in the Halifax Regional Water Commission Act.** The term customer is not included in the Halifax Charter or the Municipal Government Act of Nova Scotia. The amendments to the Act as it stands today do not include a definition of "customer". Halifax Water created customers by opening accounts in the names of property owners.

## AN OVERVIEW OF THE MISMANAGED "DITCH TAX"

### 2013

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April 15-17 NSUARB Public Hearing:

In April 2013, a Public Hearing was held on Halifax Regional Water Commission's (HRWC) application for stormwater. The Halifax Water advertisements posted in the daily newspaper to promote the hearing were directed at "customers" of Halifax Water.

Non-customers were **not** informed of the opportunity to address the Board with concerns in regards to the upcoming "Ditch Tax". Non-customers were not informed by Council, NSUARB or Halifax Water that a new charge would be billed to non-customers.

NSUARB's June 2013 decision guaranteed Halifax Water the ability to bill "customers" for stormwater service charges.

The report concluded "that the current rate structure for wastewater/stormwater is not fair and equitable and need to be revised to meet the requirements of a regulated environment set out by the Board [NSUARB]. This will require some realignment of rates between customer classes as well as the separation of the cost of providing wastewater and stormwater service from one common rate".

### 2014

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Under the authority of the Data Sharing Agreement between the Province, CBRM, and HRM, Halifax Water requested civic address information from Property Valuation Services Corporation (PVSC) for property owners within the water service boundary (as defined by municipal road ownership).

Contrary to the **Consumer Protection Act of Nova Scotia and the Interest Act of Canada**, Halifax Water created customer accounts for residential and commercial property owners without their permission or knowledge.

Bills were sent to rural HRM property owners with well and septic on the assumption of service delivery. The bills included the threat of a property lien if not paid. Blanket billing took place without any requirement to prove a service was being delivered or permission to bill had been granted. That's not good government.

On April 8, Halifax Water held a meeting in Upper Tantallon to explain the charges to non-customers after bills were sent to them.

Shortly after the April 2014 meeting, I petitioned the NSUARB for fairness. In June 2014, the NSUARB sided with property owners and stated in its written decision, "It should be the responsibility of HRWC to prove that the charge is appropriate."

**Prior to the UARB's 2014 decision, the onus was on property owners to prove they did not receive service from the utility. Property owners, residential and commercial, were forced to hire an engineer at great personal expense to demonstrate to the water utility that they did not receive any service.**

Under the jurisdiction of the Nova Scotia Utility and Review Board, the water utility billed property owners on the assumption of service delivery.

**At the time of billing, property owners were not aware of business accounts being opened in their names. They did not give permission to anyone for customer accounts to be opened in their names.**

Property owners were not aware and did not agree to a service. If it was a service, customers would be able to disconnect. But we can't. The Ditch Tax is taxation without representation. This concept was further demonstrated in 2015 by Halifax Council.

## **2015**

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In spring 2015, all Halifax Water customers received a new charge on their water bills – the Right-of-Way fee.

Halifax Council had ordered Halifax Water to collect the fee on their behalf in 2014. However, a utility does not have the legal authority to collect taxes, and under the Municipal Government Act of Nova Scotia, tax collection by a water utility amounts to “taxation without representation”.

Another public meeting was held in Upper Tantallon, this time organized by the community, to discuss ways of pressuring Halifax Council to do the right thing.

In June 2015, after significant public pressure, Halifax Council rescinded their original motion which ordered Halifax Water to collect the tax.

Another fee starting appearing on Halifax Water bills in 2015 – a \$25 connection fee. Halifax Water added the charge on the bills after it was recognized that the new rural customers had never agreed to a service agreement.

## **2016**

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**In 2016, the fees are still not fair or equitable.**

Over \$1million has been spent on a faulty appeal system, where it is in the best interest of the adjudicator - Halifax Water - to deny appeals.

All the property owners who won their appeals and were exempt from all stormwater charges, have now been charged the Right-of-Way fee on their property tax bill. That includes every property within Halifax Water's service boundary, even the individual condominiums, but not individual apartments.

Halifax Water sent notice to customers with the threat of collection by Service Nova Scotia even though the property owners were in the appeal process.

Service Nova Scotia does not require any proof that a debt actually exists. That's not good government.

In July 2016, I filed a complaint of abuse of power with the Provincial Ombudsman Office and was informed, "this Office does not have the legislative authority to investigate decisions by the Utility and Review Board. As such, this Office will not be proceeding further with your complaint."

**Question:**

If the provincial **Ombudsman does not have the ability to review complaints against the water utility** and the municipality does not have an Ombudsman, than what entity has the legislative authority to hold Halifax Water accountable?

**DANGEROUS PRECEDENT**

**There is no other legal example of forcing a customer to pay a bill that they haven't agreed to or had knowledge of prior to receiving the bill.**

A dangerous precedent has been set. The water utility appears to evade penalty for creating customer accounts without permission and demanding payment by threat of lien.

**Question:**

**Do the current amendments of the Halifax Regional Water Commission Act protect rural property owners from being charged for water consumption from their private wells?**

**HIGHLIGHTS FOR CONSIDERATION:**

- 1) Non-customers had accounts created in their names **without permission or knowledge.**
- 2) In 2014, Halifax Water bills were sent with the **threat of a lien against properties** if bill was not paid.
- 3) Halifax Water ignored the **Consumer Protection Act of Nova Scotia** when creating customer accounts without permission.
- 4) Halifax Water ignored the **Interest Act of Canada** when creating customer accounts without permission.
- 5) If Halifax Water is providing a "service" then **property owners should be able to disconnect.** However, there is no ability for a property owner to disconnect from Halifax Water's "Ditch Tax".
- 6) **Good municipal government respects legislation that exists** at other levels of government.
- 7) **Taxpayers deserve to have their rights recognized. We deserve fairness.**
- 8) **Definition of "customer" must be included in Halifax Regional Water Commission Act.**
- 9) **Definition of "service" must be included in Halifax Regional Water Commission Act.**
- 10) **Define legislative authority in Halifax Regional Water Commission Act** to hold the water utility accountable.
- 11) **Protect property owners' right to water on private land.**