

Type of Decision									
Meeting Date	Monday, April 25, 2011				Report Date	Wednesday, April 20, 2011			
Decision Required	X	Yes		No	Priority	X	High		Low
Direction	x	Information Only			Type of Meeting	X	Open		Closed
REPORT TITLE									
Failure to File Form 4 Report 25/04/10/001									

Subject: Council decision on how to resolve the issue of two members of Council failing to file their Financial Statements by the March 25, 2011 deadline.

RECOMMENDATION: That Council come to an agreement towards resolution of this situation - the most reasonable being having an application to the court requesting an extension of the deadline due to the unique circumstances of this case.

#### BACKGROUND/EXECUTIVE SUMMARY:

You are each in receipt of all correspondence between this office and Mr. Seller of MMAH, Mr. Instance our Municipal Solicitor, Reeve Stewart and Mr. Hannam of the City of Thunder Bay. I trust you have reviewed it. I'm not sure that there are any areas of disagreement or contention however; I reported as Clerk what I have been told and what I have observed. In each piece of correspondence I have requested direction. I have received none. Mr. Seller simply quotes the legislation and at this time is not willing to take any further steps.

Councillors Gibson and Aiston maintain that they will remain in their seats until they are charged under the *Municipal Elections Act*.

In an attempt to resolve this issue, on Tuesday, April 19, 2011 Councillor Gibson approached each member of Council and me to determine how a special meeting should be called to further discuss and attempt to come to an amicable solution to this impasse. We have followed the Procedure and Notice By-Laws calling and advertising this meeting to be held on Monday, April 25, 2011 at 10:00 a.m.

On Wednesday, April 20, 2011 at 9:15 I called and spoke with Mr. Instance. He has been researching this issue looking for precedent and has come up empty. He is aware of a similar situation which occurred in North Algona Wilberforce some 10-15 years ago where the individual affected brought an application to the court for an extension. In this case the municipality took no position other than providing evidence to the events that had occurred prior to the missed deadline. (I am making an assumption that an actual election took place.)

Other than that and the situation with the City of Thunder Bay which you have received, he has found nothing. His explanation was that these situations were usually resolved without a formal court decision. In the City of Thunder Bay case there was an error in that incorrect information was given to the Mayor by the Clerk. The application was brought by the Clerk on behalf of Council. The Judge granted the extension. In that case, there was indeed an election with 6 nominees for that seat.

Mr. Instance explained that during a phone conversation with Reeve Stewart he asked her to obtain additional information and direction from Steve Seller and MMAH. That is what I have been doing since this issue was brought to my attention on Wednesday, April 6, 2011 as evidenced by the emails. Other than quoting the legislation it appears that MMAH is not willing to do anything further, unless Reeve Stewart is in possession on information which I am not.

The following points are those made by Mr. Instance:

- There is no precedent in case law, no decisions that he can find.
- The legislation is quite clear, failure to complete the Financial Statements by the deadline results in a forfeit of seats. There does not appear to be any method of enforcing this legislation. It exists and should be complied with. It is up to the affected individuals to admit that they were responsible and failed to meet the deadline and seek independent legal advice.
- He is unclear whether a charge needs to be laid or not.
- The fact that I failed to provide notice by registered letter as per section 78 (b) of the legislation could be used as a defence.
- It is his opinion that the individuals in question should seek independent legal advice and have application brought to court for a decision to extend the filing deadline. (This has been previously explained to Councillor Gibson and Aiston on April 6, 2011.)
- He further declared that he is not telling Council what to do and that Council can decide to commence an action to request that a judge extend the filing deadline as occurred in Thunder Bay and he will act for Council.
- He will proceed upon direction from Council and is awaiting further direction from me.

The following points are those of the Clerk:

- Yes, the failure to file by the deadline is contrary to the *Municipal Elections Act*.
- Yes, two council members failed to meet that deadline. How does that really change anything? If Steve Seller had not sent that email, we likely never would have noticed and nothing would have changed. Business would have continued as usual, no harm – no foul.
- Since being made aware of this situation I have attempted to obtain direction from MMAH, Mr. Seller and Mr. Instance. I have informed each of these people of the opinions of Councillor Aiston and Councillor Gibson. Aside from quoting the act, I have nothing further to go on.
- There was no election.
- There was no election campaign.
- There were no campaign finances collected or spent.
- No one has done anything deceitful or duplicitous; they simply missed a deadline. One with no consequence. A crime with no victim.
- I as Clerk failed to meet the requirements of section 78 (b) to the letter of the law. I gave notice but not as per the Act.
- Councillors Gibson and Aiston failed to meet the requirement of section 78 (1) of the Act to the letter of the law. They have filed their Financial Statements, simply not before the deadline.
- Not one of the five financial statements received are compliant with section 92 (5) (a) of the Act. Each is missing the nomination fee amount. As Steve notes in his comments, it is the responsibility of candidates to ensure that they have met the reporting requirements. I as Clerk have no obligation to ensure the accuracy of these documents, by signing I am simply recording that you have sworn that the information contained within is correct and that they have been received in my office on that particular date. Until I was made aware of this provision I had not even checked them. The only time I would be obligated to do this was if

there had been a campaign and any surplus had to be paid to me. Since that occurrence did not happen, there was no need. Again, without seeking this out, we never would have known about it.

- According to section 92 (5) (a) upon conviction each of you could be subject to section 80 (2) if you file a document that is incorrect.
- Not one candidate is compliant with section 69 (1) (a) of the Act which requires the opening of one or more bank accounts for election purposes.
- Council is not compliant with section 81.1 (1) which requires that an audit committee be appointed prior to October 1 of an election year. (There was no election, no finances, no need for an audit, and no need for a committee.)
- What would the removal of these members achieve?
- What would be gained?
- Would the residents of HCM support forcing the removal of these members? Even though the Act says so?
- Who is going to be willing to fill a seat after this plays out?

It is my recommendation that Council support a resolution directing the Clerk to contact the municipal solicitor requesting that he apply to the courts to have the filing date extended for the two members who missed the deadline. It is my further recommendation that we leave the reasons for an appeal and the additional issues of non-compliance up to the discretion of our solicitor for comment and/or action.

Others Consulted: Stephen Seller, MMAH; Bill Instance, Municipal Solicitor; John Hannam, City of Thunder Bay;

Approved and Recommended by the Clerk

Melinda Reith,  
Municipal Clerk

*Melinda Reith*