

Type of Decision									
Meeting Date	Tuesday, May 3, 2011				Report Date	Wednesday, April 27, 2011			
Decision Required	X	Yes		No	Priority	X	High		Low
Direction	X	Information Only			Type of Meeting	X	Open		Closed
REPORT TITLE									
Election Issues Report 03/05/11/001									

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 and further the issue of all 5 Form 4s being submitted with errors.

RECOMMENDATION: That Council come to an agreement towards resolution of this situation upon advice of the Municipal Solicitor in his letter dated April 26, 2011 and April 27, 2011 commencing an application to the court requesting an extension of the deadline due to the unique circumstances of this case.

It is the recommendation of Senior Staff **and our Municipal Solicitor** 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 having them reinstated. It is further staff recommendation that the same be done for all 5 members of Council considering that each of the Form 4s received contained errors and could result in forfeit of all 5 seats.

**WHEREAS** two members of the Council of the United Township of Head, Clara & Maria did inadvertently fail to file their Financial Audit statement prior to the deadline of March 25, 2011;

**AND WHEREAS** each of the five Form 4s received by the Clerk's office contain errors;

**AND WHEREAS** according to the *Municipal Elections Act*, failure to meet the requirements of section 78 (1) results in a forfeiture of the council seat;

**AND WHEREAS** failure to meet the requirements of section 92 (5) by filing a document under section 78 or 79.1 that is incorrect or otherwise does not comply with that section; may result in the forfeiture of the council seat;

**AND WHEREAS** all five seats on Council were filled by acclamation resulting in no campaign, no election and/or no finances aside from the nomination fee;

**AND WHEREAS** it is the opinion of our municipal solicitor that this issue should be brought before a judge for resolution and if the two individuals in question do not wish to proceed to have themselves reinstated that he believes Council should do so;

**AND WHEREAS** the failure to file the financial forms was simply an error due to a missed deadline and not an attempt to circumvent the legislation or commit fraud or deceit, in fact a mistake;

**AND WHEREAS** the failure to correctly complete the Form 4s was an error and not an attempt to circumvent the legislation or commit fraud or deceit, in fact a mistake;

**AND WHEREAS** continuing to conduct the business of this municipality without a resolution to this issue is not an option and is not in the best interests of the staff, residents or ratepayers of the Municipality;

**AND WHEREAS** it is the opinion of the Treasurer and municipal auditor that not having a judicial review and Court Order resolving this issue is putting provincial funding upwards of \$157,000 annually at risk;

**AND WHEREAS** under section 274 (1) of the *Municipal Act* If a municipality so requests by resolution, a judge of the Superior Court of Justice shall, (a) investigate any supposed breach of trust or other misconduct of a member of council, an employee of the municipality or a person having a contract with the municipality in relation to the duties or obligations of that person to the municipality; (b) inquire into any matter connected with the good government of the municipality;

**AND WHEREAS** there is a precedent in the recent case of Thunder Bay where the filing deadline has been extended and the Mayor deemed to be in office for the entire time;

**AND WHEREAS** the municipal solicitor in his letter of April 27, 2011 has stated that any resolutions passed since the March 25, 2011 deadline could be retroactively approved through a Court Order as was done in Thunder Bay;

**AND WHEREAS** failure to bring this matter before a judge will simply result in continued costs to the municipality in wasted administrative time and legal fees which has already surpassed \$2,000;

**THEREFORE BE IT RESOLVED THAT** the Council of the United Townships of Head, Clara & Maria does hereby declare that the two seats have been forfeit and are vacant and further that it directs the Clerk to contact the municipal solicitor to have him commence an application to the court for the remedy he has suggested specifically to retroactively extend the filing date for the financial forms for the two members who failed to file by the deadline and additionally for all five municipal Councillors as their forms were filed with errors and declare that the seats are not forfeited and finally that Mr. Aiston, Mr. Gibson, Mr. Reid, Mr. Foote and Ms. Stewart have been Councillors throughout this entire time, i.e. since March 25<sup>th</sup> to and including the date of any decision;

#### BACKGROUND/EXECUTIVE SUMMARY:

Additional information has been received by the Clerk since the meeting of Monday, April 25, 2011 in the form of letters from the Municipal Solicitor which have been forwarded to each of you and are included as attachments to this report. Upon recommendation of the Municipal solicitor this special meeting has been called to resolve this issue.

1. In his letter of April 27, 2011, Mr. Instance has requested that any further contact with him be done through a resolution of Council and not by any one individual. The Municipal Act states...

#### **"Municipal administration**

**227.** *It is the role of the officers and employees of the municipality,*

(a) **to implement council's decisions** and establish administrative practices and procedures to carry out council's decisions;

(b) **to undertake research and provide advice to council** on the policies and programs of the municipality; and

(c) **to carry out other duties required under this or any Act and other duties assigned by the municipality.** 2001, c. 25, s. 227."

This is what I as Clerk have been doing since this entire situation began. I have requested written instruction from our solicitor on behalf of Council and the ratepayers of the municipality as is my job as Clerk as noted above. That information has now been received officially in the letters from Bill Instance of April 26 and April 27. The above resolution has been created based on that information.

2. At the previous meetings the decision to not support the resolution to take this matter before a judge was accredited to following the legislation and the advice of the municipal solicitor (which had not been officially received by the Clerk at the time).

The letters from Mr. Instance dated April 26 and 27 state that it is his opinion that **“until such time as an Order is made, the two Councillors in question no longer are members of Council as their seats have been forfeited.”**

He further states that **“it is obviously in the Municipality’s best interests to have this matter resolved, and if the two councillor’s in question are unwilling to commence the Court proceeding to be reinstated I believe Council should do so.”**

Mr. Gibson and Mr. Aiston maintain that they hold seats and are “unwilling to commence the Court proceeding.” It is quite apparent that our direction from legal counsel is to have the municipality commence those proceedings.

3. Of further concern to staff is the issue of all of the financial audit statements (Form 4s) being completed in error as this situation applies to each of the five members of the original Council? This too could result in forfeiture of the seat in question as well as personal fines. Staff does not see the point of continuing to waste taxpayer’s money holding meetings that will likely be challenged in a court of law.

Council cannot arbitrarily choose which sections of the *Municipal Elections Act* it wishes to enforce or abide by and it is staff position that a judge should make a decision on the validity of **each** seat so that this issue is not brought up at a later date by any resident or taxpayer requiring yet another legal decision costing the ratepayers of this municipality even more money as per section 265 of the *Municipal Act*.

4. Continuing as we are is not an option with staff not having clear direction how to proceed. According to the Municipal auditor the matter **must be settled by a court** as to who is on the council and whether or not all actions of the council from the deadline date (March 25) were legal or not. Currently staff have a legal right to pay the bills of the municipality as legislation states that you may spend up to fifty percent of the previous year budget. We will soon pass that point.

It is Mr. Harrington’s opinion that in all instances of motions made by council concerning finances there must be a quorum of three with all members being in agreement to pass. Further, If this situation is not settled to the satisfaction of staff then they have the right to refuse to sign any documents (including pay cheques) until the issue is resolved to their satisfaction. (It is unfair to have staff placed in this position.)

5. If this situation fails to be resolved and if any voter of the municipality applies to have all 5 seats forfeited due to failure to properly file documents then the Minister may act declaring all seats vacant and forcing a by-election for all seats. In that instance, not one member of this Council will be able to file for this by-election or for the 2014 regular election.

The following are the pertinent sections of the *Municipal Elections Act* which apply to filing Forms that contain errors.

#### **Additional penalties**

#### **80.**

## Same

(2) In the case of a default described in subsection (1),

(a) the candidate forfeits any office to which he or she was elected and the office is deemed to be vacant; and

(b) until the next regular election has taken place, the candidate is ineligible to be elected or appointed to any office to which this Act applies. 2009, c. 33, Sched. 21, s. 8 (44).

## Election campaign finance offences

92. (1, 2) Repealed: 2009, c. 33, Sched. 21, s. 8 (62).

## Offences by candidate

(5) A candidate is guilty of an offence and, on conviction, in addition to any other penalty that may be imposed under this Act, is subject to the penalties described in subsection 80 (2), if he or she,

(a) files a document under section 78 or 79.1 that is incorrect or otherwise does not comply with that section; or

## Exception

(6) However, if the presiding judge finds that the candidate, acting in good faith, committed the offence inadvertently or because of an error in judgment, the penalties described in subsection 80 (2) do not apply. 1996, c. 32, Sched., s. 92 (6); 2002, c. 17, Sched. D, s. 35 (2); 2009, c. 33, Sched. 21, s. 8 (67). Obstruction, etc.

6. The basis of the argument heard on Monday, April 25, 2011 to not support the resolution to request a court order was the need to follow the legislation. It was stated that we must follow the legislation and we are acting upon advice of our solicitor.

There were comments about why the Clerk failed to follow the legislation to the letter of the law and not send out registered letters. That decision was based in part on the following document, following a precedent set by 4 of these same Council members after the 2006 elections. In error, I did not request a signed document as I had in 2006.

Further, as a candidate in the 2010 election for the Town of Deep River, I received notice from their Clerk. That notice was not sent via registered letter either. In an effort to save money for the ratepayers, and especially where seats were not even contested, staff utilize other cost effective methods to provide notice.

Based on the following it was apparent to me that the persons signing the document were not too concerned with following the legislation to the letter of the law at that time; the use of a similar form was simply overlooked this time as once again, we did not have an election. Notice was given in writing in the Clerk's report of January 7, 2011 read and discussed at the meeting of January 21, 2011.

For ease of reading the preface to the form below is as follows:

"As per the requirements of the *Municipal Election's Act*, 1996 s.78(6) "the clerk shall give every candidate whose nomination was filed with him or her notice by **registered mail** of all the filing requirements of this section". Since only 5 nominations were filed and since the Clerk is personally able to meet with each of the 5 nominees and in order to save the time and expense necessary to mail by registered mail the accompanying information, I request that each of you sign this form acknowledging receipt of the appropriate sections of the *Municipal Elections Act*, 1996 and a blank Form 4 that you are required to complete

and return to me by March 2, 2007.” This document was signed based on advice from the Clerk which was contrary to the legislation and accepted by Reeve Stewart, Councillors Foote, Reid and Gibson in 2007.

Form 4 and the Municipal Elections Act, 1996


As per the requirements of the Municipal Election's Act, 1996 s.78 (6) "the clerk shall give every candidate whose nomination was filed with him or her notice by **registered mail** of all the filing requirements of this section".

Since only 5 nominations were filed and since the Clerk is personally able to meet with each of the 5 nominees and in order to save the time and expense necessary to mail by registered mail the accompanying information, I request that each of you sign this form acknowledging receipt of the appropriate sections of the Municipal Elections Act, 1996 and a blank Form 4 that you are required to complete and return to me by March 2, 2007.

I, Tammy Lea Sonnenburg, acknowledge that I have received a copy of the relevant sections of the Municipal Election's Act, 1996 and a blank Form 4, Financial Statement, that I am required to complete and return to the Clerk by March 2, 2007.

Signed in the Townships of Head, Clara & Maria in the County of Renfrew this 5<sup>th</sup> day of December, 2006.

  
Reeve, Tammy Lea Sonnenburg

  
Clerk, Melinda Reith

I, Jean Charron, acknowledge that I have received a copy of the relevant sections of the Municipal Election's Act, 1996 and a blank Form 4, Financial Statement, that I am required to complete and return to the Clerk by March 2, 2007.

Signed in the Townships of Head, Clara & Maria in the County of Renfrew this 5<sup>th</sup> day of December, 2006.

  
Councillor, Jean Charron

  
Clerk, Melinda Reith

I, Dave Foote, acknowledge that I have received a copy of the relevant sections of the Municipal Election's Act, 1996 and a blank Form 4, Financial Statement, that I am required to complete and return to the Clerk by March 2, 2007.

Signed in the Townships of Head, Clara & Maria in the County of Renfrew this 5<sup>th</sup> day of December, 2006.

  
Councillor, Dave Foote

  
Clerk, Melinda Reith

I, Jim Gibson, acknowledge that I have received a copy of the relevant sections of the Municipal Election's Act, 1996 and a blank Form 4, Financial Statement, that I am required to complete and return to the Clerk by March 2, 2007.

Signed in the Townships of Head, Clara & Maria in the County of Renfrew this 5<sup>th</sup> day of December, 2006.

  
Councillor, Jim Gibson

  
Clerk, Melinda Reith

I, Robert Reid, acknowledge that I have received a copy of the relevant sections of the Municipal Election's Act, 1996 and a blank Form 4, Financial Statement, that I am required to complete and return to the Clerk by March 2, 2007.

Signed in the Townships of Head, Clara & Maria in the County of Renfrew this 5<sup>th</sup> day of December, 2006.

  
Councillor, Robert Reid

  
Clerk, Melinda Reith

7. There has been concern for the costs to ratepayers to take this issue before a judge. Our municipal solicitor has estimated that this process might cost approximately \$2,000.

- To date over \$1,500 has been spent in administrative time/costs alone with legal costs and auditor's fees still to be added;
- Each special meeting held costs at least \$200 in additional Council honorarium, staff costs and expenses;
- A resolution to resolve this issue could have been passed at the meeting of April 15, 2011 saving the above costs;
- A by-election to fill either 2 or all 5 seats will cost approximately \$3,000 - \$4,000 (as was budgeted for the 2010 election);

Financial considerations: Failure to obtain a court order on this issue will result in the motions of this Council coming into question from an auditor's perspective. The auditor has commented that all 3 members of Council must agree to all resolutions concerning financial decisions.

If the auditor fails to award this municipality a clear audit – the municipality does risk future provincial funding.

Others Consulted: Ruth Morin, Treasurer; Stephen Seller, MMAH; Bill Instance, Municipal Solicitor; John Hannam, City of Thunder Bay; Peter Harrington, Municipal Auditor;

Approved and Recommended by the Clerk

Melinda Reith,

Municipal Clerk

*Melinda Reith*



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LAWYERS

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F. Allan Huckabone, Q.C. (Retired)  
Matthew J. Bradley  
Dwight Montgomery

Delbert A. O'Brien, Q.C., Juris D. (Retired)  
Tracy Lyle

M. Wm. Instance  
Mark Huckabone

April 26, 2011

Please Reply To PEMBROKE Office  
E-Mail: [williami@hsolawyers.com](mailto:williami@hsolawyers.com)  
Direct Line 613-735-2345  
Ext. 322

The Corporation Of The United Townships  
Of Head, Clara & Maria  
Attention: Ms. Ruth Morin and Ms. Melinda Reith  
15 Township Hall Road  
Stonecliffe, Ontario  
K0J 2K0

Dear Ms. Morin and Ms. Reith:

**RE: MEETING - APRIL 25, 2011**

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I have reviewed your various emails and it is my opinion that at the moment I am not in a position to commence a Court proceeding in an effort to obtain a Court Order extending the filing date for the financial information. The Resolution dated April 25, 2011 which you have sent to me clearly indicates that the Municipality is not in favour of the Municipality commencing this Court proceeding, and I must abide by that decision. I would urge Council to hold another meeting to discuss this issue. It is obviously in the Municipality's best interests to have this matter resolved, and if the two Councillors in question are unwilling to commence the Court proceeding to be reinstated I believe Council should do so.

I would reiterate my opinion that until such time as an Order is made, the two Councillors in question no longer are members of Council as their seats have been forfeited.

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I look forward to receiving further instructions in writing.

Yours very truly,

A handwritten signature in dark ink, appearing to read "M.W. Instance", is written over a horizontal line.

M.W. Instance

MWI/cee



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LAWYERS

F. Allan Huckabone, Q.C. (Retired)  
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Delbert A. O'Brien, Q.C., Juris D. (Retired)  
Tracy Lyle

M.Wm. Instance  
Mark Huckabone

April 27, 2011

Please Reply To PEMBROKE Office  
E-Mail: [williami@hsolawyers.com](mailto:williami@hsolawyers.com)  
Direct Line 613-735-2345  
Ext. 322

The Corporation Of The United Townships  
Of Head, Clara & Maria  
Attention: Ms. Tammy Stewart, Reeve  
15 Township Hall Road  
Stonecliffe, Ontario  
K0J 2K0

Dear Ms. Stewart:

**RE: ELECTION ISSUES**

In answer to your email of today's date, the following is a letter in which I repeat the answers that I provided in my responding email:

1. Firstly, if threats of violence have been made against you, the police should be called and they can decide if charges should be laid. The threats don't have to be made to you directly but instead through 3<sup>rd</sup> parties.
2. The Clerk is a municipal employee and takes direction from Council. In my opinion Council presently consists of three members. Council must direct the Clerk what to do. With respect to Council meetings she should be directed to advise only the 3 members of the meetings. The Clerk is correct when she states that she does not take direction from you alone.
3. Any resolutions passed where they voted could be suspect if their votes made a difference. A Court Order could retroactively fix that problem as was done in Thunder Bay.
4. You should not lose funding as long as you have enough Council members for a quorum.

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April 27, 2011

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5. Legal fees and disbursements might be closer to \$2000 than \$200. \$200 buys you 1 hr. of time not including HST and disbursements.

In light of the obvious disagreements between Council members and certain Council members and the Clerk, Melinda Reith, I believe I should receive further instructions in writing from Council, as at the moment I have been put in a bit of a bad position in an effort to answer questions from all interested parties. In the end, I am retained by the Municipality, and I should be taking instructions from Council.

Yours very truly,

  
\_\_\_\_\_  
M.W. Instance

MWI/cee