

Type of Decision									
Meeting Date	Friday, May 20, 2011				Report Date	Tuesday, May 17, 2011			
Decision Required	X	Yes		No	Priority	X	High		Low
Direction	x	Information Only			Type of Meeting	X	Open		Closed
REPORT TITLE									
Election Issues and Judges Decision Report - 20/05/11/701									

**SUBJECT:** Summary of issue with failure to file form 4's on time as per the Municipal Election's Act.

**RECOMMENDATION:** That each of the following resolutions as provided by members of the Council of the United Townships of Head, Clara & Maria is adopted. It is my understanding that the information contained within each resolution and in the summary below is accurate and truthfully reflects the actions and activities which transpired since April 6, 2011.

#### **RESOLUTION #1**

**WHEREAS** the Reeve of the United Townships of Head, Clara & Maria, Tammy Lea Stewart, has demonstrated a complete lack of leadership in resolving the matter of the incomplete and late forms submitted pursuant to the *Municipal Elections Act*;

**AND WHEREAS** noting the municipalities of Athens, Thunder Bay, and Niagara Falls, among others dealt with similar situations in an expeditious and collegial manner and at no expense to the individual council members;

**AND WHEREAS** the Reeve has not only failed to demonstrate collegiality with her fellow members of Council but has aggressively sought their removal from Council;

**AND WHEREAS** the actions of the Reeve, including the improper use of the municipal solicitor, the improper use of police in such a manner as to intimidate Councillors, the public and staff, have brought the United Townships and their residents into public ridicule;

**AND WHEREAS** the Reeve has refused to listen to or respond to the will of the public in the above matter in any way;

**THEREFORE BE IT RESOLVED THAT** the Council of the United Townships of Head, Clara & Maria does publicly censure the Reeve, Tammy Lea Stewart, and noting that she no longer has the confidence of Council, suggest that she tender her resignation immediately.

#### **RESOLUTION #2**

**WHEREAS** since April 6, 2011 or thereabouts, the Reeve contacted the Municipal solicitor a number of times without the knowledge of the Municipal Clerk and without Council's approval in the matter of Councillors Aiston and Gibson's failure to file form fours by the legislated deadline;

**AND WHEREAS** the Reeve at no time consulted with the Municipal Clerk or the Councillors involved or Council as a whole at any time throughout this issue to attempt to negotiate a practical solution which would be in the best interests of the municipality;

**AND WHEREAS** no one member of Council has the authority to contract for or conduct municipal business without the approval and/or consent of Council as decided at a duly held and conducted meeting of Council;

**THEREFORE BE IT RESOLVED THAT** the Council of the United Townships of Head, Clara, and Maria hereby instructs the Municipal Clerk to advise the Municipal solicitor to clearly identify and separate the chargeable items on the solicitor's invoice to identify those related to work initiated by the Municipal Clerk and those spent on answering the Reeve's specific questions for all hours charged to the Municipality for the matter of failure to file financial statements under the Municipal Elections Act.

### **RESOLUTION #3**

**WHEREAS** the actions of the Reeve with respect to the late filing of Form Fours by Councillors Aiston and Gibson in contacting the Municipal solicitor and the Ministry of Municipal Affairs and Housing was conducted without consultation with or knowledge of the Municipal Clerk or the members of Council involved, in clear violation of section 225 (c) of the Municipal Act which requires the Head of Council to provide leadership to Council;

**THEREFORE BE IT RESOLVED THAT** from this point forward, Reeve Tammy Lea Stewart must obtain specific instructions from Council by resolution to contact these organizations and any other outside organization about any issue and that a copy of this resolution be forwarded to the Municipal solicitor and the Ministry of Municipal Affairs and Housing advising them of Council's decision.

### **RESOLUTION #4**

#### **Municipal Elections Act, Section 80**

**WHEREAS** Section 43 of the *Election Finances Act*, governing the financial reporting requirements for members of the Ontario parliament provides for a 60 day period following the announcement of non-compliance by a member to comply with the reporting requirements prior to the seat being declared vacant;

**AND WHEREAS** Section 80 of the *Municipal Elections Act* sets out the penalty to municipal election candidates who have not complied with the financial reporting requirements provides for the automatic vacancy of the seat on Council and the candidate being deemed to be ineligible to be elected or appointed to any position covered by the Municipal Elections Act until after the next municipal election;

**AND WHEREAS** there is a discrepancy in the standard to which elected representatives are being held to between the provincial and municipal levels in relation to the penalty for non-compliance for election financial reporting;

**AND WHEREAS** the penalty to municipal candidates appears to be far beyond what would appear to be fair and reasonable, considering that the sentence could amount to 8 years of ineligibility to be elected or appointed;

**NOW BE IT RESOLVED THAT** the Council of the Corporation of the Township of Head, Clara & Maria supports the position of the Municipality of Elizabethtown-Kitley and strongly requests:

**THAT** the Province of Ontario immediately amend the Municipal Elections Act to ensure that municipal representatives and candidates are held to the same standard as their provincial counterpart with regard to the penalties applicable for non-compliance to the election financial reporting requirements;

**AND FURTHER THAT** a copy of this resolution to be forwarded to the Association of Municipalities of Ontario, and to all Ontario municipalities for support and circulation.

**BACKGROUND/EXECUTIVE SUMMARY:** You have each been in receipt of various pieces of information since this issue began. You have received emails, letters, reports and petitions from the Municipal Solicitor, Municipal Auditor, Treasurer, Clerk, individual Council members and various members of the public.

It is quite apparent that a large volume of that information was not considered by some members of this Council. It is quite apparent that the decisions made during this time were not in the best interests of the ratepayers and residents of this municipality, fellow Council members or staff but instead appeared to be made to fulfill some personal agenda.

In fact, documented emails prove that a decision was made on April 15, 2011 or thereabouts by Reeve Stewart and Councillor Reid and any subsequent information including advice from the Municipal Solicitor, petitions from the ratepayers and precedent from Supreme Court decisions in similar cases was not even considered by these individuals.

There is no place for personal agendas or a refusal to work with fellow Council members or staff to come to a sensible resolution to any problem on a Council "elected" to represent the interests of the majority of ratepayers and residents. The way in which the petition of 110 residents, precedent of other court cases and the letter from Bill Instance of April 26, 2011 were dismissed is evidence that this indeed occurred.

On Friday, May 13, 2011 a judge of the Supreme Court of Canada declared that Mr. Aiston and Mr. Gibson had not vacated their seats and in fact have been members of this Council since their swearing in back in December of 2010.

Although it is our obligation to follow legislation in the day to day activities of our job and council positions, it was apparent from the beginning that this section of the legislation was irrational. As evidenced by the activities of other municipalities including the City of Thunder Bay, The City of Niagara Falls, the municipality of Athens, the municipality of Elizabethtown-Kitley and the County of Leeds-Grenville the councils and administration within these municipalities recognized the absurdity of the legislation and quickly took steps to support the individuals and in some cases began the court proceedings themselves on behalf of the affected individuals. The decisions by the judges hearing those cases agreed.

Resolutions numbered 1 through 3 above were provided by members of Council, verified and approved by me.

Resolution number 4 is a copy of the resolution passed by the Municipality of Elizabethtown-Kitley at a special meeting of Council called on May 2, 2011 specifically in support of their council member who failed to file requesting that the legislation be changed to make it more fair and reasonable. There were alternatives to resolving the issue of failure to file; unfortunately for the reputation of this municipality and some of the members of Council they were not even considered.

Others Consulted/Resources: Stephen Seller, MMAH; Bill Instance, Municipal Solicitor; John Hannam, City of Thunder Bay; Ruth Morin, Treasurer; Peter Harrington, Municipal Auditor; Darlene Noonan, Clerk Athens Township; Yvonne Robert, Clerk-Administrator, Elizabethtown-Kitley; City of Niagara Falls; Various judicial decisions since March 25, 2011; Councillor Jim Gibson; Councillor Ed Aiston.

Approved and Recommended by the Clerk

Melinda Reith,

Municipal Clerk

*Melinda Reith*