

Request for Decision United Townships of Head, Clara & Maria Council

Type of Decision									
Meeting Date	Tuesday, October 17, 2017				Report Date	Thursday, October 12, 2017			
Decision Required		Yes	X	No	Priority	X	High		Low
Direction		Information Only		X	Type of Meeting	X	Open		Closed

Letter and Email from Councillor Villeneuve - Report #17/10/17/1202

Subject:

Letter from Councillor Villeneuve re: Council Code of Conduct received by the Clerk via email on October 12, 2017.

RECOMMENDATION:

That Council consider this letter as information. That Mayor Reid exercise his authority to refuse to bring the question to the table as although names were not named, the entire letter impugns the motives of two members of this council and casts doubts on the integrity of the Clerk.

1. One of the clauses of the municipal Procedure By-law, 28.3 states “Debate must be germane to the issue or subject under debate, **must be courteous and respectful, and no one may impugn the motives of another.**”
2. The definition of “impugn” is described as:
 - a. To attack as false or questionable; challenge in argument: impugn a political opponent's record.
 - b. If you impugn something such as someone's motives or integrity, you imply that they are not entirely honest or honourable.

It is strongly recommended that this letter not be debated. Council does not have the authority to question anyone’s intentions, integrity, motives or decisions. Council does not have the authority to remove any member of Council from their seat or duties to represent their constituents. That is up to each individual member of Council to determine for his or her self and only under the Municipal Conflict of Interest Act.

Council does not have the authority to debate or vote on: what constitutes public confidence, which members/section of the public is representative of “public confidence”, or what statements or actions are ethical or moral. Many of those items would simply be opinion and way beyond the authority of any council, any Code of Conduct or any Procedure By-law.

Has there been a vote of all members of the public to determine “public confidence” or are only a small percentage of the population concerned?

As described in the email below, there are methods to use if/when Code of Conduct violations are in question. A formal complaint is to be filed with the Clerk's office and sent to an investigator for adjudication. That is the only method of determining this type of challenge. This is beyond Council's purview or authority.

Should the content of the letter be factual, the public will make its position known in 2018 when municipal elections are to occur. Until then, all five councillors are members of this Council and are entitled to vote on any decision placed before it. Questioning their integrity is both defamatory and dangerous.

From *Room At The Top: The Administration and Governance of Municipalities in Ontario*, George H. Rust-D'Eye, 2014

A municipal councillor who, acting in good faith in what he or she perceives to be the public interest, deals with a matter within the municipality's jurisdiction, should generally pursue his or her convictions fearlessly, in confidence that municipal councillors have the legal right to fulfil their legal duties as such.

Of course, members of council should be aware of the potential for defamation proceedings arising in the course of their work.

A defamatory statement is one which has a tendency to injure the reputation of the person to whom it refers, which lowers him or her in the estimation of right-minded members of society, and in particular, which causes him or her to be regarded with feelings of hatred, contempt, ridicule, fear, dislike or dis-esteem.

In this respect, there exists in law what is known as the defence of qualified privilege, which attaches to statements published in the course of carrying out a public duty, where there is honest belief in the truth of the statements made, and an absence of malice.

I would refer you to the email sent to Council by the Clerk on October 10, 2017 in response to Councillor Villeneuve's original email.

I have also included links to the documents referred to in the email. The workshop summary from Fred Dean's session was already added to this agenda as a reminder to all.

Please note the last page where he specifically stated that "other members of council are not in a position to give advice – inappropriate to accuse another member..."

BACKGROUND/EXECUTIVE SUMMARY:

The only legislation that speaks to "familial" relationships is the *Municipal Conflict of Interest Act*. You will note that "siblings" are not listed in the entire document. Potential conflicts occur in relation to the individual, the spouse, parents or children of the individual or businesses, corporations, clubs or associations of which they are members or their employers.

In municipal legislation, the only requirement to excuse yourself from any business relating to family members is the hiring policy. Although some people may use family ties as a reason to cast aspersions or question someone's integrity, there is nothing requiring abstaining from municipal duties.

With respect to the perception of familial influence...the rest is mainly opinion and representative of a small vocal percentage of the electorate.

Each council member has the opportunity to express their opinion at the table. Councillors will have differences of opinion. That is exactly why the Code of Conduct process has been developed; to prevent council from attempting to judge itself. That is beyond Council's authority.

Options/Discussion: For Arguments sake...

1. Since the request is for those associated in a familial manner with the Council member in question, are each of the decisions from "the September 15th meeting where the two councillors in question agreed now considered invalid or inappropriate due to their familial relationship?
2. Should the content of this letter be valid, would any decision, in the past or in the future, not then be influenced by a familial relationship and subsequently suspect?
3. Does this mean that this Council is at a standstill and will never be able to vote on any matter in the future if the two councillors share the same opinion, if the Clerk has provided advice?
4. This letter impugns the motive of both the council members referred to as well as staff.

Financial Considerations/Budget Impact:

There could be financial implications if this type of debate is allowed due to defamation and Conflict of Interest defence claims through the municipal insurer.

Policy Impact:

Curtailling this type of action is imperative. To allow this type of suppression of a council members ability to represent their position is frightening. What will the next reason be? Aside from setting a dangerous precedent, taking this type of action could be contrary to legislation.

Others Consulted:

1. Municipal Conflict of Interest Law: A Law in Conflict Based on Interest, Barnet H. Kussner, Partner, WeirFoulds LLP
 - o http://www.weirfoulds.com/files/5107_ConflictLaws.pdf
2. Room at the Top: The Administration and Governance of Municipalities in Ontario, George H. Rust-D'Eye
 - o <http://files.ctctcdn.com/7df54cab201/dc86d861-8385-4634-8df5-cc6199aa492b.pdf>

Approved and Recommended by the Clerk

Melinda Reith,
Municipal Clerk

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