



Cunningham Swan
LAWYERS

December 11, 2017

PRIVILEGED AND CONFIDENTIAL

Mayor and Council
The United Townships of Head, Clara and Maria

Dear Mayor and Council:

**RE: Complaints Against Staff;
Report of Investigation and Recommendations
Our File No. 29822-6**

Pursuant to the Municipal Code of Conduct for Employees (hereinafter the "Code") we were provided with a series of complaints against staff members made by Councillor Ernie Villeneuve. A summary chart of the complaints is attached to this Report as Appendix 1.

As the Clerk was the subject of a number of the complaints, pursuant to section 79 of the Code, our office was assigned to investigate the complaints. Section 79 provides that our firm has the discretion to dismiss the complaint, perform an investigation or hire an independent investigator. After a preliminary review of the complaints we determined that it was appropriate for our office to undertake the investigation in this matter.

Pursuant to section 81 of the Code, this report must remain confidential as it considers personal information about identifiable individuals. Council must receive the report in closed session for review and deliberation.

We provide an Executive Summary and Recommendation Report as Appendix 2 to this report should Council wish to report the results of the investigation to the public.

SUMMARY:

The complaints are primarily centred around actions of staff related to the debate and decision of Council as to whether the former rail bed should be permitted to be used as a trail for snowmobiles through the village of Stonecliffe. Councillor Villeneuve voted against the recommendation of staff to prohibit the use of the former rail bed for motorized vehicles; the remaining Council members voted in favour of the prohibition. During our interview with Councillor Villeneuve he confirmed that his concerns arose from the vote related to the rail bed and its use. Even though two complaints deal with Council meetings which did not deal with the trail, it was clear from the interview that those complaints would not have been submitted but for the vote to prohibit the use of the rail bed; Councillor Villeneuve was motivated to pursue his perception that Councillor Chartrand was acting in a conflict of interest. Because Chief Administrative Officer/Clerk Melinda Reith is Councillor Chartrand's sister, Councillor Villeneuve believes that many of her actions related to the debate and vote on the rail bed were in breach of the Code of Conduct for Employees due to her relationship with Councillor Chartrand.

In addition to Melinda Reith, Councillor Villeneuve also named Noella LeBreton in two of the complaints. Ms. LeBreton is named for her role as acting Clerk during the October 17, 2017 meeting (in both closed and open session) related to comments she made to Council that alleged that Councillor Villeneuve made inappropriate comments which impugned the integrity of staff and members of Council. One complaint also named Crystal Fischer, Administrative Assistant. She appears to be named because she is a municipal employee and was part of a petition against use of the rail bed as a snowmobile trail.

In order to investigate the claims we first compiled the complaints into the attached summary chart and reviewed the Code of Conduct for Employees to understand the nature of the complaints and the Code for the Township. Interviews were conducted, first with the Complainant and then with the individuals named in the complaints (with the exception of Crystal Fischer, explained below). We reviewed all documents provided by the Complainant and the named individuals and we listened to the audio file of the October 17, 2017 meeting of Council (open and closed sessions).

It is clear from the investigation that Councillor Villeneuve genuinely believes that Councillor Chartrand had a conflict of interest with respect to the rail bed issue. This alleged conflict arises from the fact that Councillor Chartrand obtains some employment income from the Township as a contractor, as well as receiving some income working on a contract basis for the Missing Link Snowmobile Club. Although Councillor Chartrand lives adjacent to the rail bed in Stonecliffe, this was not cited by Councillor Villeneuve in his complaints as a source of conflict.

It must also be acknowledged that Councillor Villeneuve is a member of the Missing Link Snowmobile Club. We have no information that Councillor Villeneuve has any financial interest in the Club, or that he derives any financial benefit from the Club. This fact is germane to the

investigation only to ensure that the readers of this report understand that the investigation was aware of this fact; in our view nothing turns on this issue.

We find that Councillor Villeneuve had (and continues to have) a genuinely held belief that Councillor Chartrand was acting in breach of either the *Municipal Conflict of Interest Act* and/or the Code of Conduct for Council. He became frustrated that Councillor Chartrand refused to accept that he had a conflict and further frustrated that he was unable to prohibit the Councillor from voting on the rail bed issue.

The essence of the complaints against CAO/Clerk Reith is that she preferred the interests of her brother Councillor Chartrand over what Councillor Villeneuve perceived as the public interest. Councillor Villeneuve submitted 10 complaints against Melinda Reith, most of which relate to the rail bed issue and her role in it. Many of the complaints speak to different aspects of the same actions and appear to focus on Councillor Villeneuve's belief that Melinda Reith should have done more to prohibit her brother from voting on the rail bed issue. Councillor Villeneuve's frustration is clear in the written complaints where he uses the following phrases:

- "when viewed by Municipal Code of Conduct for Employees all statements of principle are violated"
- With respect to the Report prepared by the CAO for the October 17, 2017 meeting, "this indicates bias and violates sections 9 & 11 of the Municipal Code of Conduct for Employees and implies that the end result of the vote was known before the meeting."
- "Since the CAO was informed one month earlier of my concerns and did nothing but side with her brother Chartrand this in my opinion violates all the statements of principle for employees."

In addition, as can be seen from the summary chart, the complaints were submitted over a number of weeks subsequent to the vote to prohibit use of the rail bed. As time passed after the vote and no one agreed with Councillor Villeneuve's position on the alleged conflict of interest, his frustration appears to have grown and that spawned new complaints, often dealing with the same incidents. While we can appreciate the frustration experienced by Councillor Villeneuve, the volume of complaints does not establish the veracity of those complaints.

After a vigorous investigation and a thorough review of the Code of Conduct and research into the underlying issues it is our conclusion that Melinda Reith did not breach the Code. There is no evidence that her relationship with her brother improperly influenced her behaviour or her recommendations to Council. We have no reason to disagree with Ms. Reith when she says that she conducted research into the issues surrounding the use of the Rail bed and made recommendations that she believed were in the best interests of the municipality as a whole. Councillor Villeneuve disagreed with those recommendations and disagreed with the majority of Council who voted to support the recommendation. The political decision is not at issue in this

investigation; what is at issue is the behaviour of staff, which we find to be consistent with the Code.

Our finding with respect to Noella LeBreton is that her raising a point of order to point out behaviour of Councillor Villeneuve that she believed was contrary to the Code of Conduct for Councillors, while procedurally unusual, was not curtailed or sanctioned by the Mayor as improper procedure. Councillor Villeneuve elected to read a slightly edited version of his letter in open session. The Councillor was exercising his right to point out an issue he felt was inappropriate; Ms. LeBreton exercised what she believed was her right to call into question the propriety of Councillor Villeneuve's statement. It is not the function of this investigation to determine which statement was correct, or if either were correct. This investigation finds that the statement made by Ms. LeBreton did not breach the Code of Conduct for Employees. She acted without bias, malice or dishonesty and in accordance with section 26 of the Code.

Administrative Assistant Crystal Fischer is named in a complaint submitted November 22, 2017, after this investigation had been initiated. Ms. Fischer signed a letter/petition in April of 2017 which set out objections to using the rail bed for motorized use. The complaint is that because Ms. Fischer is an employee the letter breached the Code of Conduct for Employees. There is no breach of the Code in this instance. Ms. Fischer stated a personal opinion in the letter. There is no indication that she misled Council or used her position with the municipality in any improper fashion.

Our recommendation in future is that if Council believes that any staff member has a conflict of interest – or could be perceived to have a conflict of interest such that their ability to perform their job might be affected – that Council could, by resolution, direct the staff member with the potential conflict of interest to not participate in that particular matter or author reports on the subject. The Code could be amended to reflect that this process is available to avoid future difficult situations. We caution Council that this should only be used in the clearest of cases. Staff should be assumed to have the best interests of the municipality in mind unless the circumstances clearly warrant such action.

BACKGROUND:

The complainant is Councillor Ernie Villeneuve. Councillor Villeneuve was appointed to Council to fill a vacancy left by the resignation of a former councillor.

Melinda Reith is the Clerk/Chief Administrative Officer for the Township. Ms. Reith was hired by the Township in 2005 and has held the office of Clerk since that time. In 2006 Ms. Reith was also made CAO and has held that position since. The roles and responsibilities of the CAO are set out in the *Municipal Act*:

- (a) exercising general control and management of the affairs of the municipality for the purpose of ensuring the efficient and effective operation of the municipality; and

(b) performing such other duties as are assigned by the municipality.

Ms. Reith is the sister of Councillor Chartrand. This familial relationship is not a secret and Councillor Villeneuve readily admitted that at all times he was aware of the relationship.

Noella Lebreton was the Acting Clerk for the Township during the Council meeting which gave rise to the complaints. Ms. LeBreton was hired by the Township in 2011 and her job duties include completing all duties of the Municipal Treasurer and filling in for the Clerk in the Clerk's absence. As Deputy Clerk Ms. LeBreton's duties are the same as the Clerk, which are set out in the *Municipal Act*:

- (a) to record, without note or comment, all resolutions, decisions and other proceedings of the council;
- (b) if required by any member present at a vote, to record the name and vote of every member voting on any matter or question;
- (c) to keep the originals or copies of all by-laws and of all minutes of the proceedings of the council;
- (d) to perform the other duties required under this Act or under any other Act; and
- (e) to perform such other duties as are assigned by the municipality.

Crystal Fischer is the Administrative Assistant. Ms. Fischer was hired by the Township in 2015. While not relevant to the complaint, Councillor Villeneuve made a point of stating that Ms. Fischer is related to Councillor Chartrand and Councillor MacKay.

On October 16, 2017 Councillor Villeneuve (hereinafter the "Complainant") submitted to our office an e-mail that stated, "Good morning. My name is Ernie Villeneuve and I am a recently appointed councillor for Head Clara Maria. I would like to file a code of conduct complaint against our clerk/CAO. Can I submit by e-mail to you or what is the process?"

Through a series of e-mails I confirmed that it would not be necessary to submit a formal affidavit as required in the Code, unless it became necessary to revisit that issue. I did however require that the complaint be submitted in writing. On October 16, 2017 I strongly recommended (by email) that the Complainant consider an informal way to resolve any concerns. Prior to reviewing any e-mails or attachments I again requested on October 25, 2017 that the Complainant file a formal complaint so that I would not be prejudiced by reviewing any materials in advance of receiving a complaint. The Complainant confirmed that he wished an investigation to commence.

I was subsequently provided with 19 separate complaint forms dated October 14, October 21, November 3, November 6 and November 22 relating to various incident dates. Some of these 19 complaints were received during the course of the investigation. The complaints included

complaints against employees of the Township as well as members of Council. This investigation will only deal with complaints against employees under the Code.

The complainant confirmed in his interview that all of his complaints were related to the decision of Council to prohibit motorized vehicle use of the former rail bed as it travelled through Stonecliffe. Our understanding of the issue is that for a number of years (decades) snowmobiles and ATV's have used the "legacy trail" which by-passes the village. 2016 was the first year that snowmobiles were allowed to use the former rail bed (now owned by the County) to drive through the village. The legacy trail does not pass through the village, but feeder or by-pass trails exist to connect the Village with the legacy trail.

Prior to the complaints, our firm provided legal advice to the Township related to liability for allowing the snowmobile club to use municipal roads, groom municipal roads and to deposit snow on municipal roads. Our firm has not provided any advice or opinions on issues related to possible nuisance impacts in villages related to trail use.

The Investigation:

To prepare for the investigation we reviewed all of the complaints and prepared the summary chart attached to this Report as appendix 1. We also reviewed in detail the Code and arrived at the preliminary opinion that it was appropriate for our office to conduct the investigation. We reviewed all documents provided by the Complainant and those interviewed and listened to the audio files of the October 17, 2017 meeting (open and closed session).

I interviewed the following people by telephone in order to understand the complaints and to obtain responding information from the employees:

Counselor Ernie Villeneuve
Clerk/CAO Melinda Reith
Acting Clerk Noella LeBreton

ANALYSIS:

Relevant Provisions of the Code:

8 – "Employees shall conduct themselves with integrity and ethics. The Code does not have the answers to all questions however; it is created to ensure that the right questions are asked."

9 – "When taking any action while in the course of employment, each employee shall ask:

- Am I putting my own interests before those of the Municipality?
- Would I make the same decision if my manager, a member of the public, my mother or the media were watching me?
- Will I owe someone a favour if I do this?
- Would I be offered this if I weren't an employee of the Municipality?

10 – “Transparency – As public servants, employees are accountable for what they do and that accountability is ensured by transparency. Employees must be open and honest in dealing with supervisors, the public and Council. Employees shall not just do their jobs well, but shall also be open and honest about what they say and do at all times and to all persons.”

11 – “Impartiality – As public servants, employees have to do their jobs with the Municipality’s best interests in mind, not their own. Employees shall do their jobs without bias, without favour, without consideration of personal interests or those of family and friends and without allowing outside interests to conflict with work decisions.”

15 – “Employees shall not make decisions on behalf of the Municipality, make recommendations to the Municipality, use their position with the Municipality, or take any action on behalf of the Municipality in respect of matters in which they have or believe they have a Conflict of Interest.”

1. September 15, 2017 closed session of Council - Subject of Complaint, Clerk/CAO Melinda Reith

The written Complaint, as amended, indicates that at a closed session of Council a discussion was held concerning legal advice pertaining to the Clerk/CAO. The matter related to a complaint made by the Clerk/CAO against the former Mayor and a former councillor.

The Complainant confirmed in his interview that the nature of his complaint is that because Councillor Chartrand is the brother of Melinda Reith he should not have been at the meeting. In Councillor Villeneuve’s view that was not very transparent or neutral to the public.

In Councillor Villeneuve’s view, Melinda Reith should have been aware that this was a “questionable practice” and told her brother that he should leave. Councillor Villeneuve confirmed that there was no discussion at the meeting about whether Councillor Chartrand should stay or not.

There are no provisions of the Code that might apply to this complaint. It is not the role of the CAO or Clerk to advise councillors about potential conflicts of interest; that is a personal matter for each individual councillor.

The relevant findings of fact disclosed by the investigation include:

- Councillor Chartrand has no pecuniary interest in the complaint submitted by Melinda Reith under the *Municipal Conflict of Interest Act* (MCIA);
- Whether Councillor Chartrand had a conflict of interest with respect to the complaint submitted by Melinda Reith under Code of Conduct for Councillors is not a matter for the CAO/Clerk to address, it is a personal matter for each councillor;
- Melinda Reith was appropriately in attendance at the meeting, and if Council wished her to recuse herself that was Council’s decision;
- We are aware of no attempt by the Complainant or any other member of Council to ask Melinda Reith to leave.

The conclusion of the investigation is that Melinda Reith had no obligation to discuss potential conflicts of interest (either under the MCIA or the Code) with any councillor. Both types of potential conflicts are matters personal to the councillor and are not the business of the municipality unless a complaint is lodged. The familial relationship between Melinda Reith and Councillor Chartrand was not relevant to the issue before Council (but was not hidden from Council). Melinda Reith had no duty to object to Councillor Chartrand's presence at the meeting.

Melinda Reith did not breach the Code.

2. October 17, 2017 closed session of Council

- Subject of Complaint, Clerk/CAO Melinda Reith and Acting Clerk Noella Lebreton

The Complainant indicates that at a closed session of Council a discussion was held concerning legal advice pertaining to the complaint lodged by the Clerk/CAO. The matter related to the same complaint made by the Clerk/CAO dealt with at the September 15 meeting.

The Complainant confirmed in his interview that the nature of his complaint is that both Melinda Reith and Noella LeBreton should have been aware of the "questionable practice" in allowing Councillor Chartrand attend and either or both of them should have told Councillor Chartrand that he should leave.

There are no provisions of the Code that might apply to this complaint. It is not the role of the CAO or Clerk to advise councillors about potential conflicts of interest; that is a personal matter for each individual councillor.

The relevant findings of fact disclosed by the investigation include:

- Melinda Reith was not present at this meeting;
- Councillor Villeneuve advised that he challenged Councillor Chartrand that he should not be at the meeting. The two councillors debated whether Councillor Chartrand should be present and ultimately Councillor Chartrand elected to stay and participate in the discussion, but he did not vote. He did not declare a conflict of interest.
- Councillor Chartrand has no pecuniary interest in the complaint submitted by Melinda Reith under the MCIA;
- Whether Councillor Chartrand had a conflict of interest with respect to the complaint submitted by Melinda Reith under Code of Conduct for Councillors is not a matter for the CAO/Clerk to address, it is a personal matter for each councillor;

The Code contains no obligation (express or implied) to discuss potential conflicts of interest (either under the MCIA or the Code) with any councillor. Both types of potential conflicts are

matters personal to the councillor and are not the business of the municipality unless a complaint is lodged.

Melinda Reith did not breach the Code.

3. CAO report dated October 17, 2017 **- Subject of Complaint, Clerk/CAO Melinda Reith**

The complainant alleges that Report number 17/10/17/1102, prepared by the Clerk/CAO, contains no option considering a vote to use the former rail bed for snowmobile use. The written Complaint alleges that the Report, "indicates bias and violates sections 9 and 11 of the Municipal Code of Conduct for Employees and implies that the end result of the vote was known before the meeting."

The applicable provisions of the Code that might apply to this complaint include not only 9 and 11, but also 8, 10 and 15.

The relevant findings of fact disclosed by the investigation include:

- The report did in fact make a recommendation that the rail bed not be used through the village for motorized use;
- Councillor Chartrand, Melinda Reith's brother, lives adjacent to the trail and he had previously signed a letter/petition opposing the use of the rail bed;
- Melinda Reith was candid and frank in her interview and expressed that her position was not biased by the fact her brother was in opposition to the rail bed;
- Melinda Reith stated that she took (and continues to take) her role as CAO seriously and she conducted an investigation into the rail bed use and the implications for residents of the Township. Her recommendation was based on what she believed was in the best interests of the Township as a whole;
- There was no evidence disclosed by the investigation that Ms. Reith has any personal interest in the use of the rail bed.

The conclusion of the investigation is that neither Ms. Reith's familial relationship nor Councillor Chartrand's opposition to the rail bed were facts hidden from Council or the public. Whether Councillor Chartrand had a conflict of interest (either under the MCIA or the Code for Council) is not relevant to the complaint. The sole issue for this investigation is whether Melinda Reith was biased. It is important to note that any potential bias is unrelated to her brother's status as a councillor; the bias, if it exists, would exist regardless of his role as a councillor.

A recommendation contained in a report to Council is just that, a recommendation. It does not (and cannot) bind Council to vote in favour of the recommendation. It is the duty of the CAO to make recommendations to Council; if Council does not agree with the recommendation they will amend the resolution and vote as the majority decides.

The central question with respect to this complaint is whether the fact that the CAO's brother is not personally in favour of the trail through the village is sufficient to establish bias?

Paragraph 15 of the Code speaks to Conflicts of Interest, but that term is not defined in the Code. A reasonable interpretation of conflict of interest is taking actions that are intended to favour a personal agenda or bias.

The report clearly identifies Councillor Chartrand as a party that is not in favour and discusses other options and other objections; there is no hidden agenda or any attempt to mislead Council.

Melinda Reith prepared a report that she genuinely believed reflected the best interests of the Township. We have no reason to doubt the statement Ms. Reith made in our interview that she takes her role seriously and does her best to research issues and make a recommendation to Council that is independent of any personal views that she might have. Ms. Reith was aware of her brother's publicly stated views on this subject and she considered whether she could make an unbiased decision and elected to prepare a report that she felt was reflective of the broader public interest. We are satisfied that Ms. Reith was being truthful when she stated that she was acting in what she perceived to be the best interests of the entire community, taking all relevant factors into account.

Melinda Reith did not breach the Code.

4. CAO report dated October 17, 2017 **- Subject of Complaint, Clerk/CAO Melinda Reith**

The complainant alleges that Report number 17/10/17/1202, prepared by the Clerk/CAO, contains "too many biased statements to list". The report in question recommends that Council not deal with a letter written by the complainant dated October 12, 2017. In the letter the Complainant states:

Since our council and administration has strong familial ties it is vital that council decisions when viewed through the lenses of bias, transparency, influence, impropriety etc. remove any doubt from public opinion and pass the closest scrutiny.

Whether we like it or not there is a public perception that council decisions are influenced by family ties, unfortunately council is painted with the same brush.

With respect to the upcoming vote on the use of the rail bed for snowmobile use and published correspondence opposed to the use of the rail bed for snowmobile use signed by one of our own councillors and containing false and misleading information, it is my opinion that members of council that have familial ties with the subject councillor should

excuse themselves from further discussion and voting so that the remaining council can make a decision that will be viewed as meeting the guiding principles of the Municipal Code of Conduct.

The Complainant confirmed in his interview that the nature of his complaint is that he has questions about whether the Clerk is impartial. In response to the October 12 letter Ms. Reith wrote an email to council explaining further her decision to not publish the letter in the agenda, and explaining the position as set out in the report for the meeting of October 17. It was stated that the letter was perceived to be defamatory and it impugned the integrity of members of Council. The basis for her position was as stated in the report, "the Procedural by-law requires debate to be "courteous and respectful, and no one may impugn the motives of another".

The applicable provisions of the Code that might apply to this complaint include 8 – 11 and 15.

The relevant findings of fact disclosed by the investigation include:

- The allegations of bias are not substantiated on the evidence;
- It is appropriate for the Clerk to assess whether correspondence should be placed in the agenda and to consider matters such as the liability of the municipal corporation for disseminating potentially defamatory materials in a public agenda;
- The letter was provided to all members of Council by Councillor Villeneuve. Council was not deprived of his views on this issue, nor did the CAO/Clerk attempt to do so;
- Ms. Reith conducted research into the issue and provided that research to Council as support for her position;
- In her email, Ms. Reith invites council to seek a legal opinion if they disagree with her decision. We can confirm that no legal opinion was sought of our firm;

The conclusion of the investigation is that the decision of the CAO/Clerk was within her duties and was made after a reasoned process of research into whether it was appropriate under the Procedural By-law to produce the letter and whether publishing the letter in an agenda could constitute dissemination of defamatory information. Council was aware of the letter and could deal with it as they saw fit. In fact, the mayor permitted Councillor Villeneuve to read an edited version of the letter into the public session.

Melinda Reith did not breach the Code.

5. September 9, 2017 public meeting

- Subject of Complaint, Clerk/CAO Melinda Reith

At the public meeting held September 9, 2017 the Complainant alleges that a statement attributed to the Clerk/CAO is a breach of the Code, Items 4 and 5.

The Complainant confirmed in his interview that the nature of his complaint is that the comments made by the CAO/Clerk were impugning the previously constituted council. It was not honest to say council did nothing; this was misleading to the public. In the complainant's opinion Council had made a decision at the March and April meeting to postpone the public meeting; the decision was to have a cooling off period and have a public meeting in September.

The Code provides:

4. Employees are responsible for making honest statements and upholding the integrity of Council and its decisions. No employee shall make a statement with the intent to mislead anyone including Council members, fellow staff members, the media or the public.
5. Employee shall always refrain from making public statements on Municipal policy and/or Council decisions.

The minutes of this meeting contain the following statement attributed to the Clerk/CAO (at paragraph 77):

I would like to take a minute and clarify something. I'd heard a number of people talk about this council having to do something. For the record, this council is doing something, so far based on a schedule set by the last council. It was the previous council which did not address this issue. In March, information was provided to council to make a decision and it was that council that deferred any decision and discussions to the fall.

There seems to be no dispute that no decision was made by the previously constituted council; its decision was to defer until after a public meeting was held in the fall. The currently constituted council held the public meeting required by the previously constituted council and was responsible for making a decision. Ms. Reith confirmed that she was responding to comments from the public that implied council had not done anything. The statement by Ms. Reith was correct, the previously constituted council had not made a decision, they deferred until after a public meeting could be held. In our opinion the statement attributed to Ms. Reith is not impugning Council (in either of its iterations). Ms. Reith provided a factually correct clarification that the previously constituted Council did not make a decision, other than to defer the decision until the fall.

Melinda Reith was not making a public statement about a policy or decision of Council contrary to paragraph 5. She was offering a clarification about the timing of decisions and her statement related to which "version" of Council would be making a decision was correct in fact. There was no intent to mislead contrary to paragraph 4 and no evidence that the statements were incorrect.

Melinda Reith did not breach the Code.

**6. October 17, 2017 open session council meeting
- Subject of Complaint, Acting Clerk Noella Lebreton**

The Complainant alleges that at the regular council meeting on October 17, 2017 the Acting Clerk Noella Lebreton, "accused me of impugning two members of Council and the clerk".

The Complainant confirmed in his interview that the nature of his complaint is that he believes that Ms. LeBreton read a statement prepared by Melinda. He confirmed in his interview that he had no evidence to support his belief. However, because Ms. LeBreton spoke to the entire letter and not the version he prepared, it seemed to the Complainant that her response was prepared in advance.

With permission of the Mayor, the Complainant read what he described as an "edited" version of the letter. The Complainant advised the Investigator that he did not include names or familial relationships in the material he read out. Upon reviewing the audio file of the meeting it is apparent that the majority of the letter was read and the minor edits were still insufficient to disguise the targets of the letter.

Noella LeBreton advised the Investigator that after hearing the Complainant she raised her hand and asked to speak to a point of privilege. Noella LeBreton stated that she felt the Complainant was impugning the integrity of the Councillor and that his statements were not in order. Upon reviewing the audio file of the meeting is apparent that Ms. LeBreton's message to the complainant was that Councillor Chartrand was not prohibited by the *Municipal Act* from participating in the meeting and that it was an individual councillor's responsibility to govern their behaviour.

The Code clearly applies to Noella LeBreton in her role at the October 17 meeting as Acting Clerk and in her interactions at that meeting with Council. Section 26 of the Code provides, "Respect for delegates, for Council members and staff requires that all employees shall show courtesy and not distract from the business of Council during presentations and when other members have the floor. This does not mean that staff may not offer advice, comments or suggestions; what it means is that all comments must be accurate, respectful and germane to the topics/subject at hand."

Even if Ms. LeBreton was speaking from notes prepared by Ms. Reith (and there is no evidence of that), there is no provision of the Code that speaks about employees raising issues of process. It is not surprising that it appeared to the Complainant that Ms. LeBreton was referring to the entire letter. Ms. LeBreton was aware of the letter's contents, the report of Ms. Reith outlining the objections to the letter being presented was before Council and Ms. LeBreton had just heard the Complainant read the letter.

The statements made by Ms. LeBreton at the meeting were consistent with the report of the CAO. There is no evidence on the audio recording of the meetings to suggest improper behaviour on the part of Ms. LeBreton or intemperate language. Staff are permitted to offer comments and suggestions, provided they are respectful.

Noella LeBreton did not breach the Code.

7. October 17, 2017 council package
- Subject of Complaint, Clerk/CAO Melinda Reith

The Complainant alleges that an e-mail from Morning Mist Campground was included in the Council package that should not have been included. The e-mail was not addressed to council and therefore should not have been included. The Complainant stated in his interview that he was bringing the complaint on behalf of Mr. Dowser, and that Mr. Dowser did not know he was bringing the complaint.

We are uncertain what applicable provisions of the Code might apply to this complaint.

The relevant findings of fact disclosed by the investigation include:

- The e-mail was brought to the attention of staff by a camper from the park;
- The e-mail was included because it was provided to the municipality and it was on the same issue being addressed by Council. Ms. Reith advised in her interview that it was considered part of general background for the issue and that once received by the Township it was part of the municipal record;
- It was deemed relevant to explain why people showed up to the public meeting in September that Council did not recognize – they were not from the municipality;
- There is no established practice or policy for including this type of information in the agenda;
- Ms. Reith confirmed it is a judgement call on her part and is dependent on what is before council and whether it is relevant.

There is no evidence that the email was obtained improperly or that the contents of the email were irrelevant to Council's decision. There is no evidence of improper intent on the part of Ms. Reith in including the material and no provision of the Code that would prohibit this action.

Melinda Reith did not breach the Code.

8. October 17, 2017 counsel report, item 15
- Subject of Complaint, Clerk/CAO Melinda Reith

The Complainant alleges that the October 17, 2017 council report, Item 15, states that comments attributed to Raj Patel are simply hearsay. The Complainant believes this statement is false; emails received by Council previously demonstrate the incorrectness of this statement.

The applicable provision of the Code that might apply to this complaint is 4.

The relevant findings of fact disclosed by the investigation include the following statements from Ms. Reith:

- Based on all the information received almost everyone says it is important to keep Yates store open;
- It was not until after the report was made public that Ms. Reith became aware that Raj Patel had previously submitted an email for the consideration of council;
- In April or May Raj Patel did send an email to council members directly – but this was not in the possession of staff;
- Raj Patel subsequently brought in his letter and that was put on the agenda for Oct 17;
- The Report was sent Friday;
- The letter from Raj Patel came in Monday – on Tuesday the letter was included on the agenda as correspondence;
- Council had the report and the email for its deliberations.

The conclusion of the investigation is that there was no intent to mislead Council and that as soon as the letter from Raj Patel was provided to staff it was placed on the agenda. The statement regarding hearsay was correct at the time it was written based on the information available to staff at that time.

Melinda Reith did not breach the Code.

9. October 18, 2017 letter to county
- Subject of Complaint, Clerk/CAO Melinda Reith

The written Complaint states, "October 18, 2017 letter to the County from CAO contained the following items that are referenced in the complaint:

- Paragraph 2 – "use as a trail is currently prohibited. Why? There is a logging operation in the center of the Hamlet";
- "Council did not request County members to vote against the use of the trail";
- "Deux Rivieres was not part of the discussion or vote";
- "Council did not ask county staff to meet or ask for permission, they stated consultation and input";
- "Resolution 17/10/17/005 was to have item #4 removed".

During her interview Ms. Reith was asked to comment on each of the allegations. Her response is summarized below:

- Paragraph 2 – "use as a trail is currently prohibited. Why? There is a logging operation in the center of the Hamlet";
 - o The letter was drafted based on the fact the rail bed property is zoned residential
 - o Logging is on Crown land – not zoned by the Township
 - o Logging on residential land is a permitted use, but trails are not a permitted use
- "Council did not request County members to vote against the use of the trail"
 - o The Resolution said that the rail bed was not zoned for the purpose
 - o Because it is not zoned, therefore the County should not permit a use that is contrary to zoning. While this was not expressly stated in the resolution, the resolution did state that the use was not permitted, and this is a reasonable interpretation of what the Township was asking the County to do
- "Deux Rivières was not part of the discussion or vote";
 - o Stoncliffe and Deux Rivières have the same zoning
 - o If council passed a resolution that it is against zoning in Stonecliffe, it must also be contrary to zoning in Deux Rivières
 - o The issue in Ms. Reith's mind has always been liability associated with municipal roads, not strictly the use of the rail bed
 - o The general proposition still holds for other areas
- "Council did not ask county staff to meet or ask for permission, they stated consultation and input"
 - o The letter to the County contains a reasonable inference and clarification of the intent of Council
- "Resolution 17/10/17/005 was to have item #4 removed"
 - o The matter was not amended in the resolution
 - o Ms. Reith candidly conceded that perhaps the letter should have not included that paragraph

Based on a review of the audio recording, it is clear that Councillor Villeneuve asked that item #4 be removed, and that the Mayor appeared to agree. However, no amendment to the resolution was proposed, no vote was taken to amend and the resolution appears to have been passed without any amendment.

Of most significance is that Ms. Reith presented the letter to the Mayor before sending it and he approved the form and content of the letter. It is also important to remember that paragraph 6 of the Code states, "It must be recognized that employees are only human and will occasionally make honest mistakes."

The conclusion of the investigation is that the letter met the spirit and intent of Council. There is nothing misleading in the letter and because resolution #4 was never formally deleted from the resolution, including resolution #4 was, at worst, an honest mistake.

Melinda Reith did not breach the Code.

**10. Conflict of Interest of Councillor Chartrand
- Subject of Complaint, Clerk/CAO Melinda Reith**

The written Complaint alleges that the Complainant made his position known well in advance of the vote on using the rail bed for snowmobile use that Councillor Chartrand had a conflict of interest. Because the CAO did nothing except for, "side with her brother", she is in violation of, "all the statements of principle for employees".

The Complainant alleges that Councillor Chartrand acted in violation of the *Municipal Conflict of Interest Act*, or at a minimum, was in a conflict of interest as that is broadly defined in the Municipal Code of Conduct for Council. For purposes of this investigation, whether or not the Councillor was or was not in breach of either the MCIA or the Code of Conduct for Council is largely irrelevant. The issue with respect to the Clerk/CAO is whether her brother, Councillor Chartrand, had a personal interest in the matter of the vote on allowing snowmobile use of the rail bed, and if so, did she allow her personal relationship to influence her professional judgment?

The essential question is whether the Clerk/CAO acted impartially as required in paragraph 11 of the Code? Did she do her job without bias, without favour, without consideration of personal interests or those of family and friends and without allowing outside interests to conflict with work decisions?

As stated above, the fact of the familial relationship was not hidden. Similarly, the fact that Councillor Chartrand was opposed to the rail bed was well known.

The mere fact that the Clerk/CAO's brother is also a member of Council is not, in and of itself, evidence of partiality or bias; something else must be demonstrated on the facts to establish that the Clerk/CAO allowed this relationship to influence her professional judgment. There is no evidence of any partiality or bias on the record.

Melinda Reith did not breach the Code.

**11. Letter dated April 24, 2017 and a flyer
- Subject of Complaint, Clerk/CAO Melinda Reith and Crystal Fischer**

The letter is signed by 6 households. 5 of the 6 households have been or are paid by the Township. The complaint alleges that the, "code of conduct for employees 2 and 4 are violated".

It is unclear how the fact that people who may have an economic relationship with the Township signing a letter in opposition to the use of the rail bed could be a breach of the Code. Ms. Reith is not a signatory to the letter and she did nothing with the letter other than place it before Council (as she is obliged to do). It is the conclusion of the investigation that this letter, in and of itself does not constitute a breach of the Code by Melinda Reith.

Ms. Fischer signed the letter. The Code clearly states at paragraph 3, "Actions taken by employees outside their employment are not governed by this Municipal Code of Conduct unless the employee is speaking against decisions and/or policies of Council. No municipal employee or appointed official represents the municipality outside of work hours and should refrain from conducting municipal business while not on the job."

At the time of the letter, no Council position had been taken and therefore the letter cannot be construed as "speaking against the decisions and/or policies of Council". The Code expressly provides that it does not govern employees outside of work.

There is therefore no evidence of a breach of the Code by Crystal Fischer and for that reason she was not interviewed.

This is not a valid complaint in our opinion.

RECOMMENDATIONS:

Notwithstanding the conclusion that there are no substantiated breaches of the Code by the staff members named in the complaints, we have recommendations for Council:

1. The Procedural By-law and Code should be amended to allow Council to direct staff to recuse themselves in circumstances where a perceived conflict of interest might arise. It is our opinion that Council always has this right to direct staff, but if it were expressly stated in the Code or Procedural By-law both Council and staff would better understand that this right exists and might make better use of the right.
2. The Code should be amended to make dispute resolution mandatory. In this case it is abundantly clear that Councillor Villeneuve was frustrated by what he perceived as a conflict of interest of Councillor Chartrand. This frustration was heightened because neither Councillor Chartrand, Council nor staff agreed with his view. The absence of a dispute resolution mechanism left Councillor Villeneuve in the position where he felt it necessary to file 11 complaints against staff and 8 complaints against councillors. Councillor Villeneuve was encouraged by our office to try and resolve his concerns informally, but that apparently was not successful. A formal dispute resolution process would be more efficient, less costly and could result in consensus building and education rather than an adversarial process.

We trust that this report will allow the Township to move forward and start to build consensus among councillors and staff. Should Council have any questions or wish for us to appear before Council on this matter please let us know.

Sincerely,

Cunningham, Swan, Carty, Little & Bonham LLP

A handwritten signature in black ink, appearing to read 'Tony E. Fleming', with a long horizontal flourish extending to the right.

Tony E. Fleming, C.S.

TEF:

Enclosures

Appendix 1 - Summary of Complaints

No.	Complaint	Date of incident	Parties complained against/ Date Complaint received
1.	Amended by complaint 1(a) dated November 6, 2017 Closed session Matter dealt with complaint brought by Clerk/CAO Councillor Chartrand was in attendance (CAO's brother) Councillor McKay was in attendance (Councillor Chartrand's sister in law) "when viewed by Municipal Code of Conduct for Council all statements of Principle are violated" "when viewed by Municipal Code of Conduct for Employees all statements of principle are violated"	09/15/17	Mayor Council Clerk/CAO (Oct 21/17) "administrative staff" removed from complaint by amendment (Nov 6/17)
2.	Amended by complaint 2(a) dated November 6, 2017 Closed session Legal advice related to the complaint brought by the Clerk/CAO Councillor Chartrand was in attendance (CAO's brother) Councillor McKay was in attendance (Councillor Chartrand's sister in law) "I challenged Councillor Chartrand on his attendance when viewed in the public eye and he still remained for discussion..."	10/17/17	Mayor Council Acting CAO LeBreton CAO Reith Oct 21/17 "Municipal staff in meeting" removed from complaint by amendment (Nov 6/17)
3.	Report prepared by Clerk/CAO (17/10/17/1102) contains, "no option considered for a vote to use the rail bed for snowmobile use". "this indicates bias and violates sections 9 & 11 of the Municipal Code of Conduct for Employees and implies that the end result of the vote was known before the meeting."	10/17/17	Clerk/CAO Oct 21/17
4.	Letter October 12, 2017 from Complainant - Refer to familial ties and influence and perception of the public	10/12 and 17/17	Clerk/CAO Oct 14/17

No.	Complaint	Date of incident	Parties complained against/ Date Complaint received
	<p>Report 17/10/17/1202 – including the October 12, 2017 letter from Complainant</p> <ul style="list-style-type: none"> - Recommending letter be considered as information - Request that the letter not be brought forward as it impugns the motives of 2 councillors and the CAO - Email from CAO advises that letter should not be debated as it could expose the municipality to libel and slander charges – there is a code of conduct process to deal with complaints 		
5.	<p>See minutes of public meeting September 9, 2017</p> <ul style="list-style-type: none"> - Quote from CAO on page 9, comment 77 	09/09/17	CAO Oct 14/17
6.	<p>October 17, 2017 Council meeting</p> <p>Acting Clerk accused the Complainant of making defamatory comments against 2 councillors and the Clerk</p>	10/17/17	Noella LeBreton Nov 3/17
7.	<p>October 17, 2017 Council package included an email from Morning Mist Campground. This was a private email that should not have been included in the package</p>	10/17/17	CAO Nov 3/17
8.	<p>October 17, 2017 council report</p> <p>Item 15 states comments attributed to Raj Patel are simply hearsay. This is incorrect based on emails sent to council by Mr. Patel previously.</p>	10/17/17	CAO Nov 3/17
9.	<p>October 18, 2017 letter to County from CAO contained items that are referenced in the complaint as follows:</p> <ul style="list-style-type: none"> - Paragraph 2 – why is use of trail prohibited - Council did not request that the County vote against the trail - Deux Rivieres was not part of the discussion - Council did not ask county staff to meet or ask for permission, they stated consultation and input - The resolution was to have item #4 removed 	10/18/17	CAO Nov 3/17
10.	<p>A number of e-mails were sent to council and the CAO related to conflict of interest for Councillor Chartrand.</p>	October 2017	CAO Nov 9/17

No.	Complaint	Date of incident	Parties complained against/ Date Complaint received
	<p>The Council training session confirmed Councillor Chartrand was in a conflict of interest.</p> <p>"Since the CAO was informed one month earlier of my concerns and did nothing but side with her brother Chartrand this in my opinion violates all the statements of principle for employees."</p>		
11.	<p>A letter dated April 24, 2017 and a flyer is signed by 6 households</p> <p>5 of the 6 have been or are paid by the Township</p> <p>"code of conduct for employees 2 and 4 are violated"</p>	April 24, 2017	<p>Admin Fischer</p> <p>Mayor Reid</p> <p>Councillor Chartrand</p> <p>CAO Reith</p> <p>(Nov 22/17)</p>

APPENDIX 2 – SUMMARY OF FINDINGS AND CONCLUSIONS:

11 complaints were filed against 3 staff of the Township by a councillor. The complaints centre around actions of staff related to the debate and decision of Council as to whether the former rail bed should be permitted to be used as a trail for snowmobiles through the village of Stonecliffe.

In order to investigate the claims, we reviewed the complaints and the Code of Conduct for Employees and confirmed that an investigation was warranted. Interviews were conducted, first with the Complainant and then with the individuals named in the complaints. We reviewed all documents provided by the Complainant and the named individuals and we listened to the audio file of the October 17, 2017 meeting of Council (open and closed sessions).

It is clear from the investigation that the complainant genuinely believes that a fellow councillor has a conflict of interest with respect to the rail bed issue. This perceived conflict permeates the complaints and can readily be seen as the source of significant frustration; it is our opinion that the complaints are a direct result of being unable to resolve the complainant's concerns with perceived conflicts of interest.

10 of the 11 complaints involved a single employee; most related to the rail bed issue and that employee's role in it. Many of the complaints speak to different aspects of the same actions and a number focus on the complainant's belief that the employee should have done more to prohibit a councillor from voting in violation of what the complainant perceives as a conflict of interest. The complaints also allege bias and that reports contained misleading statements.

After a vigorous investigation and a thorough review of the Code of Conduct and research into the underlying issues it is our conclusion that the named employees did not breach the Code.

There is no evidence of any intent to mislead Council or to improperly influence Council. There is further no evidence of improper conduct or bias in any of the impugned actions. We have no reason to disagree with the employee at the heart of the complaints when they say that they conducted themselves in what they believed were the best interests of the municipality as a whole.

Our recommendation to Council is to amend its Procedural By-law and Code of Conduct for Employees to make it clear that where Council believes that any staff member may have a conflict of interest – or could be perceived to have a conflict of interest such that their ability to perform their job might be affected – that Council may, by resolution, direct the staff member with the potential conflict of interest to not participate in that particular matter. In addition, we recommend amending the Code to include dispute resolution.