

Type of Decision									
Meeting Date	Friday, March 9, 2012				Report Date	Tuesday, March 5, 2012			
Decision Required	X	Yes		No	Priority	X	High		Low
Direction	X	Information Only			Type of Meeting	X	Open		Closed

REPORT TITLE
Delfi Group Investigations Report #09/03/12/1103

Subject: Consideration of next steps in relation to the harassment and code of conduct complaints prepared by the Delfi Group.

RECOMMENDATION: That Council approve the following resolution concerning the Delfi Group reports.

WHEREAS the Council of the United Townships of Head, Clara & Maria has contracted with the Delfi Group to complete both workplace harassment and code of conduct complaints;

AND WHEREAS the reports of Mr. Bonenberg are by his own admission from 5000 feet perhaps 80% accurate;

AND WHEREAS the Delfi Group has advised that they have fulfilled their contractual obligations with Council in delivering their reports;

THEREFORE BE IT RESOLVED THAT the Council of the United Townships of Head, Clara & Maria does hereby agree to follow some of the recommendations of Mr. Bonenberg as they relate to creating a more cohesive working environment without accepting either of his reports due to the unsubstantiated and undefended content.

AND FURTHER THAT Council direct staff to plan to implement the Council approved recommendations of Mr. Bonenberg in the most cost effective manner keeping within allocations currently made to training and education within the 2012 draft budget document.

Background/Executive Summary: It is obvious that there are challenges within the workplace and within council. Everyone keeps stating that they just want to move on; then some take actions that contradict those statements.

In order to move forward, there needs to be a common goal and a common objective. For this process to work, each individual must determine what they require to happen in order to be able to "move forward".

Then each individual must be prepared to clearly communicate to Council, staff and the public support for their position. The next step is to agree that to move forward there must

be willingness to compromise by all parties. Then definitive actions are needed to move forward in a positive manner.

Questions that need to be considered and answered include:

- i. What would you ultimately like to see happen to diffuse this situation and move forward?
- ii. What aspects of your position would you be willing to compromise on?
- iii. What do you want or need Council and/or staff to do to help you realize your needs?
- iv. What steps are you willing to take to move forward in a positive, open and transparent manner?
- v. What do you think about what has been occurring here?

Once an initial compromise has been met, this process should become a regular occurrence so that a similar situation does not recur. It has been said that one of the current challenges is that too many conversations which should be occurring around the council table are taking place outside of Council chambers.

An attempt by Council to resolve the current situation by hiring an outside agency to determine the validity of the complaints has failed. Mr. Bonenberg in his report submitted on February 17, 2012 states **“The investigation could not determine if the... Oct 21, 2011 complaint was or was not based on fact... This was not the role of the investigator.”**

Council has spent considerable funds to obtain a report which fails to determine if the complaints were based on fact or not. As a result, members of Council have publicly expressed that they do not see the benefit of spending any additional funds in this vein.

This does not mean that the entire process has been for naught. Some of Mr. Bonenberg’s suggestions and solutions, although obvious and general, are useable.

Although the Code of Conduct Complaints report does not include any specific suggestions for resolution the harassment complaint report did. Some of these suggestions were outside the mandate and purview of the investigator as they relate specifically to previous decisions of Council and have therefore been removed. Other suggestions for Council consideration include:

- 1) That scheduled and timely performance reviews be conducted with the Clerk and proper documentation be produced.
- 2) That Council develop a continuous learning plan for Council, budget it accordingly and follow through on the agreed to targets.
- 3) Council should review their procedural by-law 2008-10 annually with the intent to review the validity of the procedures, adjust if necessary and clarify roles and responsibilities.
- 4) That training be pursued by the head of Council to more effectively and constructively lead all types of municipal meetings and public sessions.

- 5) That training be conducted for Council and staff on delivering the Municipal Code of Conduct. It is appreciated that no “formal course” on this may be available, however elements of how to realize the Code are. For example there is a course called **“Thinking on your feet”** that could assist individuals in handling awkward and difficult situations.
- 6) Council and staff should pursue **“Conflict Resolution”** training.
- 7) That the policy to address staff and public complaints be overhauled to ensure the process is clear and that confidentiality is maintained.
- 8) That a mediator be sought to begin the process of mediation between the Reeve and the Deputy Reeve and the Reeve and the Clerk.
 - Seek mediator and begin process March 2012 for a 6 month period; review progress after 6 months and clarify action plan.
- 9) Utilize the present Performance Review System with the Clerk with the intent to clarify roles and set clear expectations.
 - Begin the process immediately and develop a schedule for feedback, formally and informally with a review period at least every 6 months.
 - Utilize a 360 review system for the Clerk, incorporate feedback from that process into a training and development plan.
- 10) Develop a continuous learning strategy for Council. There may be assistance from the Ministry of Municipal Affairs and Housing (MMAH) to facilitate such a strategy and assist with possible workshops, seminars and courses. MMAH may also be able to assist Council in the suggested review of their procedural by-laws.
- 11) Leadership and Governance training can be pursued in many different ways and need not be high cost. On line training, reading, and interactive workshops provided at Municipal conferences are effective and reasonably affordable ways of gaining some knowledge and improving the skills necessary to preside over meetings.
- 12) MMAH or other County staff may be able to assist in facilitating an overview of the Code of Conduct and the Workplace Harassment and Violence Policy with Council. Some clarity on roles after complaints are received, investigation processes, and timeframes and confidentiality rules would be helpful in the future.
- 13) Conflict Resolution training can be gained through workshops, books and on-line courses. Outreach with other Municipalities and the County may present opportunities in collaborating to bring in the necessary training tools.

It will be up to Council to prioritize these suggestions for staff to take action.

Although Council did agree to accept the reports of the investigator sight unseen, the reports received from Mr. Bonenberg contain error in fact and findings. By his own admission Bonenberg stated more than once that “I have to believe that the people I am interviewing are telling me the truth”. When there are two versions of any story, it is

obvious that someone is not telling the truth, yet independent corroboration was not obtained and was available.

This Council and the Clerk have been over the reports and there are obvious errors of fact which have led to faulty findings and conclusions. Some sections of the Code have been applied arbitrarily to the actions of some individuals, but not to others. Interpretation of some sections of the code is questionable.

Objective corroboration was not sought and email evidence has been disregarded. Many conclusions are unsubstantiated and are prefaced with the words "it appears", "it is this investigator's opinion" and "it may be argued that"; definitely not conclusive.

Interpretation of legislation (specifically *The Municipal Act*) used to provide recommendations to Council based on their past decisions is in error and outside the mandate of Mr. Bonenberg's investigation.

Consideration should be given to demand that the report be corrected at Mr. Bonenberg and the Delfi Group's expense and/or receive a refund of Council costs as these reports are considerably less than accurate in fact and ultimately in findings.

A promise to accept the recommendations of the investigator does not bind any Council to blindly accept unsubstantiated conclusions. One of the roles of Council is to make educated decisions based on fact and evidence which these reports are lacking.

The following points are a sample of the errors of fact contained within the reports that are general in nature. There are many other errors of interpretation of legislation and policy. These examples have been provided to demonstrate the quality of the reports and to support Council's decision to not accept the unsubstantiated conclusions.

1. In an email dated Tuesday, January 3, 2012 and in verbal communication at the open meeting of February 17, 2012 Mr. Bonenberg states that 10 witnesses were interviewed. In a letter from Delfi dated March 2, 2012 he states that 12 witnesses were interviewed.
2. Mr. Bonenberg relies on a quote by a respondent in the NRT as conclusive evidence of the validity of the statement in support of the conclusion and position taken in his report.
3. Mr. Bonenberg states that the public meeting of October 7, 2011 was called to deal with the auto-ex decision. In fact, that meeting was called to discuss the Waste Management by-law.
4. "It appears that the management of the complaint process at the time was unclear to the Clerk and to Council, thereby allowing the posting of the entire staff complaint..." And... "The main focus is the release... publically in the Township's website along with the complaint material." This has not occurred. The harassment complaints have not been made public by staff or put on the municipal website.
5. Bonenberg states in his reports and letter dated March 2, 2012 that Council should have received both reports in closed session. The Municipal Act and the advice of

the municipal solicitor, which had been provided to Mr. Bonenberg at the January 26, 2012 meeting is contrary to that position.

6. Bonenberg states “that the Clerk had shared new information to Council regarding the issue after their Sept 9, 2011 Council meeting. As a result, Council was re-considering the position they took.” This is not true. Council at that time was not reconsidering the decision it made. The new information provided was in consideration of an auto-ex committee meeting to be held that Wednesday in Deep River which Reeve Stewart was to attend.
7. Because Councillor Foote shared information contained in a public report with a ratepayer Bonenberg finds that Councillor Foote “is not showing respect or support for the Clerk’s position”. Would this not simply mean he was sharing new information and trying to be helpful? If an error was made by staff, how does sharing it not show respect or support?
8. Bonenberg fails to consider the findings and writings of experts in the field of Municipal governance including George Cuff and Fred Dean as they relate to staff and Council responsibilities, Council decisions or staff activities outside of work hours. Dean stated quite clearly – Council represents the municipality 24/7; staff do not. The Code of Conduct defines “outside activities” as private activities that are not part of an Employee’s assigned work and are not part of his or her job.”
9. Bonenberg, based on the comments of three members of the public (who incidentally have been the subject of harassment complaints and who have filed code of conduct complaints against staff and Council) has decided that he can definitively speak to the feelings of “the public at large ” and “the ratepayers” of the United Townships of Head, Clara & Maria.
10. States that he cannot find evidence to support a specific statement “this investigator could not verify that the statement was made, or if it was, by whom.” then says “If it was meant in jest or just a one off comment, it is inappropriate and would violate The Code.” He just stated that he can’t prove that the statement was made. Why comment any further giving credence to the statement at all?
11. “Conclusion: It is difficult to properly determine the level of inappropriateness regarding this altercation. Some present at the meeting testified that it was minor, some thought it major. It appears that Sec 8 of The Code; **General Integrity** may have been compromised:” Acknowledging that it is difficult to determine exactly what occurred, Bonenberg still makes the conclusion that the code “may have been” compromised? If there is not enough evidence to support a definitive conclusion, perhaps there should be no definitive comment on Code violation?
12. When discussing the Form 4 issue he states “This previous waiver may have contributed to the confusion over the process and the requirements.” Neither of Councillor Aiston or Gibson admits to being confused over the issue. They both acknowledge that they simply forgot to file the forms for different reasons.
13. Bonenberg finds in his report that “The investigation found that there is little to no respect in this administration.” The members of this administration have considerable respect for one another. The challenge is with a few individuals.

14. Mr. Bonenberg, in his report, states “An interpretation of the word *elsewhere* would support that “a ratepayer’s” yard can indeed be construed as the “workplace” especially within the confines of the Townships of Head, Clara, Maria.” Legislation defines a “workplace” or “elsewhere” as anywhere that work is being carried on including in a vehicle, at a conference or in a motel where staying while on company business.

15. “The investigation could not determine if the Clerk’s Oct 21, 2011 complaint was or was not based on fact. This was not the role of the investigator.” Was this not the entire point of hiring an investigator?

It should be noted that Council and staff have already taken some steps to follow Mr. Bonenberg’s recommendations.

- a) Staff have taken advantage of a Municipal World discount offer and has purchased for each member of Council a copy of *Cuff’s Guide for Municipal Leader’s* Volumes One and Two by George B. Cuff along with a one year subscription to Municipal World magazine. These costs are budgeted in the annual Council conventions and training budget.
- b) Staff have contracted with the Delfi group to complete a 360 review for the Clerk. The performance appraisal has been completed. The results are expected within days. These costs were approved by Council in December and have been allocated in the draft budget. Once the 360 report has been received, the Clerk will work with Council to meet any deficiencies and follow up within 6 months’ time.
- c) The Clerk is planning to attend AMCTOs annual General Meeting and Professional Development conference with general topics to be covered including Organizational Performance, Managing Money, Managing People, Personal Development and Networking. These costs are included in the annual staff education and training budget.
- d) Staff have contacted neighbouring municipalities to determine the demand for shared training. The opportunity currently does not exist.
- e) Amendments to the Procedure By-law, the Code of Conduct and the Harassment and Workplace Violence Policies are being considered and will be presented to Council for consideration in the near future.

Other considerations requiring Council decision and direction to staff:

1. Council direction to the Delfi Group as it relates to the costs of reports which are less than accurate.
2. Council direction to the Delfi Group in response to their letter dated March 2, 2012.
3. When and in what format the reports are to be released to the public; keeping in mind that the harassment complaints and personnel issues are bound by confidentiality of the Municipal Act. The Code of Conduct Complaints are not and

as per the Municipal Act should be shared with the public. The Clerk will amend the current drafts for council consideration at a future meeting.

Financial Implications/Budget Impact: None, the costs have been incurred.

Policy Impact: Decisions made by Council on this issue will affect many future policies and by-laws. As it is, there have been obvious violations of components of both the harassment and code of conduct policies however; nothing definitive has been decided.

Others Consulted: Bonenberg's reports; legislation; Councillors Foote, Gibson and Grills who responded to emails sent to each Council member.

Approved and Recommended by the Clerk

Melinda Reith,

Municipal Clerk

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