

Type of Decision									
Meeting Date	Tuesday, November 14, 2017				Report Date	Friday, October 27, 2017			
Decision Required	X	Yes		No	Priority	X	High		Low
Direction		Information Only		X	Type of Meeting	X	Open		Closed
<b>REPORT TITLE - Clarifications from October 17, 2017 Meeting</b>									
Report #14/11/17/1101									

**Subject:**

Clarifications from the meeting of October 17, 2017. With all due respect to this new Council.

**RECOMMENDATION:**

That Council receive the following for education and information purposes.

\*\*\* (Most of the concerns identified in this report have now been discussed in general terms during Council/staff training however; it is important that some be specifically identified to ensure that they are not repeated and are made clear to members of the public.)

**BACKGROUND/EXECUTIVE SUMMARY:**

1. With all due respect to this new Council's debate and actions during the October meeting of Council, there are a number of points which require clarification from a procedural and legislative perspective. Other points correct inaccurate statements and still others appear to be misinterpretation of the resolutions placed before council. My apologies for not being present however; I expect my advice would not have been well received at the time. I was away on Bill 68 training.

Where Council members process municipal legislative matters on a part time basis, this is the full time job of employees and we are quite careful about the recommendations made to members of Council and/or the public. Providing advice to Council is one of the main components of a Clerk's legislated role. Although new to their roles as well, as acting Clerk for a council meeting, Noella and Crystal did attempt to clarify a couple of these points during the meeting.

For your information and clarification:

2. Todd Dowser's email was not included in correspondence but in the supporting information for Council's decision related to the use of the rail bed. My apologies for not clarifying the separation of the two bundles of documents. It was noted that the supporting information was not numbered as correspondence. It was placed in your packages with the report on the rail bed use. In future I will be sure to be more specific in identifying supporting documentation. My apologies.

The inclusion of this email was not a breach of any sort; it was perfectly legal. Mr. Dowser claims the email was a private correspondence between him and his seasonal campers however; once a correspondence has been sent, there is no obligation on the recipient to keep

it private. Many pieces of information in that package were not addressed to Council. They don't need to be.

There was a valid reason for inclusion for Council's information as it was directly related to the use of trails as the email directly influenced information being provided to Council for its consideration.

Should council question why they were receiving so many comments, both at the public meeting and via email from people who are not permanent residents; this email was an explanation.

When anyone attempts to count the number of people for and/or against the rail trail; this correspondence provides explanation.

Thirdly, the email (or perhaps the conversation referred to within the email) appears to be somewhat misleading in that it resulted in responses from some recipients expressing to council that they shouldn't "cut off access to Stonecliffe" or "not allow trails". There was misinformation being circulated which Council needed to be made aware of.

There was no breach of any privacy in sharing that email. Permission for sharing is not required.

3. Councillor Foote expressed concern with the fact that the report and recommendations from April had changed for the October meeting.

Conversely, Councillor Villeneuve questioned why some clauses were still included; demanding that they be removed as they no longer applied. We can't have it both ways.

Staff was faced with additional information, had time to complete research and considered deputations and input from the public meeting; of course the recommendations were changed. The issues were deferred from April to October so that the Club could have an opportunity to address certain issues and make a report to Council on the use of the trail. They did that. Staff also had time to complete research and obtain additional information.

The first resolution was included due to the claims of miscommunication by the club which occurred in the 2016-2017 winter season. Staff feel that it is important for the club to understand Council's position in relation to the use of municipal roads for snowmobiling purposes going forward. As was the case then, this resolution has nothing to do with the route being chosen but is simply about municipal liability in relation to snow on municipal roads.

In the second resolution, there was some misunderstanding at the meeting on Tuesday, October 17, 2017. The reason that the first two points were included were to show that the Club could use whatever trail it wanted; the legacy trail any new trail and/or the pipeline. That is not for council to decide, except to permit use across/around the heli-pad and the road allowance near the ball field if requested.

The point was, the club could use whichever of these trails it chose, so long as it did not use the rail corridor as it did in 2017. That was staff recommendation, to not use the rail corridor for the reasons outlined in the report and supporting information. If Council disagrees with recommendations or the resolution, it has the authority and responsibility to vote against it.

The other points in the resolution referred to direction to staff to move forward on the larger issue.

Whether a resolution is stated in the negative or positive has no bearing. Council simply needs to vote accordingly. At no point was the intent of the resolution to be a vote for the use of the rail corridor as a snowmobile trail. That was not staff's recommendation.

It is perfectly acceptable to separate clauses as occurred. There is a formal process to do so but with a small municipality, waiving those formalities is common.

4. Consultation with municipal solicitor: No member of Council, including the Mayor has the authority to consult with the municipal solicitor without support from a vote of council. Across the municipal world, contact has been limited due to the potential for abuse resulting in significant costs to the municipality due to frivolous and vexatious consultation. Every time a council member (or member of the public) disagrees with staff or other members of Council, they could be contacting municipal counsel for advice on the taxpayer's dime.

Should a member of Council have an issue which he/she believes requires legal opinion, they are to bring that issue to Council for debate and discussion. Based on Council's decision it may direct staff to forward the question to legal counsel for opinion if it affects the municipality or an issue before council. If a member feels he/she may have a pecuniary interest in an issue, or that someone else has, or that there are Code breaches, they are to obtain independent legal advice, from their own legal counsel. Municipal counsel will not provide that advice. (Legislation is being amended so that come March 1, 2019 that will not be the case but it is currently.)

Any member of Council is able to obtain independent legal advice on municipal issues from anyone other than the municipal lawyer and at their own costs if they so choose. It is likely that any opinion will be sent to the municipal counsel for advice as the firm hired by the municipality specializes in municipal law which is significantly different from other areas of law.

The first option however; is to trust that municipal staff are providing accurate and timely advice. Municipal employees have every right to contact the solicitor for advice as it relates to council operations and council business without explicit direction from Council.

5. To that point, the reason that Councillor Villeneuve's letter to council dated October 12, 2017 was not included in the report presented to Council for the last meeting was because its contents directly impugned the motives and opinions of two members of Council. Simply because a lawyer has reviewed it and determined that it was not defamatory, does not mean that the content was not in breach of the fundamental principles of democracy and governance. This letter was not missing from the package, but deliberately left out for those reasons as explained prior to the meeting via email and in my report.
6. As to the second claim that an email was missing; the email from Debbi Grills dated the 16<sup>th</sup> was not sent to municipal staff but only to Council members. There is no way that staff can include an email which they were not provided.
7. As to the email from Raj Patel which some members of Council state they had received months ago, again, this letter was not provided to staff until after the packages were prepared. Staff did not see that email prior to the week of October 13<sup>th</sup>. Individuals have every right to contact their municipal representatives however; without copying in staff, their correspondence might not receive the attention it requires. The Clerk's statements were accurate based on information provided to staff at the time of writing.
8. As to the term "biased" used to describe the report of the clerk concerning the use of the rail bed; the report and resolution are the **recommendations** of staff after reviewing various pieces of information.

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”

Since advice and a recommendation will naturally select one option over any multitude of others, for those with an opposing opinion, it may indeed look biased. It is staff opinion that the list of solutions to some of the identified problems presented by the MLSC were valid however; by using the legacy trail, there was no need for those solutions.

Using the legacy trail keeps the feeder trails directly in the back yard of Mr. Patel. As most of the correspondence received concerning this issue expressed their concern in keeping Yates General Store open and trails going through Stonecliffe, it only made sense to keep the trail in his back yard instead of moving it down to the rail bed, fencing the end of Yates Road and then expecting people to backtrack down Sesame Street to gain access. That is simple logic.

Based on the information received, and respecting the opinions of those submitting their concerns; it is staff opinion that this is in the best interest for the future of Yates General Store.

Further, as indicated in the legal definition of “bias” below, the principle of law refers to a “decision-maker”. In creating reports to Council and providing recommendations, the Clerk is not acting as a decision-maker but instead simply making recommendations for Council debate and decision.

9. As to the term “bias” used to address municipal decisions, courts have determined the following about bias.

(a) *Bias*

*“It is a central principle of the law that a **decision-maker** should be free of bias and should be perceived to not be biased in making their decisions.*

*The law, however, recognizes that municipal councillors wear many hats and take on various roles. The leading case on the issue of municipal councillor bias is *Old St. Boniface Residents Association v. Winnipeg (City)* (1990), 2 M.P.L.R. (2d) 217 (S.C.C.), where the Supreme Court of Canada provided as follows:*

*Some degree of prejudgment is inherent in the role of municipal councillor but a disqualifying bias can be made when a councillor has a personal interest in the matter. Where such an interest is found, both at common law and by statute, a member of council is disqualified if the interest is so related to the exercise of public duty that a reasonably well-informed person would conclude that the interest might influence the exercise of that duty.*

*In a companion decision, a majority of the Supreme Court of Canada in *Save Richmond Farmland Society v. Richmond (Township)*, [1990] 3 SCR 1213, **held that a member of a municipal council is not disqualified by reason of his bias unless he has prejudged the matter to be decided to the extent that he is no longer capable of being persuaded.** The majority held that the relevant test is not whether a council member has a closed mind. In this case, the alderman had not reached a final opinion which could not have been dislodged and he was, accordingly, not disqualified by bias.*

***A council member must be amenable to persuasion. The test sets an almost impossible standard of proof.***

Each Council member must decide for him or herself whether or not they are biased, whether they have a pecuniary interest which might lead to a conflict and/or if they are in breach of the Municipal Code of Conduct. Failing to do so, any other person may file a formal complaint to have the situation investigated. If a Conflict of Interest is alleged, the only recourse is application to court through independent legal counsel.

10. As to Councillor Villeneuve's insistence that there was an obvious breach by a member of the community of the *Highway Traffic Act*, due to the plowing of snow across Yates Road. That statement is entirely false and slanderous. In order to protect itself and the municipality, Council members need to be careful making accusations about residents, especially in open meetings and should refrain from doing so.

The *Highway Traffic Act* states: "*Deposit of snow on roadway*

**181 No person shall deposit snow or ice on a roadway without permission in writing so to do from the Ministry or the road authority responsible for the maintenance of the road. R.S.O. 1990, c. H.8, s. 181."**

The snow in the photos was in the ditch across the road; not on the road, therefore, no conflict.

As Councillor Villeneuve expressed, he did bring that issue up with the Clerk/CAO back in April and as expressed then, the issue was addressed with the property owner. There was no breach of legislation; however the situation was discussed as requested.

11. As to Councillor Chartrand abstaining from a vote where council is considering how to process the harassment complaints filed by the Clerk. There was no legislative reason for him to not vote as the issue at hand was not pecuniary or financial in nature for anyone other than the municipality; however, that is at the discernment of the individual. The issue was that of the municipality honouring its legal obligations under the *Occupational Health and Safety Act* and municipal policy.

Procedurally, if a member of council does not wish to vote on any resolution, he/she must not just abstain from the vote verbally, the individual must also physically remove him or herself from the council table. By sitting at the council table and not voting, by abstaining, the vote is to be recorded in the negative.

12. There were significant challenges with protocol, parliamentary procedure, decorum and respect for others during this meeting, including fellow Council members which hopefully we will work through as this new council and staff gets used to working together.

### **Options/Discussion:**

**Financial Considerations/Budget Impact: - none**

**Policy Impact:**

**Others Consulted:**

Approved and Recommended by the Clerk

Melinda Reith,  
Municipal Clerk

*Melinda Reith*