

| Type of Decision | | | | | | | | | |
|--|---------------------------|------------------|--|----|-----------------|----------------------------|------|--|--------|
| Meeting Date | Tuesday, January 23, 2018 | | | | Report Date | Wednesday, January 3, 2018 | | | |
| Decision Required | X | Yes | | No | Priority | X | High | | Low |
| Direction | x | Information Only | | | Type of Meeting | X | Open | | Closed |
| REPORT TITLE – Legal Advice Invoicing | | | | | | | | | |
| Report #23/01/18 - 1202 | | | | | | | | | |

Subject: Responsibility for costs of legal advice for individual council members contrary to municipal policy and by-laws.

RECOMMENDATION:

That Council adopt the following recommendation invoicing the responsible party for expenses personally contracted for contrary to municipal by-laws and policy.

The clerk has been questioned by a number of people about this situation; council members, staff and members of the public; both about whether the Councillor should be responsible for the costs of the investigations into the frivolous complaints made as well as the specific costs he contracted for with municipal legal counsel. The issue has been brought to Council for decision.

WHEREAS Council policy is to obtain legal advice through the Clerk's office or upon decision of Council as a whole;

AND WHEREAS procurement of goods and/or services may only occur under authority of municipal council as outlined in the municipal Procurement By-Law, legislation and municipal policy or by specific resolution of Council;

AND WHEREAS Council recently addressed the issue of procedure for consulting the municipal solicitor and incurring expenses on behalf of the municipality at the September 15th and November 14th Council meetings;

AND WHEREAS despite those discussions and email direction from the municipal solicitor, Councillor Villeneuve continues to contact the municipal legal counsel for advice;

AND WHEREAS no one member of Council has the ability to contract for services on behalf of the municipality and in order to avoid a continuation of this occurrence and not set a dangerous precedent Council deems it appropriate to take steps immediately to prevent this behaviour from continuing;

THEREFORE BE IT RESOLVED THAT the Council of the United Townships of Head, Clara & Maria does hereby direct staff to contact the municipal legal counsel, confirm the invoice owing due to Councillor Villeneuve's direct and specific contact and further provide Councillor Villeneuve with an invoice for the services he contracted for:

AND FURTHER THAT failing to reimburse the municipality for those costs, that the outstanding amounts will be added to the Councillor's tax roll as is allowed for unpaid invoices owing to the municipality under the Municipal Act.

BACKGROUND/EXECUTIVE SUMMARY:

At the Council meeting of Friday, September 15 in closed session council discussed in part the fact that individuals were not to contact the municipal solicitor due to potential for significant legal costs not sanctioned by staff or council; that there was a process whereby only staff and/or others on specific direction from council were authorized to do so.

From the report for that meeting #15/09/17/1301 – *“Concerning the information received from the municipal solicitor in the email dated September 11, 2017 included for council’s consideration regarding contact...it is recommended that Council follow solicitor advice and refrain from providing members of the public with contact information and in fact go further and send a formal letter advising that the firm is only to act for the municipality upon requests for information and **opinion initiated by municipal staff under their legislated authority and/or upon direction by Council.**”* Councillor Villeneuve was present at that meeting and received that report.

In an email to Council on October 10, 2017 – the Clerk explained the policy and described the process to be used if anyone wished to pursue a municipal Code of Conduct Complaint (employee or council) by filing the complaint through the municipal office.

Even with those directions, at the October 17, 2017 meeting Councillor Villeneuve asked if a council member could contact the solicitor. Noella LeBreton followed up with me via email at Mayor Reid’s direction where it was confirmed that the answer was no.

On October 16, 2017 Councillor Villeneuve sent an email to the office of the municipal solicitor. The Employee Code of Conduct complaint report from the municipal solicitor speaks to a number of emails exchanged between Councillor Villeneuve and the solicitor’s office.

The municipal solicitor states that on October 25, 2017, he again replied to an email from Councillor Villeneuve explaining the formal process for filing Code complaints trying to dissuade him from doing so. Councillor Villeneuve persisted.

Mr. Fleming’s email containing the final report on the investigation into employee Code of Conduct Complaints – as forwarded by Councillor Villeneuve on December 19, 2017 states *“As this is now a matter for Council deliberations, I would ask that individual councillors not seek clarification; all request should come from Council as a whole.”*

Billing indicates additional email contact from Councillor Villeneuve on December 11th.

An email from the Workplace Harassment and Violence investigator to the Clerk provides evidence of Councillor Villeneuve again ignoring municipal policy and contacting the firm directly as well.

In addition to the costs of training to educate new Council members, the costs of frivolous and vexatious Code of Conduct complaints against employees at Councillor Villeneuve’s insistence are the costs related to his personal contact with the municipal solicitor.

Legal precedent has been set. From the Ontario Municipal Law: A User’s Manual – 2017 by Rust-D’Eye, Bar-Moshe and James, at page 304 is a list of court cases which decided that even the mayor did not have the authority to bind the corporation without approval of the majority of Council and/or a by-law of Council and were personally responsible for their invoices. Continuing to allow an individual council member to disregard municipal policy and contract on behalf of the municipality sets a dangerous precedent. This was not a one-time event; it continues.

Please note that the Council member in question is taking these actions on behalf of himself, ignoring Municipal by-law, policy and procedure in an attempt to prove that other members of Council and staff are not following council procedure, policy or by-laws? So far in the investigative process of 11 complaints filed there has been no evidence of wrongdoing on the part of staff. The

allegations have been determined to be unfounded. The investigation into the complaints filed against members of Council is still ongoing.

Options/Discussion:

Allowing this behaviour to continue is setting a dangerous and potentially costly precedent using taxpayers' money to satisfy the personal agenda of a Council member who to this point appears not willing to take advice from fellow Council members or staff. Would these invoices be paid if anyone else undertook these actions on behalf of the municipality?

It is inconceivable that ratepayer's should be on the hook for these costs.

Financial Considerations/Budget Impact:

Costs related to the Code of Conduct and Harassment Complaints against staff and other concerns, to date, are as follows:

- November 6, 2017 Council training session;
- October 16, 2017 email and comments to Councillor Villeneuve;
- On November 15, 2017 Councillor Villeneuve filed "harassment" complaints against employees through the firm hired by the municipality;
- November 30, 2017 – coordination between Cunningham Swan with Curtis re: Employee Code of Conduct Complaints;
- December 11, 2017 – review emails from Councillor Villeneuve;
- Employee Code of Conduct investigation and report;

Total legal fees are over \$4,700 to date; at least \$200+ directly attributable to Councillor Villeneuve's contact with the municipal legal counsel and nearly \$2,000 attributable to the Employee Code investigation and report. The investigation into the complaints against fellow Council members and employee harassment complaints are still proceeding.

Policy Impact:

The processes within various municipal policies and by-laws are being simply disregarded.

Processes and procedure within the Councillor and Employee Codes of Conduct have been ignored. The Municipal Harassment and Workplace Violence policy has been misused and procedure not followed. The Procurement By-Law has been breached in that a single council member has contracted for services by seeking personal legal advice through the municipal solicitor.

Mr. Fleming was obviously placed in a difficult position while it seems from his emails and report, attempting to dissuade Councillor Villeneuve from proceeding with his frivolous complaints. (It is assumed that he thought by dissuading Councillor Villeneuve to proceed he would save the municipality from the costs of an investigation and report and corresponded with him; to no avail.)

Not enforcing Council policy and rules is setting a dangerous precedent. At what point does Council stop paying for personal legal advice for individual members of Council? It appears that there is a complete disregard for Council policy, by-law and procedure; and with all due respect, staff believes Council should stop this practise immediately.

It is further recommended that a letter be forwarded to the law firm of the municipal solicitor advising that the municipality will not be responsible for any legal fees initiated by anyone other than staff through its delegated responsibilities and/or the Mayor with full support of council. We recognize that there are some times where Council may wish to contact the solicitor about employees, but this should only be done with the support of council obtained through a duly called and conducted meeting and decision of council. That decision would likely be taken in closed

session with another individual taking on the responsibilities of the Clerk. This is normally another municipal employee.

Others Consulted:

Ontario Municipal Law: A User's Manual – 2017 by Rust-D'Eye, Bar-Moshe and James
Emails, reports and letters from legal counsel.
Municipal policy.

Approved and Recommended by the Clerk

Melinda Reith,

Municipal Clerk

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