

| Type of Decision                                       |                            |                  |  |    |                 |                            |      |  |        |
|--|----------------------------|------------------|--|----|-----------------|----------------------------|------|--|--------|
| Meeting Date   | Tuesday, February 13, 2018 |                  |  |    | Report Date     | Thursday, February 8, 2018 |      |  |        |
| Decision Required                                      | X                          | Yes              |  | No | Priority        | X                          | High |  | Low    |
| Direction  | x                          | Information Only |  |    | Type of Meeting | X                          | Open |  | Closed |
| <b>REPORT TITLE - Code of Conduct Complaints - New</b> |                            |                  |  |    |                 |                            |      |  |        |
| Report #13/02/18 - 1202                                |                            |                  |  |    |                 |                            |      |  |        |

**Subject:**

Council determination of process and direction to staff with respect to newly received Code of Conduct complaints against all 5 members of Council and the Municipal Clerk.

**RECOMMENDATION:**

That Council choose one of the three following options to provide direction to staff on how to proceed with the 6 new Code of Conduct Complaints filed February 7, 2018.

**WHEREAS** 6 Code of Conduct Complaints have been filed on February 7, 2018 against Council members and staff;

**AND WHEREAS** Council has options to process these complaints including the ability to amend its own policy and not have the complaints investigated;

**THEREFORE BE IT RESOLVED THAT** the Council of the United Townships of Head, Clara & Maria does hereby direct staff to:

1. \_\_\_\_\_ Hire Cunningham Swan to conduct Code of Conduct Complaints;
2. \_\_\_\_\_ Direct staff to research and hire an independent firm to conduct the investigations;
3. \_\_\_\_\_ Determine that the complaints are frivolous and unfounded and for those reasons and in this instance specifically, disregard the section of the complaint process requiring an investigation.

(Council's choice will be noted with a check or other mark in the space beside the desired option.)

**BACKGROUND/EXECUTIVE SUMMARY:**

The above resolution has been created based on consultation with and upon advice of municipal legal counsel. Although Council has a policy, if it deems complaints to be frivolous, of no merit; Council can decide to disregard its own policy and not complete an unwarranted investigation.

Once the new legislation, under the Municipal Act is implemented, we will have an Integrity Commissioner on retainer who will fill this role of determining whether complaints are worth investigating or not. By the complainants own admission as documented in the complaints, they were only filed as he did not receive a response to his emails.

Definitions:

**Frivolous** – not having any serious purpose or value

**Vexatious** - causing or tending to cause annoyance, frustration, or worry

A policy of Council, including a by-law, is a set of rules and guidelines to direct Council in the completion of their duties. In large organizations more complex rules and guidelines are put in place and are strictly adhered to. In smaller organizations, there are fewer rules, procedures and guidelines and they are quite often not strictly adhered to. Often, they are completely ignored until one individual has a challenge with the way something is progressing and they call for protocol and procedure to be followed. The examples of this within this municipality are numerous.

1. Procedural guidelines are just that and if all council members present are in agreement to take a certain position or decision; there is no contravention of the rule. During the deputation at the last meeting which is being questioned, all council members participated in a discussion with an individual providing a deputation to council. They were in agreement. They are within their authority to do so.
2. As a further example, quite often this municipality has authorized staff, due to its location and lack of service providers to overlook the guidelines in our Procurement By-Law simply because we have limited bidders. In order to avoid the complete process of tendering to only have one bid; council has seen the benefit of not following that specific by-law. In fact, since this practise was becoming so common, the by-law was finally amended to allow for sole-sourcing for certain types of products/services. The sections in the by-law specified that certain steps be taken; council determined that the process was not time or cost effective and directed staff to do otherwise. That is council's prerogative.
3. The same is true of making amendments to resolutions put before council. Quite often words are simply stricken out or added to reflect the wishes of the majority of Council. They are written on the resolution document, normally initialled and then voted upon in effect amending the original resolution without going through the formal process of voting on the amendment and then voting on the newly created resolution. This has become common practise within this municipality.
4. Further, it has become quite common for members of Council to discuss the content of any persons' deputation with them during the meeting. The instances are numerous where the presenter asks questions of Council, Council asks questions of them and a back and forth occurs. At the meeting of January 23, 2018 this exact exchange occurred during the deputation by County Council staff and Reeve Stack and Council. At the end of their presentation, questions were asked and answered between the presenters and Council members. There were no complaints from the gallery.

The same process occurred in Ms. Rose's deputation. As is his prerogative, Mayor Reid made some comments and statements, as did other members of Council. As all council members participated in the discussion, even if it may not be specifically allowed in the Procedure By-law, there is nothing that warrants a code complaint.

5. As for the deputation process; again, unless there is to be documentation provided to council, there is no need to supply a written outline of the deputation.
  - a. To this point in time, there has never been a report to Council concerning a deputation prior to the deputation; when documentation is to be presented, it is requested and forwarded to Council in their package. If an issue requires follow up and a decision of Council, a report is prepared subsequently and the issue brought back to the table for Council debate.
  - b. Normally if the deputation is from a ratepayer, there is nothing provided, nothing forwarded to Council. This has always been the case.
  - c. Every deputation to council has been because someone has questions of council and requests answers.
  - d. I don't believe that at any point in the 12 plus years I have worked here that the deputation was confirmed by the head of council.

6. The individual filing the complaint has listed in the code complaints the fact that an email he sent was not responded to. The email asked Council to defer a large amount of the last meeting because it had not been posted on line by the end of the day Friday. The municipal resolution states that the agenda will be posted on line for public viewing as soon as possible after being completed. The meeting is to occur Tuesday evenings and the individual is complaining that there is not enough time for residents to review the package prior to the council meeting? Up until quite recently, Council was only given two days to review the entire meeting package. It was ready for them Wednesday afternoon for a Friday afternoon meeting. The contents were only posted on-line Friday morning for a 2:00 p.m meeting.

Now Council packages are ready 4 days in advance. At the latest, contents have been posted on line the Monday morning. Asking for a council meeting to be postponed because the content wasn't available for the public by Friday afternoon is unreasonable. In no way is this matter one for a code complaint.

7. To the request to have a decision of council rescinded? There is nothing that can occur aside from a judicial review which can affect a council resolution/decision to be rescinded. An integrity commissioner does not have this power. The role of an investigator or integrity commissioner is to determine whether or not there has been a breach of the Code and make recommendations specifically about the behaviour of the individuals involved. Decisions of Council cannot be effected. The requested outcome is outside of the role of an integrity commissioner, ombudsman or any other investigator.

8. Disagreement with the outcome of a vote is not grounds for a code of conduct complaint.

All of the events and actions, referred to as complaints made in the 6 filed Code documents are normal practise for this municipality. It is staff opinion that there is no need to waste taxpayer dollars any further on investigating any of these claims. Of course that is Council's prerogative.

Three options have been presented to Council for their consideration and direction to staff.

### **Options/Discussion:**

### **Financial Considerations/Budget Impact:**

There could be significant costs should an investigation be completed however; it is staff's informed opinion that all of these allegations are frivolous and vexatious.

### **Policy Impact:**

In consultation with municipal legal counsel, it was suggested that we, along with a large number of other municipalities are facing this same dilemma and as such, the Codes should be amended to insert a clause allowing staff and Council to deal with frivolous and vexatious complaints without having to incur legal expenses in certain situations.

### **Others Consulted:**

Tony Fleming, Municipal Solicitor  
Mayor Reid

Approved and Recommended by the Clerk

Melinda Reith,

Municipal Clerk

*Melinda Reith*