

*Request for Decision United Townships of Head, Clara & Maria Council*

| Type of Decision                                      |                       |                  |   |    |                 |                       |      |  |        |
|---|-----------------------|------------------|---|----|-----------------|-----------------------|------|--|--------|
| Meeting Date  | Tuesday, May 15, 2018 |                  |   |    | Report Date     | Saturday, May 5, 2018 |      |  |        |
| Decision Required                                     |                       | Yes              | x | No | Priority        | X                     | High |  | Low    |
| Direction   |                       | Information Only |   | x  | Type of Meeting | X                     | Open |  | Closed |
| <p><b>Clerk's - Report #15/05/18/801- A</b></p> <hr/> |                       |                  |   |    |                 |                       |      |  |        |

**Subject: Integrity Commissioner Presentation and MFIPPA**

**Recommendation:**

**WHEREAS** Council has reviewed the information provided during training by the Municipal Integrity Commissioner;

**THEREFORE BE IT RESOLVED** that Council will comply with recommendations and direction of this newly appointed investigator and hereby direct that:

1. The Library Board be asked to adopt a Code of Conduct for itself;
2. Staff begin the process of creating a Risk Management Policy to present to Council for adoption;
3. Staff stop the practice of recording closed meetings;
4. Staff and Council make use of the "Notice of Motion" process;
5. Staff consult with Wishart to investigate contracting for legal representation;

**Background:**

On Thursday, April 26, 2018 Council met in closed session as per the appropriate sections of the Municipal Act (239) 3.1 to receive education and training on municipal practice and procedures as it relates to amendments to the Municipal Act as well as Codes of Conduct, and other legislation.

The following are general notes and comments in respect to changes recommended by the municipality's new Integrity Commissioner and the processes that will be followed in the future.

1. In future, it is expected that municipalities will be required to prepare and follow Risk Management Plans in a manner similar to the way Asset Management Plans are required. If so, future provincial funding might be dependent on compliance with legislation. It was suggested that the municipality be pro-active and research and develop a Risk Management Plan.
2. Mr. Wray provided permission to share his presentations with Council members either in print or electronically. If any council member wishes a copy, please let me know the preferred format.

3. Mr. Wray spoke of a new program offered through a law firm in Sault Ste. Marie which provides a base of legal services in a package deal. Staff will investigate further and provide a proposal to Council in the future.
4. General Council practice:
  - a. If you are at a council meeting, you have to vote. Its “yes” or “no”; if you abstain it’s a “no”.
  - b. Council policy role – budget, grants, recreation programming, pass policy by by-law.
  - c. Council management role – to ensure that policies are complied with
  - d. Mayor has the authority to close a meeting if it gets out of hand.
  - e. Mayor and COA should have day to day contact so that the mayor is familiar with matters but does not micromanage.
  - f. Purpose of the municipality – governance, provision of services – promote those of the municipality.
  - g. A mayor’s only power is influence – no more authority than any other member of Council.
  - h. Staff/council have a right to say no to a request for a delegation. It is not a ratepayer’s right. E.g. The reason is inappropriate.
  - i. Individual council members are to support council decisions after they are made whether they were for or against the decision. A member must respect the Council decision as a whole.
  - j. There can be fines under MFIPPA (and others) for the sharing of confidential information learned during a council meeting in closed session or otherwise.
  - k. Emails, email chains and email responses might be considered frivolous. Emails that are sent repeatedly by an individual(s) to Council to influence their vote on any subject should just be ignored. Don’t answer them. You have no obligation to answer every email you receive. Email meetings should not occur.
  - l. Don’t record meeting minutes of closed sessions. Members are normally more relaxed in closed session, and may say something that is not appropriate – if ever brought to court. Even though the Ombudsman might make this recommendation, just don’t do it. (Additional information attached.)
  - m. Council can use a “notice of motion” if they would like to bring an issue before council in the near future. The notice should be noted on the agenda and stay there until the issue is eventually brought forward. Surprises at council should not happen. Dropping previously undiscussed/new business on council is frowned upon. Posing questions that are meant as “gotcha” either towards Council or staff members should never happen.
  - n. No one has the “right” to present a motion/resolution to Council. Not Council members, not members of the public. That is up to staff. Past practice of allowing this to happen so as to prevent calls of bias will be stopped.

- o. When declaring a pecuniary interest – the council member should give the “general nature” and nothing further. Full stop. No reason, no explanation, no story.
  - i. Don’t allow a member to question council about whether or not they have a conflict.
  - ii. A quorum can be 2 people if declared by pecuniary interest.
  - iii. If a council is down to one member, staff will have to apply to council for declaration of quorum/decision.
- p. Council members should never contact municipal legal counsel. The municipal solicitor should not speak with you. They could be called to testify against council at some point; who then would be representing council – conflict of interest.
- q. Many councils recognizing the importance of qualified, educated staff, while in updating their Asset Management Plans are adding “staff” to that list as they are an important resource.
- r. There are number of Criminal Code offenses related to a council position. Breach of trust, sharing confidential information, bribery, influencing council members etc.
  - i. If there is any breach of confidentiality – report to the Integrity Commissioner right away.
  - ii. MFIPPA - \$5,000 fine plus investigation by IC and code investigation – could be found in contravention of all three with sanctions/fines under each piece of legislation.
- s. When staff make recommendations that are not adopted by Council, staff reports provide staff protection for decisions of council made against that recommendation. Not so for council though. If they vote against staff recommendation they are on their own and no longer offered the protections through insurance etc. E.g. Snow on roads – staff is protected – council is not.
- t. Information about a council member while performing the duties as a councillor is considered public information and not personal information.
- u. Staff/council should review the Municipal Reporting Burden Report (AMCTO/AMO). (attached)
- v. There is never to be debate via email. Asking a question to council members and responding via email is not appropriate – could be considered “closed” meeting. Just don’t do it.
- w. Council/staff criticism at council meetings – that’s crossing the line and should never happen.
  - i. If there is a personal challenge with employees, the mayor should discuss it with them or, with Council in closed session. Never in public at open meeting.

- x. Unless a decision is illegal or puts the municipality at risk, or council at risk, all council members must support council's decision. Especially when dealing with the media.
  - i. Staff must have political acuity – know what to say, what not to say, when to refer media to the Mayor.
  - ii. Social media – how to respond chart. Chris to provide.
- y. Recommended to request that past council members stop using emails created with the “hcm” prefix used for all council addresses.
- z. Staff was directed to write a formal request to Council members to forward all municipal records to the Clerk for safe keeping. This includes all email correspondence with constituents and includes notes made during council meetings.

#### Integrity Commissioner – General

- aa. The Library Board should be encouraged to create their own Code of Conduct.
- bb. Insurance – a municipality is required to indemnify the IC. Need to contact our insurer.
- cc. Going forward, frivolous and vexatious issues will be dismissed; taxpayer dollars will not be wasted on them.
- dd. An updated policy needs to be created. E.g. If complaints are made to the IC and if a contravention, the council member will pay the legal costs, similar to the Municipal Conflict of Interest Act.
- ee. A form will be created to ensure that all appropriate information is collected and submitted in a consistent manner.
- ff. After an investigation, the applicant could go to court to have a judge look at the decision if they don't like the response. If found that there was an error, the municipality would have to cover costs.
- gg. This is a new issue for insurance companies – will likely be dealt with in same manner as Municipal Conflict of Interest Act.
- hh. Electronic Meetings – Council will need to amend its Procedure By-law – E4M has a white paper created for this purpose, will share with us. Normally only use for AODA purposes or health emergencies – not vacation or snow birds.
- ii. Invite Library Board members to the New Councillor Training sessions in the fall.
- jj. Moving forward – it is OK for staff to contact IC – a full report will be provided to Council with response.
  - i. Will review process and forms.
  - ii. Rules of decorum for meetings – deputations – post in the hall for public viewing – (add to Newsletters.)
- kk. From now until after elections, there will be no investigations as per the new Municipal Act rules to come into effect in 2019. Best practice to implement now. Not fair as they may simply be used as an election ploy.