



## **Township of North Algona Wilberforce COUNCIL REPORT**

<b>Title:</b>  <b>Election/Recount</b>	<b>Date:</b> July 16 2019
	<b>Council</b>
	<b>Author:</b> Andrew Sprunt
	<b>Department:</b> Administration

### **RECOMMENDATIONS:**

**That, the Council accepts the report as presented in regard to Justice James ruling on Mr. Clarke's application.**

**And that, Council directs staff to bring a policy forth to Council by December 31, 2019 that thoroughly addresses the procedure for an election recount.**

### **BACKGROUND:**

After the election of October 22, 2018 Councilor Berndt brought forward to Council a request for a recount of the results. Mr. Berndt was Questioning the number of rejected ballots (Mr. Berndt had lost by 15 votes).

Council without policy, procedure, or precedence directed the Clerk to commence a recount using a third party.

The Clerk without the guidance of policy, procedure, or precedence secured a third party to perform the recount. The only guiding document was the Municipal Elections Act that basically states that; "The recount shall be in the same manner as the election count". The act does not go into any detail regarding procedure.

The task of the recount was accepted by Bryan Martin, the CAO of Bonnechere Valley Township. With no recount procedure or policy from North Algona Wilberforce Mr. Martin performed the recount in the manner he believed to be best conforming to the Municipal Elections Act and information provided to him by North Algona Wilberforce.

The results of the recount were different than the original count. In the recount Mr. Berndt was ahead of Mr. Clarke by 14 votes. The Township declared Mr. Berndt to be the rightfully elected Councillor. Mr. Clarke was removed from office and Mr. Berndt was sworn into office.

After the recount Mr. Clarke brought forth a request to Council to have a second recount. Council denied the request based on there being no mechanism in the Municipal Elections Act that permitted a Council to open ballot boxes or perform a second recount. Also, the Township did not have a written recount procedure that permitted any such action.

Over the next six months there were several attempts by Mr. Clarke to challenge the results of the election and the recount through the provincial court system. All actions including the decision of Judge James dated July 12<sup>th</sup>, 2019 rejected Mr. Clarkes arguments.

In an attempt to get closure the Township tried to work with Mr. Clarke through legal counsel to assist with the application. The Township wanted to do its due diligence and to ensure it had done everything right in the election and the recount.

There was much unrest in the community with the election aftermath from Mr. Clarkes action, another member of the community attempted legal actions and there was general dialogue among the residents through word of mouth and social media.

Judge James' recent decision brings an end to the question of the election, the recount, the results and the blame. His message is that the Township moves on, there was no wrong doing, everyone acted in good faith.

There is an appeal period of twenty days that the decision could be appealed. There is no reason for the Township to take any action against the ruling.

The decision of the former Council to order a recount set off a series of events that were uncontrollable and resulted in months of turmoil in both individuals and the community. There needs to be a very firm and clear recount policy in place prior to the next election that accounts for every possible scenario. The Township should not allow this to happen again.

The decision of the previous Council on November 6, 2019 to order a recount without the tools to carry out the procedure created a chain reaction that has hampered the business of the municipality for the past eight months. People have been hurt, trusts broken, faith in the process challenged and unanswered questions remain.

It is important that there be no blame cast on individuals, all acted in good faith. Mr. Berndt had the right to ask for a recount, Mr. Clarke had the right to request action from Council, Mr. Clarke had the right to make applications to the provincial court. The two Clerks worked within the limited tools provided to them for the recount.

The end result is that two candidates exchanged places in the election count and one is to be a Councillor until the next election.

The Community and Council needs to move on now and get on with the business of the next three years.

There is no value to investigate this matter any further. After twenty days without an appeal the ballots will be destroyed and there will be no possible way to review the past. This unfortunate chapter in the Township's history will be over.

The recommendation to Council is that a recount policy needs to be in place before the next election.

## **ALTERNATIVES:**

Do not accept report

## **FINANCIAL IMPLICATIONS:**

**None**

## **ATTACHMENTS:**

Mr. Berndt Letter

Council Resolution Recount

Mr. Clarke Letter

Justice James July 12th

## **CONSULTATIONS:**

**Author:** \_\_\_\_\_  
signature

**Other:** \_\_\_\_\_  
signature

**Treasurer** \_\_\_\_\_  
signature

**C.A.O.** \_\_\_\_\_  
signature

Dear Major and Council

I would like a recount, on the results of the latest election. The number of spoiled ballots seems to be in question.

Thank You

A handwritten signature in cursive script that reads "Melvin Berndt".

Melvin Berndt



***North Algona Wilberforce Township***

1091 Shaw Woods Road  
RR #1 Eganville, Ontario K0J 1T0

Tel: 613-628-2080

Fax: 613-628-3341

---

May 8, 2019

The following resolution was passed at the November 6<sup>th</sup> 2018 Regular Meeting of Council

**RESOLUTION**

13.1 Municipal Election Recount

MOVED BY Councillor Schultz

Resolution A 11-6-266

SECONDED BY Councillor Brose

THAT Council directs the Clerk to proceed with a recount of the October 22, 2018 ballots  
Carried

**ORIGINAL SIGNED BY MAYOR JAMES BROSE.**

---

This is a certified true copy of a Resolution of Council of North Algona Wilberforce Township passed at the Regular Meeting held November 6, 2018

Marilyn Casselman, CMMIII  
Clerk

February 27, 2019

To Mayor, Council and Staff

I am back here in front of you to make one more plea to council to sit down and work with me for you and the people of this municipality. As you know there were major mistakes in one of these counts. I don't believe that I *should have to be carrying the whole load for this Council to get a recount done and to make this election right. WHAT ARE YOUS AFRAID OF??* The only one that it can effect is Melvin.

*To make a short explanation. I was winning the election by 15 votes and after the recount I was losing by 14 votes.*

*It was not disputed ballots that caused the problem,*

*It is not the rejected ballots that caused the problem.*

What is the problem is one of these counts is wrong.

There was 72 mistakes made between those two counts.

There are 34 votes that magically appeared out of the recount with no explanation.

Melvin gained 29 votes, possibly out of those 34; scientifically that is not possible.

It comes down to someone can't count or someone can't add or someone is trying to control the election or who sits on council.

The only way to find out is with a resolution from council or by a judge's order, which I have been attempting to get by going to court, to have these ballot boxes unsealed and recounted in an accountable and transparent procedure.

I am hear to ask this respected Council to work with me to have a mediation that can come up with a solution to get those ballot boxes unsealed and opened and to do a transparent recount in front of all candidates and scrutineers so that at the end of the day there is no questions unanswered.

This would be the must common sense approach to deal with this issue.

In my mind it is the most sensible way of solving this problem. I don't want to hear that our hands are tied because to me that is only a cheap, lame excuse.

RECEIVED FEB 2 6 2019

I am going to throw this at you, if you have the ability to run this township as a Council, and you have the ability to pass by-laws, especially a by-law that you passed last meeting to encroach on private property by passing a by-law dealing with tree canopy, this by-law effects every person in North Algona Wilberforce Township. You have the ability to pass a resolution or by-law to open those ballot boxes and recount those ballot boxes and make the election of October 22, 2018 right.

This would be only taking care of twp business.

If we can't agree to come together, and do mediation and to do this right in and inexpensive way you leave me no choice but to make this whole thing very expensive. It could get messy with finger pointing and accusing and possible law suits.

IS THAT WHAT YOU WANT??

I don't want to do this, but if you force me into this, it will be on your shoulders and you can answer to the rate payers of this township, so if this is the way you want to go and this happens so much for accountability and transparency to the people of this township. Which I presume that you all promised to the people of this township ACCOUNTABILITY and TRANSPANCY.

THANK YOU.

Kevin Clarke



**North Algona Wilberforce Township**

1091 Shaw Woods Road

RR #1 Eganville, Ontario K0J 1T0

Tel: 613.628.2080

Fax: 613.628.3341

[www.nalgonawil.com](http://www.nalgonawil.com)

Appendix "A" to By Law 2018 - 105

**REQUEST TO APPEAR AS A DELEGATE (PLEASE PRINT CLEARLY)**

I am requesting delegation to speak:

a) ☒ on my own behalf

b) ☐ on behalf of a group, organization, if so, please state name of group, organization, association below:

Name(s) of Group, Organization, Association (please print):

Name(s) of Speaker(s) (please print and include the names of all speakers):

Subject/Title of Presentation (please print):

Please describe below, the subject matter of the delegation. Full text of the presentation and all documents to be provided during the presentation must be attached to this document and provided in the electronic format requested by the Clerk.

Printed Name of Delegation Representative:

*Kevin Clarke*

Signature of Delegation Representative:

*Kevin Clarke*

Address:

*50 Rhedars Lane*

Telephone:

*613 585 7407*

Fax:

Email:

**ADDITIONAL DOCUMENTATION AND PRESENTATION MATERIALS:**

Additional documentation attached?

Yes ☒

No ☐

Will a PowerPoint presentation be made?

Yes ☐

No ☒

**FOR OFFICIAL USE ONLY**

Confirmation of Mayor

☒

Yes

No

Delegation Date

*March 5*

Prescribed Time (if permitted)

*10 minutes  
7:30 pm*

Duration

*10 min*

Completed and signed requests and all presentations documentation must be delivered to the Clerk by 12:00 noon on the Wednesday preceding the meeting of Council for which your delegation is scheduled.

Delegations may be tentatively booked by the Clerk, however will be confirmed by the Mayor.

The delegation representative provides a signature on behalf of all spokespersons. The number of spokespersons will not be limited, however all spokespersons will share the delegation duration. Additional or substitute spokespersons may be permitted upon approval by the Mayor. Such approval must be sought and given prior to the beginning of the meeting when the delegation is heard.

By signing this request form, the signatory hereby agrees on behalf of all spokespersons to the public display of all information provided and the public recording of any delegation proceedings.

Unless otherwise approved, all delegations must attend the meeting and be heard when Council reaches the item Delegations on the agenda. Failure to appear during that agenda item will result in the delegation not being heard.



Ministry of the Attorney General  
Court Services Division  
Superior Court of Justice  
297 Pembroke St. E  
Pembroke, ON  
Telephone 613-732-8581  
Fax 613-7321766

### FACSIMILE TRANSMISSION

This facsimile may contain **PRIVILEGED AND CONFIDENTIAL INFORMATION** only for use of the Addressee(s) named below. If you are not the intended recipient of this facsimile or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination or copying of this facsimile is strictly prohibited. If you have received this facsimile in error, please immediately notify us by telephone to arrange for the return or destruction of this document. Thank you.

TO : J. Paul Cassan  
Taayo Simmonds

FAX: 1-705-949-2465  
1-613-699-4457

DATE: July 12, 2019

TOTAL PAGES (incl. Cover) 7

**Re: Clarke v. Corporation of North Algona Wilberforce Township et. al.**

On behalf of the Honourable Justice James, please find enclosed the Reasons for Decision.

Should you have any questions, please do not hesitate to contact the undersigned.

Respectfully Yours,

  
Diana Kelly  
Judicial Assistant

**CITATION:** *Clarke v. Corporation of North*

**COURT FILE NO.: CV-19-0000049**

**DATE:** July 12, 2019

**SUPERIOR COURT OF JUSTICE**

)  
) Taayo Simmons for the Applicant  
)  
)  
)  
)  
)  
)  
)  
)  
)  
) J. Paul Cassan for the Respondents,  
) Corporation of North Algona Wilberforce  
) Township, Marilyn Casselman, Janet  
) Reiche-Schoenfeldt, Doug Buckwald, Maria  
) Robinson  
)  
) No one appearing for the remaining  
) Respondents  
)  
)  
)  
) **HEARD:** July 5, 2019

[1] The applicant has brought an application in relation to the municipal election in the Township of North Algona Wilberforce (sometimes referred to as "the Township") on October 22, 2018 requesting:

- 2 -

- a. a recount of 35 disputed ballots under section 63 of the Municipal Elections Act (the "*Act*") or alternatively,
- b. a determination under section 83 of the *Act* of the validity of the election of Melvin Berndt as a councillor.

[2] The request for relief under section 63 was previously brought before the court by Mr. Clarke in court file CV-18-93 in January of this year. At that time Mr. Clarke's affidavit said he wanted to get to the bottom of why there were different tallies between the election night results and the recount results but he indicated in court that he was satisfied that the few remaining disputed ballots weren't going to change the outcome of who had actually received the most votes. Mr. Clarke said he didn't have an issue regarding so-called disputed ballots and he did not ask the court to rule on any disputed ballots under the section 63 procedure.

[3] I now turn to the request under section 83. The first point is that this application is brought more than 2 months after the expiration of the 90 day limitation period stipulated by the legislation. While it is true that Mr. Clarke gave a clear indication that he intended to bring a second application before the 90 day limitation period expired, there is a serious question whether this court has the power to extend the time, even if inclined to do so.

[4] Leaving aside the limitation period issue for a moment, Mr. Clarke says that the recount procedure was so deeply flawed that the results ought to be quashed, clearing the way for another recount. He is joined in this submission by the Township.

[5] The recount was conducted on November 14, 2018 by Bryan Martin, the Chief Administrative Officer for a neighbouring municipality, with the assistance of two retired municipal employees. The shortcomings of the recount procedure alleged by Mr. Clarke are itemized in his affidavit, supplemented by the Township in its material filed with the court. The particulars of these allegations include the following:

- a. The recount was conducted in the Township of Bonnechere Valley where Mr. Martin was employed;

- 3 -

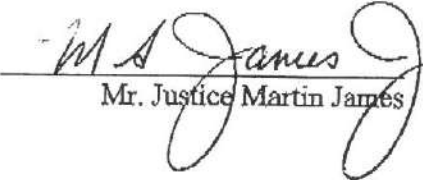
- b. The scrutineers had difficulty assessing the "numbers of votes counted in the recount given the lack of proximity" between themselves and the persons conducting the recount. It is not clear to me whether this was something that Mr. Clarke observed or that this information was relayed to him by an unidentified third party;
  - c. The doors were not locked; and,
  - d. The results of the recount were not double-checked.
- [6] Marilyn Casselman, Clerk of North Algona Wilberforce Township, swore an affidavit in which she noted the following:
- a. Candidates, rather than scrutineers, had control of the ballot boxes, some of which had seals that were undone; and,
  - b. The original staff and scrutineers were not used at the recount.
- [7] Again, it is not clear whether Ms. Casselman was present and actually saw who had control of the ballot boxes or whether this is something that she was told by someone else. Details are lacking.
- [8] Counsel for the Township notes that the *Act* provides that the recount is to be conducted in accordance with the prescribed procedures (sec. 60(2)) and these procedures were set out in training material leading up to the election but, he says, were not followed at the recount. At the same time, however, I would suggest that it is difficult for the Township to complain or suggest that the recount team failed to perform the recount properly when the recount was initiated and conducted at the Township's request and presumably under its control. I am of the view that the Township had a responsibility to ensure the recount was conducted properly and fairly.
- [9] Until now, there has not been an allegation made in court by or on behalf of the Township that the recount procedure was flawed. There are no contemporaneous records or evidence of either intentional or unintentional non-compliance by the recount team. There is an absence of evidence from the time of the recount that municipal officials expressed concerns as to how the recount was conducted.

- 4 -

- [10] Similarly, there is no evidence in the record before me of any objection or complaint raised by Mr. Clarke at the relevant time that the procedure was defective. The *Act* specifically provides that Mr. Clarke was entitled to be present together with a lawyer acting on his behalf throughout the recount process and to have a scrutineer at each counting station. They were entitled to examine (but not touch) each ballot and to dispute the validity of a ballot or the counting of votes in a ballot (sec. 61(5)). Surely this was the time to go on record with objections to the process or the procedures, especially considering that the legislation provides for only one recount with no right of appeal.
- [11] As a matter of public policy, clearly it is desirable that elections, including recounts, be conducted fairly and that the results reflect the true will of the electorate.
- [12] There is a competing public policy consideration, which is that finality, regardless of the outcome, is important too. The municipality must be able to get on with the tasks of government without lingering distractions. For this reason the *Act* imposes specific, and relatively short, time limits and does not provide a mechanism for the extension of the applicable time limit.
- [13] On the record before me, I am not persuaded that the recount ought to be nullified and a further recount ordered. Such a remedy, if even possible, would be extraordinary and require compelling evidence of improprieties and unfairness. To the contrary, there is no evidence in this case of illegal or fraudulent activity and no such allegations have been made. It appears to me on the available record that all participants were acting in good faith in unfamiliar territory in their efforts to respond to an unusual situation.
- [14] I appreciate that some may find it a vexing question as to why there is a significant, unexplained difference between the two tallies. The legislature has provided a right to review the initial results with a statutory recount provision and that right was exercised in this case. The issue of disputed ballots has already been dealt with. If another recount was permitted, whether the results changed or not, it is reasonably likely that further controversy would ensue, all to the detriment of the municipality as a whole.

- 5 -

[15] For the foregoing reasons, this application is dismissed.

  
Mr. Justice Martin James

**Released:** July 12, 2019

- 6 -

**CITATION:** *Clarke v. Corporation of North  
Algona Wilberforce Township et. al.*, 2019 ONSC 4258  
**COURT FILE NO.:** CV-19-0000049  
**DATE:** July 12, 2019

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

KEVIN CLARKE

- and -

CORPORATION OF NORTH ALGONA  
WILBERFORCE TOWNSHIP, JANET REICHE-  
SCHOENFELDT, MARIA ROBINSON, DOUG  
BUCKWALD, MELVIN BERNDT, DALE  
BENOIT-ZORH, CLAY BINGLEY, SHAWN  
DAVIDSON, DAVID GREEN, MEENU PURI,  
BARRY PROULX, DAVE PLUMB and  
MARILYN CASSELMAN

---

**REASONS FOR DECISION**

---

Mr. Justice Martin James

**Released:** July 12, 2019