



Statement by Councillor Ferrie-Blecher Meeting of Council - September 6, 2016

I would like to take a moment to speak about a meeting I attended last Wednesday, August 31 at the Ganaraska Forest Center.

The meeting was hosted by the local group Rural Representation to discuss the LLRW legal matter, and featured Mr. Ian Angus, the applicant in the lawsuit, as guest speaker.

I attended the meeting with Councillor Les Andrews. Deputy Mayor Burns sent his regrets due to a prior engagement at a fire services working group meeting, and Mayor Sanderson was on vacation.

Having attended the meeting and heard for myself what was communicated, I understand why some residents are so angry about the Municipality's decision to appeal the LLRW decision, and the letter that was subsequently distributed to all residents.

I was asked to address the audience at the end of the meeting, and I indicated that I was not in agreement with all of the information that was presented, and invited people to speak to me after the meeting if they had specific questions. A few did.

There was a lot of information provided at the meeting, but we feel it's important to speak to a couple of the points that generated the most misunderstanding.

Mr. Angus provided the audience with an overview of the trust process, stating that when a trust fund comes to the end of its life, it is "wound up" and distributed to the beneficiaries. Mr. Angus stated that the trust does not become invalid, nor does it go back to where it came from. According to Mr. Angus, the only way the money would go back to Canada, is for the "Municipality to win its appeal and have the Trust declared invalid from the beginning."

Given the information that was communicated, we feel it is very important to clarify, once again, Council's position with regards to the appeal.

Mr. Angus stated during the meeting on August 31 that "when you have an invalid trust, the money has to go back to its source". He further explained this would only apply if the trust was invalid in the first place, and given the Court identified the fund was a valid non-charitable purpose trust, this would not apply.

However, contrary to Mr. Angus' commentary, paragraph 93 of Justice McCarthy's decision clearly states that following a period of 21 years, "the unexpended capital and income in the trust should go to those persons who would have been entitled to receive the trust property, had the trust been invalid from the start". This is repeated again in paragraph 107 of the decision. Nowhere in the decision does it say that upon collapse of the trust in 2022, the remaining funds would be distributed amongst the beneficiaries.

As outlined in our letter to residents, the Municipality has applied to the Court of Appeal to set aside the current judgment, meaning the fund would not become invalid in 2022 and return to Canada as the settlor, or face the potential tax implications and other costs associated with the administration of a non-charitable purpose trust. In our view this outcome is the most consistent with the original intention of the agreement, and provides the maximum benefit to the Municipality and its residents.

If that is not accepted by the Court of Appeal, our second argument is that the non-charitable purpose trust does not meet the original intent of the agreement, and therefore, the nearest 'Trust' to meeting the original intention is a charitable trust.

Council will move forward with our appeal as planned, and we were pleased to learn that Mr. Angus has decided to cross-appeal, meaning he will also make arguments to the Court of Appeal to request an alternate decision.

Similar to our second argument, Mr. Angus' cross-appeal asks the court to reconsider the funds as a charitable trust.

Residents have asked me why the Municipality is spending more money on an appeal. Aside from protecting the fund for the community, the Court has ordered that we return in 2022 to seek direction on what will happen to the money. It does not make sense to wait until 2022 to learn the fate of the fund, and spend again on legal expenses at that time.

As for the current use of the interest on the fund, this Council committed to using the interest earned to defray taxes, in the manner that reflected the original intent of the fund, and we have done this over the last 2 years, and will continue to do so, pending further direction from the Court.

Given the amount of misinformation circulating in the community, we completely understand the level of anger amongst some residents, and we would like to take this opportunity to reassure you that your best interests are at the heart of our decisions, and we invite you to contact us, or speak with the Director of Finance if you would like further clarification on the fund, while we await the decision of the Court of Appeal.

As we have a long meeting ahead of us, Council will not speak to the issue further at this time, but we invite you to contact us later if you have any additional questions.