

ADDENDUM



MEETING OF COUNCIL MAY 8th, 2018

➤➤ D-6) General Government / *gouvernement général*

D-6 (b) Update re: WNPS Board – Judicial Review

Court File No. 1086-18

**ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)**

BETWEEN:

WEST NIPISSING POLICE SERVICES BOARD

Applicant

- and -

**MUNICIPALITY OF WEST NIPISSING
(COUNCIL FOR THE MUNICIPALITY OF WEST NIPISSING)**

Respondent



APPLICATION UNDER the *Judicial Review Procedure Act*, R.S.O. 1990, c.J.1, s.2

**NOTICE OF APPLICATION TO DIVISIONAL COURT
FOR JUDICIAL REVIEW**

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION for judicial review will come on for a hearing before the Divisional Court on a date to be fixed by the registrar at the place of hearing requested by the applicant. The applicant requests that this application be heard at the City of Greater Sudbury.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the office of the Divisional Court, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the office of the Divisional Court within thirty days after service on you of the applicant's application record, or at least four days before the hearing, whichever is earlier.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN TO IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: April 30, 2018

Issued by


Local Registrar

Address of 155 Elm Street
court office: Sudbury ON P3C 1T9

TO: **Municipality of West Nipissing (Council of Municipality of West Nipissing)**
c/o Melanie Ducharme, Municipal Clerk / Planner
Municipality of West Nipissing
101-225 Holditch Street
Sturgeon Falls, ON P2B 1T1
Tel: (705) 753-2250 ext. 6926
Fax: (705) 753-3950
mducharme@westnipissing.ca

AND TO: **Attorney General of Ontario**
Crown Law Office — Civil
720 Bay Street
8th Floor
Toronto, Ontario M5G 2K1

APPLICATION

1. THE APPLICANT MAKES AN APPLICATION FOR:

- (a) an Order quashing motion 2017/384 and the decision of the Council of the Municipality of West Nipissing (the “**Council**”) dated December 5, 2017, adopting By-Law 2017/85 (the “**Decision**”);
- (b) an Order quashing By-Law 2017/85, being the by-law to authorize the acceptance of the OPP contract policing proposal for the Municipality of West Nipissing (the “**By-Law**”);
- (c) if required, an Order quashing all other motions and decisions of Council relating to the implementation of the Decision and By-Law;
- (d) an Order remitting the matter to the Council with the necessary directions;
- (e) if required, an Order staying the implementation of the Decision and By-Law pending the determination of this Application;
- (f) costs of this Application for Judicial Review on a substantial-indemnity basis; and
- (g) such further and other relief as counsel may advise and this Honourable Court considers appropriate.

2. THE GROUNDS FOR THE APPLICATION ARE:

- (a) The process by which Council considered and made the Decision and passed the By-Law was flawed and unfair as Council categorically refused to adequately consult with the community and to involve the West Nipissing Police Service Board (the “**Board**”), the Chief of Police and other stakeholders in its process to seek alternative policing services from the Ontario Provincial Police (“**OPP**”);

- (b) Certain Councilors who voted in favour of the Decision and the By-Law participated in the decision making process despite being in a personal conflict of interest due to having OPP members in their immediate families;
- (c) Certain Councilors, including former members of the Board, who voted in favour of the Decision and the By-Law, have displayed a pattern of personal animosity for the senior command of the West Nipissing Police Service and have adopted a highly questionable course of conduct for the purpose of advancing their personal agenda;
- (d) Council repealed its Code of Conduct on March 14, 2017;
- (e) Council acted in bad faith when making the Decision and enacting the By-Law;
- (f) Council failed to act with frankness and impartiality when making the Decision and enacting the By-Law;
- (g) Council acted with improper and/or ulterior motives when making the Decision and enacting the By-Law;
- (h) Council failed to act in the public interest when making the Decision and enacting the By-Law;
- (i) Council failed to adhere to the principles of natural justice and/or procedural fairness when making the Decision and enacting the By-Law;
- (j) Council relied upon improper and/or irrelevant considerations when making the Decision and enacting the By-Law;
- (k) Council continued its unlawful and improper conduct in the form described above when considering and determining motions 2017/382, 2017/383 and 2018/43 relating to subject matter of the Decision and the By-Law;
- (l) the Decision and the By-Law are unreasonable;

- (m) the Decision and the By-Law are unlawful;
- (n) the *Judicial Review Procedure Act*, R.S.O. 1990, c.J.1, s.2; and
- (o) such further and other grounds as counsel may advise and this Honourable Court may considers appropriate.

**3. THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED
AT THE HEARING OF THE APPLICATION:**

- (a) the affidavit of Board Chair Barry Bertrand, to be sworn;
- (b) the affidavit of Chief R.C.J. (Chuck) Seguin, to be sworn;
- (c) other affidavit evidence, to be sworn;
- (d) the record of the Council's proceedings pertaining to the Decision and By-Law, including those meetings held on October 4, 2016, October 18, 2016, March 14, 2017, November 14, 2017, November 22, 2017, December 5, 2017, January 9, 2018, February 13, 2018 and April 17, 2018 including the recordings of these proceedings; and
- (e) such further and other material as counsel may advise and this Honourable Court may permit.

Date: April 30, 2018

**PERLEY-ROBERTSON, HILL &
McDOUGALL LLP/s.r.l.**
Lawyers/Patent & Trade-Mark Agents
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Lawyers for the Applicant,
West Nipissing Police Services Board

WEST NIPissing POLICE
SERVICES BOARD and
Applicant

MUNICIPALITY OF WEST NIPissing (COUNCIL
FOR THE MUNICIPALITY OF WEST NIPissing)
Respondent

Court File No.: 1086-18

ONTARIO
SUPERIOR COURT OF JUSTICE
(Divisional Court)

Proceeding commenced at Sudbury

**NOTICE OF APPLICATION TO DIVISIONAL
COURT FOR JUDICIAL REVIEW**

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Lawyers / Patent & Trade-Mark Agents
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Reply to/Communiquez avec:
Joël M. Dubois
613.566.2815 jdubois@perlaw.ca

May 8, 2018

BY EMAIL & COURIER

Linda Lamoureux, Executive Chair
Safety, Licensing Appeals and Standards Tribunal Ontario
Ontario Civilian Police Commission
401-250 Dundas Street West
Toronto, ON M5T 2Z5
Email: linda.lamoureux@ontario.ca

Dear Ms. Lamoureux:

Re: Municipality of West Nipissing Section 40 Application to Abolish the West Nipissing Police Service
Our Reference: WNPS 0004

Further to the letters of April 25, 2018 to Ministers Lalonde and Flynn, to which you were copied and which are attached hereto for ease of reference, we are the lawyers for the West Nipissing Police Services Board (the “**Board**”).

We understand that the Ontario Civilian Police Commission (the “**Commission**”) is (or will soon be) in receipt of a request from the Municipality of West Nipissing (the “**Municipality**”) for the Commission’s consent to abolish the West Nipissing Police Service pursuant to section 40 of the *Police Services Act* (the “**Act**”) for the purposes of transferring policing to the Ontario Provincial Police (the “**Section 40 Application**”).

The Section 40 Application is predicated upon Municipal Council’s passing of By-Law 2017/85, which, in the Board’s view, was passed following a deficient process. In short, it is the Board’s position that the By-Law is unlawful. Accordingly, the Board has commenced an Application for Judicial Review seeking to quash By-Law 2017/85. Enclosed herein is a copy of the *Notice of Application to Divisional Court for Judicial Review*, Div. Ct. Sudbury file# 1086-18 (the “**Application for Judicial Review**”) setting out the bases upon which the Board challenges By-Law 2017/85.

The Commission has previously held that challenges to the manner in which a municipal council reaches its decision to seek alternative policing services are outside of its jurisdiction¹. Further, the Commission’s *Protocol for Section 40 Abolition Requests* and authorities require a lawful resolution of municipal council before the Commission will consider a section 40 application.

¹ *Pembroke Police Service*, OCPC-DSB #13-02

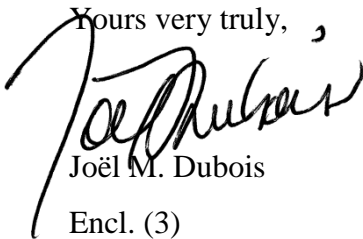


In light of the foregoing, it is the Board's position that it would be inappropriate for the Commission to proceed with the Section 40 Application until such time as lawfulness of By-Law 2017/85 has been determined by the Divisional Court.

Please confirm that the Commission will stay the Section 40 Application pending the determination of the Application for Judicial Review. The Board undertakes to keep the Commission apprised of the status of the court proceeding.

Please do not hesitate to contact us should you require any additional information.

Yours very truly, ,



Joël M. Dubois

Encl. (3)

cc. Barry Bertrand, Board Chair (by email only - bbertrand@wnpb.ca)
Melanie Ducharme, Municipal Clerk / Planner (by email only - mducharme@westnipissing.ca)
Jessica Barrow, Lawyer (by email only - jbarrow@perlaw.ca)

WEST NIPISSING POLICE SERVICES BOARD

CONSEIL DES SERVICES POLICIERS DE NIPISSING OUEST



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2018-04-26

Honourable Kevin Flynn
Ministry of Labour
14th Floor – 400 University Avenue
Toronto, Ontario M7A 1T7
Fax: 416-326-1449
kflynn.mpp@liberal.ola.org

Dear Minister Flynn,

I am the Chair of the West Nipissing Police Services Board (the “**Board**”). I write to you on behalf of the Board in order to express our concerns regarding the decision of the West Nipissing Municipal Council (the “**Council**”) and of the Ontario Provincial Police (the “**OPP**”) to temporarily locate the West Nipissing OPP facility within the former “Zone facility” on John Street adjacent to Goulard Park in Sturgeon Falls (the “**Temporary Facility**”).

As you may be aware, the Municipality of West Nipissing is currently policed by the West Nipissing Police Service. In December 2017, the West Nipissing Municipal Council (the “**Council**”) decided to have policing in West Nipissing changed over to the OPP. This change over has yet to be approved by the Ontario Civilian Police Commission (the “**OCPC**”).

In preparation for the change in policing provider in West Nipissing, Council and the OPP have identified and approved the approx. 1,000 sq. foot Temporary Facility as the location for the OPP facility in West Nipissing until the new 17,000 sq. foot OPP facility can be built at the entrance of Cache Bay at the end of 2019.

The Board is extremely concerned with the choice for the Temporary Facility as it does not appear that this building will meet the requirements of the *Occupational Health and Safety Act* and the *Industrial Establishments Regulation* (Reg. 851) for a safe working environment nor will it meet the adequacy standards for police facilities under provincial standards. The Board has

attempted to have a dialogue with Council and Municipal staff regarding its concerns however such attempts have been met with a complete refusal.

The Board requests your assistance as Minister of Labour to investigate this matter so as to ensure that the Temporary Facility is safe and appropriate for our community.

Thank you for your consideration. Please do not hesitate to contact me should you have any additional questions.

Yours very truly,



Barry Bertrand
Board Chair
bbertrand@wnpb.ca

cc. **Marie-France Lalonde**, Minister of Community Safety & Correctional Services:
mflalonde.mpp@liberal.ola.org
Linda Lamoureux, Executive Chair, SLASTO/OCPC : Linda.Lamoureux@Ontario.ca
J.V.N. (Vince) Hawkes, Commissioner, OPP: Vince.Hawkes@Ontario.ca
Mary Silverthorn, Provincial Commander, Corporate Services, OPP: Mary.Silverthorn@Ontario.ca
Graham Wight, Police Services Advisor, MCSCS: Graham.Wight@ontario.ca
Fred Kaustinen, Executive Director, Ontario Association of Police Services Board: admin@oapsb.ca
John Vanthof, MPP, Timiskaming-Cochrane: jvanthof.kl-co@ndp.on.ca

WEST NIPISSING POLICE SERVICES BOARD

CONSEIL DES SERVICES POLICIERS DE NIPISSING OUEST



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2018-04-26

Honourable Marie-France Lalonde
Minister of Community Safety & Correctional Services
18th Floor – 25 Grosvenor Street
Toronto, ON M7A 1Y6
Fax: 416-325-6067
mflalonde.mpp@liberal.ola.org

Dear Minister Lalonde,

I am the Chair of the West Nipissing Police Services Board (the “**Board**”). I write to you on behalf of the Board in order to express our concerns regarding the actions of the West Nipissing Municipal Council (the “**Council**”) relating to its December 5, 2017 decision to seek the disbandment of the West Nipissing Police Service (the “**Service**”) and to have the Ontario Provincial Police (the “**OPP**”) police the Municipality of West Nipissing (hereinafter referred to as “**By-Law 2017/85**” – copy attached).

The Board is writing to you in your capacity as Minister of Community Safety & Correctional Services (“**MCSCS**”) rather than the Ontario Civilian Police Commission (the “**OCPC**”) as the OCPC has previously held that it does not have the jurisdiction to consider the process by which a municipal council has arrived at the decision to seek alternative policing services (see: *Pembroke Police Service*, OCPC-DSB #13-02). Further, Graham Wight, Police Services Advisor with the MCSCS, has been copied with this letter as he was directly involved in, and has been a witness to, many of the events that are relevant to this matter.

As will be outlined below, the Board is seeking your assistance and intervention as the process by which Council considered, and ultimately passed, By-Law 2017/85 was seriously flawed and fundamentally unfair. Contrary to its obligations, Council categorically refused to involve the Board, the Chief of Police and other stakeholders in its process to seek alternative policing services from the OPP. Council also failed to adequately consult with the community.

The Board's Concerns

Both the Ontario Association of Chiefs of Police (the “OACP”) and the OPP have published guidelines to be followed by municipalities when considering and seeking alternative policing services:

1. The OACP recommends the establishment of an Advisory Committee consisting of “the local Chief(s) of Police and/or the local O.P.P. Detachment Commander, designated Municipal Officials, representation from the involved Police Associations, and representatives of the Police Services Board(s)”.
2. For its part, the OPP recommends “creat[ing] a committee responsible to oversee the process, e.g. Chief Administrative Officer, municipal representative, Police Services Board Chair, Police Service Chief or designate”.

During the previous 2012/2013 OPP costing process in West Nipissing, a Steering Committee comprised of representatives from Council, the Board, Municipal Staff, the Police Association and the Chief of Police was followed. The committee met several times to ensure proper communication and awareness and to provide input into the process. Unfortunately, as will be outlined below, a different inequitable and highly prejudicial approach was preferred by Council in 2016/2017.

In October 2016, Council requested a proposal from the OPP for policing in the Municipality of West Nipissing. On November 14, 2017, the OPP presented its proposal to Council. At no time during this 13-month period were the Board, the Chief of Police or other stakeholders consulted regarding seeking alternative policing services in West Nipissing. In fact, in May 2017, the Board expressly requested the opportunity to address Council regarding this issue however this request was denied.

Prior to the OPP's presentation on November 14, 2017, a 21-day timeline by which Council's final decision would occur was already set and the decision to proceed with the disbandment of the Service was treated as a foregone conclusion. Pursuant to this 21-day timeline, a single public meeting was scheduled for November 22nd; a 9-day online Q&A process for members of the public was established; and a final Council meeting and vote was scheduled for December 5, 2017.

On November 22, 2017, a single 2.5 hour public meeting was held in Sturgeon Falls. It should be noted that during the previous 2012/2013 OPP costing process, three public meetings were held in all of the communities of West Nipissing: Verner, Field and Sturgeon Falls.

On December 5, 2017, the Board Chair was granted, at the Board's request, a 15 minute delegation to address Council on the issue of the OPP costing. This was the sole opportunity given to the Board to address the matter. During this meeting, the Board requested that Council take more time to consider the matter in light of a public poll which revealed that 51% respondents preferred maintaining the existing police service and another 23% of respondents did not have sufficient information to form an opinion. Further, the poll also revealed that 68%

of respondents believed that the issue of the OPP costing required a referendum. Despite these facts, Council proceeded with its 21-day timeline and passed By-Law 2017/85 at this meeting.

It should be noted that at no time prior to the adoption of By-Law 2017/85 were the Chief of Police or the police associations consulted regarding the OPP proposal. As noted above, the Board was given a 15 minute delegation in the minutes leading up to the final Council vote. Council did not have all of the information it required to ensure the OPP could meet the public's needs, having not first heard from those stakeholders with the actual experience and knowledge in serving those needs.

On February 13, 2018, Council considered a petition presented from the community requesting that the OPP implementation be treated as an election issue. This request from the public was rejected by the Council with little to no discussion.

In summary, over a 21-day period in November and December 2017, Council embarked on an unfair process in order to meet its ultimate goal of having the OPP police the Municipality of West Nipissing. Council adopted a closed mind, treating its decision to proceed with the OPP as a foregone conclusion, and treating the input of the community and relevant stakeholders as a barrier. The process by which Council considered, and ultimately passed, By-Law 2017/85 was seriously flawed and fundamentally unfair.

The Board's Request for Assistance

The Board requests your assistance to address the failure of Council to provide the community of West Nipissing with a transparent and fair process that adequately considers the best interests of the community. As noted above, the OCPC does not have jurisdiction to address these issues and the Board submits that Council should not be permitted to proceed with the implementation of By-Law 2017/85.

In closing, the Board has also written to the Honourable Kevin Flynn, Minister of Labour, in order to express its concerns regarding *Occupational Health and Safety Act* and *Police Services Act* adequacy standards concerns with the proposed temporary location for the West Nipissing OPP facility. A copy of this letter is enclosed for your information.

Thank you for your consideration. Please do not hesitate to contact me should you have any additional questions.

Yours very truly,



Barry Bertrand
Board Chair
bbertrand@wnpb.ca

Encl. (2)

cc. **Graham Wight**, Police Services Advisor, MCSCS: Graham.Wight@ontario.ca
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John Vanthof, MPP, Timiskaming-Cochrane: jvanthof.kl-co@ndp.on.ca