

ADDENDUM #2



MEETING OF COUNCIL MAY 1st, 2018

➤➤ D-7) General Government / *gouvernement général*

D-7 (a) Ontario Civilian Policing Commission (OCP) – Disbandment Brief.

Additional and/or changed supporting documentation which include:

- (i) Amendments to Brief
- (ii) Notice of Application to Divisional Court for Judicial Review.

MEMORANDUM

TO: Mayor and Council
FROM: Jay Barbeau, CAO
Melanie Ducharme, Municipal Clerk/Planner
DATE: May 1, 2018
RE: **UPDATE - PROPOSAL TO THE ONTARIO CIVILIAN POLICE COMMISSION**

It has been brought to our attention that there were two errors in the draft document provided to you with the Agenda;

1. A severance provision relating to civilian members was left out; and
2. The Background section contained a reference to the Police Board as an “Applicant” along with the Municipality. This document was a template taken from another municipality and this should have been omitted. A corrected version is attached.

Further, the Municipality has today been served with the attached Notice of Application to Divisional Court for a Judicial Review of the OPP Costing process/decision.

Legal advice has been sought and additional information will be provided at the meeting tonight.

Joie de vivre



www.westnipissingouest.ca

BACKGROUND

Application Pursuant to Section 40

On October 18, 2016, the Council for the Municipality passed a resolution No.2016/431, authorizing the Municipality to seek a costing proposal from the OPP for municipal policing services for the Municipality. On December 5, 2017 Council for the Municipality of West Nipissing passed By-law 2017-85 to accept the OPP Contract Policing Proposal dated the 14th day of November, 2017.

Accordingly, the Corporation of the Municipality of West Nipissing ~~and the West Nipissing Police Service Board (hereinafter, respectively, “the Municipality”, “the Board”, or collectively, “Applicants”)~~ seeks the consent of the Commission pursuant to section 40 of the *Police Services Act*, RSO 1990, c P. 15 to terminate the employment members of the West Nipissing Police Service for purposes of abolishing the force and transferring policing to the OPP.

As required by section 5 of the *Police Services Act*, the Municipality undertook a review of the available options for the delivery of policing services within the municipality, including the transfer of services to the OPP. In so doing, the Municipality carried out an analysis of the costs and services available under an alternative policing model. The Municipality also undertook public consultation of the matter.

These submissions detail the OPP costing proposal accepted by the Municipality, the process followed by the Municipality to consider and ultimately elect an alternate policing arrangement, including the process undertaken to obtain public input.

The OPP Costing Proposal and the services to be provided by the OPP satisfy the obligations of section 4 of the *Police Services Act*. The OPP is able to provide adequate and efficient policing services in a manner which protects the best interests of the municipality and details of the OPP Integrated Service Delivery Model is included herein.

The Applicant submits that it has fair and reasonable severance arrangements in place for the Chief, Inspector and the members of the WNPS. The existing collective agreements for the Senior Officer, Uniform Officers and the Civilian Members contain severance provisions freely negotiated between the parties. The Chief’s contract of employment also includes a severance provision which was agreed upon between the Chief and the Board. The Municipality has obtained letters from the West Nipissing Police Association (on behalf of the uniformed and civilian members), the Senior Officer (Inspector) and from the Chief of Police, each stating that the severance provisions contained in their respective agreements or contracts are acceptable and being honoured. Unfortunately, we have not been unable to obtain any statement from the West Nipissing Police Board, despite repeated requests. We will continue to follow up with the Board in the hope that such a statement will be forthcoming.

The following are the contracts or collective bargaining units and present status:

Party(s)	Collective Agreement/Contract	Status/Due Date
Chief of Police	Employment Contract	Due: 12-31-2019
Inspector	Collective Agreement No.	Renewed: 31-12-2019
Uniformed Officers	Collective Agreement No.	Renewed: 21-12-2018
Civilian Members	Collective Agreement No.	Renewed: 31-12-2018

Senior Officer:

The Senior Officer unit is comprised of one (1) Inspector.

In the event of termination due to disbandment, the Inspector is entitled to one year salary plus three weeks for every year of service.

Administrative Assistant - Article 25 Severance Pay

In the event of termination due to disbandment, civilian members who are not offered employment with the new provider are entitled to four (4) weeks of salary for every year of service plus up to \$5,000 for retraining.

~~civilian members who are offered employment with the new provider are entitled to four (4) weeks of pay.~~

Civilian members who are offered employment with the new provider are entitled to four (4) weeks of pay.

Uniform Members, Article 30 Severance

In the event of termination due to disbandment, sworn members who are not offered employment with the new provider are entitled to four (4) weeks of salary for every year of service plus up to \$5,000 for retraining.

Sworn members who are offered employment with the new provider are entitled to four (4) weeks of pay.

Civilian Members: Article 25 Severance Pay

In the event of termination due to disbandment, civilian members who are not offered employment with the new provider are entitled to four (4) weeks of salary for every year of service plus up to \$5,000 for retraining.

Employees on Leave

No employees on leave at this time.

Retired Former Employees

Retired members are eligible to continue to receive drug plan, dental plan, and vision care until the age 65, if they retire under the conditions set out in Article 23.02. The Municipality will continue to pay the cost of these benefits. There are currently two retirees.

Court File No. 1086-18

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

BETWEEN:

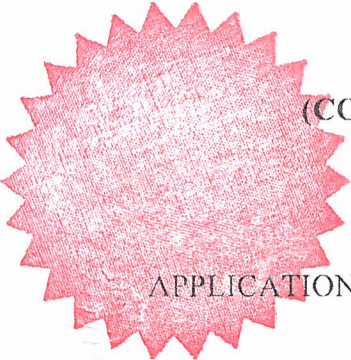
WEST NIPISSING POLICE SERVICES BOARD

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.**
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Lawyers for the Applicant,
West Nipissing Police Services Board

WEST NIPISSING POLICE
SERVICES BOARD
Applicant
and
MUNICIPALITY OF WEST NIPISSING (COUNCIL
FOR THE MUNICIPALITY OF WEST NIPISSING)
Respondent

Court File No.:

ONTARIO
SUPERIOR COURT OF JUSTICE
(Divisional Court)

Proceeding commenced at Sudbury

NOTICE OF APPLICATION TO DIVISIONAL
COURT FOR JUDICIAL REVIEW

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Ottawa, ON K1R 0A5

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