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File number/Référence: OP15368399

September 28, 2016

Members of Council
Township of Adjala-Tosorontio
7855 Sideroad 30
Alliston, Ontario
L9R 1V1

RE: Final Report on OPP Investigation in Post-Retirement Benefits

Dear Members of Council,

This letter is a follow-up to my presentation to the Council for Township of Adjala-Tosorontio this morning in relation to the OPP Investigation into a complaint about post-retirement benefits.

Attached you will find a summarized final report relating to the OPP investigation and resulting conclusions.

If you have any questions or concerns, or if I can provide any additional information to assist you, please contact me anytime.

Respectfully,

A handwritten signature in black ink, appearing to read "Shawn Evans", is written over a light blue horizontal line.

Shawn Evans
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Ontario Provincial Police
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cc. Detective Constable Patrick Marchand, Ontario Provincial Police, Central Region Crime



**Township of Adjala-Tosorontio
Post-Retirement Benefits Investigation
Report to Council
September 28, 2016
OP15368399**

Lead Investigator: Detective Constable Patrick Marchand
Ontario Provincial Police
Central Region Crime

Investigative Assistance: Detective Sergeant Shawn Evans
Ontario Provincial Police
Anti-Rackets Branch
Corruption and Economic Crime Unit

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Complaint

On October 29, 2015 a complaint was made to the Ontario Provincial Police (OPP) by two members of Council for the Township of Adjala-Tosorontio (the corporation).

A number of concerns were raised about the creation of post-retirement benefits and increases in the eligibility age limit that occurred over several years. The primary concern raised was a change in post-retirement benefits that occurred in 2012 that increased the eligibility age from 75 to 80. It is alleged this was done contrary to a municipal by-law and without the sanction of Council.

Scope of OPP Investigation

Based on a review of the complaint and the identified issues, the OPP investigation focused on the following areas:

- The creation of post-retirement benefits
- Enhancements to post-retirement benefits in 2006, 2009, 2011, and 2012
- Standard practices within the municipality dealing with changes to remuneration
- The extent of involvement by municipal staff and Council with the above

The purpose of the investigation was to determine if there was evidence of the commission of an offence in relation to the identified scope.

Sources of Information

OPP investigators relied on documentary and witness information sources from the corporation. Further, investigators relied on insurance documents and information from a third part service provider. Thirteen formal interviews were conducted with current and former corporation employees and Council members.

The investigation identified record retention issues within the corporation. It was determined the extent of the corporation records relating to the post-retirement benefits issue is incomplete. Email communication records in particular were not complete making it difficult to determine who was involved in the various decision making processes regarding enhancements to post-retirement benefits.

The Standard Set By Council

The corporation was formed on January 1, 1994. By-Law 94-44 was to set salaries, wages, and remuneration for the employees and officials for the year 1994.

The by-law set out the rate of remuneration for the various categories of employees. The by-law did not address any information pertaining to post-retirement benefits. Paragraph 17 of the by-law set out the following information:

“THAT for any employee of the Corporation that is otherwise retained or hired by resolution of Council, then for their carrying out or discharge of their duties, the Council of the Corporation shall fix, by By-law, the remuneration and benefits (recompense) to be provided, and which may be adjusted from time to time by resolution or Council letter of direction to the Municipal Treasurer...”

The Creation of Post-Retirement Benefits

There is no clear accounting of how post-retirement benefits came into existence. Insurance documents confirm the existence of a policy in 1997 that afforded post-retirement benefits for dental, deluxe travel, and extended health for retired employees under the age of 70.

Investigators were not provided with any documentary evidence detailing how this benefit came into existence. Witness interviews were not of assistance in affording evidence of how and when these benefits came into existence. Investigators were not provided with any evidence about whether Council was informed of this benefit or provided direction in the form of a resolution or letter of direction. Given the incomplete corporate record on this matter, the OPP took no further investigative steps on this issue.

2006 Enhancements

Effective December 1, 2006, the eligibility age for post-retirement benefits increased from 70 to 75. While reviewing the circumstances that lead to this enhancement, investigators reviewed evidence from the insurer, corporation emails, and witness perspectives. The email exchanges afford evidence the intent at the time was to increase the age limit for *active employee* benefits from 70 to 75, to ensure a serving member of Council was appropriately insured. A representative from the firm assisting the corporation with its insurance needs (the firm) raised the question about increasing the post-retirement benefits from age 70 to 75 at the same time. The firm provided information in the email exchanges that there would be no change to the existing rates the corporation was paying. An Employee from the corporation (employee one) provided direction to make the change to age 75 for both active and retired members.

Email evidence suggests employee one was not working unilaterally on this direction to the firm. That being said, the incomplete records of the corporation precludes investigators from being able to make a determination about who was involved in, or had knowledge of, the decision making process.

Investigators were not provided with any evidence confirming Council was informed of this benefit enhancement or provided direction in the form of a resolution or letter of direction.

2009 Life Insurance Enhancements

Effective November 1, 2009, two enhancements were made to life insurance coverage relating to the corporation. Life insurance for retired employees was introduced with an eligibility age of 70. Dependent life insurance for both active and retired members enhancements were made for dependent life insurance with an eligibility age of 70. Email communication between employee one of the corporation and the firm affords some evidence this direction by employee one to enhance the insurance was not made unilaterally. That being said, the incomplete records of the corporation precludes investigators from being able to make a determination about who was involved in, or had knowledge of, the decision making process.

Investigators were not provided with any evidence confirming Council was informed of this benefit enhancement or provided direction in the form of a resolution or letter of direction.

2011 Enhancement

Effective April 1, 2011 dental, extended health, and travel insurance benefits for *active employees* of the corporation were enhanced increasing the eligibility age from 75 to 80. The explanation provided for the increase in age eligibility was to ensure a serving member of Council was appropriately insured.

There are no records held by the corporation supporting who was involved in the decision to change the insurance benefit for *active members*. Investigators were not provided with any evidence confirming Council was informed of this benefit enhancement or provided direction in the form of a resolution or letter of direction.

2012 Enhancement

In 2012, the firm was assisting the corporation with switching insurance providers with an anticipated savings of \$23,700 in annual premiums. Insurance records afford evidence the new policy effective date was June 1, 2012.

On May 24, 2012 employee one sent an email to the firm inquiring about post-retirement benefits. The content of the email suggests employee one was of the belief the eligibility age for post-retirement benefits was 80, effective April 1, 2011. The firm sent a reply email to employee one confirming the age eligibility for retirees was still set at 75. In the same email the firm asked if employee one wanted the firm to proceed with asking the insurer to extend post-retirement benefits to age 80.

Employee one responded to the firm with an ambiguous email. The email did not clearly direct the firm to increase the age eligibility to 80; however the firm interpreted the email as a direction to do so. The language in the email affords some evidence employee one was acting unilaterally in sending the email. As a direct result of the work being done by the firm to switch insurance providers for the corporation, the increase in age eligibility was not immediately acted on.

On September 4, 2012, the firm sent an email with attachments relating to the new insurance policy to corporation employees two and three. Employee one was not sent the email¹. The email and attachments contained detailed information about the corporation's new insurance coverage. In the body of the email it was clearly detailed that Class C retirees post-retirement benefits had a proposed age eligibility of 80 years (as a result of the email exchange between employee one and the firm). The email directed employee two and three to review and authorize the insurance documents. A notation was added to the email that if the insurer did not receive confirmation back from the corporation by November 27, 2012, the insurance documents would be printed as presented in the email.

Employee two and three did not reply to the email. An employee from the firm informed investigators about a telephone conversation with employee two. During the conversation employee two deferred to the firm's expertise on the content of the insurance documents and the firm on behalf of the corporation authorized the new insurance provider to proceed with the proposed policy language, including post-retirement benefits eligibility to age 80.

Aside from the emails, there are no records held by the corporation informing whether others were involved in the decision to change the insurance benefit for retired members to age 80. Investigators were not provided with any evidence confirming Council was informed of this benefit enhancement or provided direction in the form of a resolution or letter of direction.

Review of Other Remuneration Enhancements

Investigators examined records of other enhancements to employee remuneration² for the years 1994 to 2011. The purpose of the examination was to ascertain if the direction set out in By-Law 94-44 was being followed for other remuneration enhancements.

Investigators examined corporation documentation for 13 other forms of remuneration enhancement. Investigators determined none of the 13 remuneration enhancements were executed in accordance with the standard set out in By-Law 94-44. The documents afforded some evidence that individual members of Council were aware of some of the enhancements. Further, some of the documents afforded evidence of Council being informed of the enhancements. Investigators were not provided with any evidence

¹ Further detail about employee one is considered personal information pursuant to the Freedom of Information and Protection of Privacy Act (FIPPA)

² Salaries, hourly wages, and other employee benefits

confirming Council provided direction for the enhancements in the form of a resolution or letter of direction.

Council Budgetary Review and Approval Process

Investigators were provided with detailed budget documents for the years 2003 through to 2013. Investigators completed an analysis of the budgets relating to how salaries, wages and post-retirement benefits were presented.

The budgets for the defined years consistently break-down salary and remuneration totals by each department of the corporation.

From 2003 through to 2009 the amounts relating to post-retirement benefits were rolled together in the budgets with salaries and wages. From 2009 through to 2013 post-retirement benefits became a single line item in the budget described as *Payroll Burden*.

Investigators reviewed Council Minutes from 2004 through to 2013 relating to budgetary matters. The minutes reflect Council held at least one budget workshop for members of Council for the years 2004 through to 2013. Investigators believe members of Council would have been provided with the detailed budget lines in order to have discussions and ask questions about the various financial liabilities and obligations. 9

For the years 2003 through to 2013, Council consistently held public meetings about the budget and ultimately passed by-laws approving each years detailed budget items.

Investigators believe the budget workshops would have allowed each member of Council to see exactly what costs the municipality was facing each year relating to salaries, benefits, and payroll burden. Members of Council would have been presented with the opportunity to flush out further details of any particular budget line. By approving each budget for the years 2003 through to 2013, Council effectively approved every line item in the budget, including salaries, benefits, and payroll burden.

Witness Perspectives

There was consistency in the information provided in the interviews that one or more members of Council along with senior corporation staff were left to negotiate and deal with the various departments on the issue of increases to wages and remuneration. Further, there was consistency in information from the interviews that the designated members of Council involved in the negotiations kept the other members of Council informed. Witnesses told investigators the motives behind the increases were to compensate corporation employees for a lower than average pay level and to promote employee retention.

[The primary concern of investigators on this issue is the lack of documentation within the corporation for what was asserted in the interviews. There is no delimitative way to

2 [determine the extent to which any or all members of Council and/or staff for the relevant years had knowledge of the various enhancements.] 9

Conclusion

In concluding this investigation, the OPP has taken into consideration all of the available evidence relating to the post-retirement benefit issue. [The incomplete record for the various decisions made by the corporation about enhancements to post-retirement benefits limits the ability to conclusively determine what occurred in each transaction.] ?

Investigators do not believe the evidence presented, and obtained, affords reasonable grounds that a criminal offence was committed. It is important to note this finding does not preclude an employer from making a finding that by-law procedures were not followed and the record keeping (and retention of those records) was inadequate. [While individual employees or perhaps individual members of Council could have been held accountable by the corporation for not following the direction set out in By-Law 94-44, there is no evidence anyone committed a criminal offence.] ?

Moving forward, the current Council and the top corporation administrative staff have the ability to turn the page on how business relating to remuneration was conducted in the past and focus on developing and delivering change to administrative and procedural processes.

[Council also has the ability to appropriately deal with any financial consequences that may have been caused by decisions of any of its former and current employees (and/or members of Council) in relation to remuneration and post-retirement benefits.]

The OPP has concluded its investigation into matters detailed in this report.