

**Craig Gammie  
Councillor**

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**Report Re: Council, August 16, 2016**

**Report No: Gammie04-2016**

**Subject: Enforcement of Fireworks by-law**

**Recommendations:**

1. That council accepts this report,
2. That council instructs the OPP to enforce the fireworks bylaw and the noise bylaw as required by statute law and by agreement .
3. That council informs the OPP that per agreement no extra charges will be paid for enforcement of by-laws as per law and agreement.
4. That staff investigate whether there may be cost savings in the future by adding bylaw enforcement coverage after regular business hours for noise and fireworks bylaws and other regulatory bylaws.

**Link to Strategic Planning:** *Goal 1: Supportive and Accountable Municipal Operations and Governance .*

**Background:**

Four related issues are discussed in this report, namely:

- A. Breach of confidentiality by the OPP detachment Commander,
- B. Improper vilification of residents who make complaints about fireworks,
- C. Duty of the Municipality to provide adequate and effective by-law enforcement,
- D. Duty of OPP to provide by-law enforcement.

**A. Commader Thompson breached confidentiality – commander Thompson has lost any credibility he had.**

Every police officer and bylaws officer and council member knows or ought reasonably to know that personal information about a complainant is to be kept confidential (sections 42. (1) and 61. (1) of the Freedom of information and protection of privacy act (FIPPA) and Regulation 268 /10 (Police Services Act) SCHEDULE (code of conduct) Section 2. (1) (e) (i).

Wayne Thompson as detachment commander has to know that.

I have seen evidence that shows commander Thompson disclosed outside the OPP the name of at least one resident who had called the OPP with complaints about fireworks.

Commander Thompson has made a serious breach in disclosing information that in law is to be kept confidential.

I understand that the matter is under investigation by the Independent Police Review Director (OIPRD), and also being followed by the Office of the privacy commissioner.

As a result of the breach, Commander Thompson has lost any credibility he may have had.

The information was disclosed to at least Mayor Janice Jackson.

Mayor Janice Jackson also should have known that disclosure of confidential information by Mr. Thomson to her was a breach. She should have informed Mr. Thompson of the breach and let the information go no further. Instead she inappropriately launched a personal attack against the complainant who had been named by Mr. Thompson.

**B. Mayor Jackson blaming the complainant is unacceptable and unmayoral**

Janice Jackson is quoted by bayshore broadcasting August 4, 2016 as saying:

Fireworks at Sauble Beach -- it's something people are going to have to get used to.

That's according to South Bruce Peninsula Mayor Janice Jackson, who says that's just the way it is living in a tourist town.

She's asking residents not to call the Bruce Peninsula OPP to complain, because that will accomplish nothing but cost the town money.

From J. Jackson August 2, 2016 report:

The OPP have reported to me several calls regarding fireworks at Sauble Beach.

..

Our current OPP contract is now in excess of \$2.2 million per year.

Council voted on October 20, 2015 not to increase the cost of our contract by adding this type of by-law enforcement. Please be aware that each time the OPP are called, the people of SBP are charged.

It's subtle, but her comments blame the complainant.

Commander Thompson and Mayor Jackson have made serious breaches by bullying, vilifying, villainizing and threatening by innuendo those good residents who lodge complaints or simply ask that the law be enforced. Vilifying and villainizing the complainant is just another form of bullying and that's wrong.

Lots of residents bring to me complaints about fireworks. I tell them to call the OPP when the offence is occurring. Almost all say they will not because they have called before and have been treated with contempt and disrespect or because they fear retribution.

That residents are afraid to call is a sad state of affairs and a blemish on all of council and involved staff.

### **C. Municipality must provide "adequate and effective police services"**

From Police Services Act ("PSA"):

Police services in municipalities

**4. (1) Every municipality** to which this subsection applies **shall provide adequate and effective police services** in accordance with its needs. 1997, c. 8, s. 3.

[emphasis added by Gammie]

***Adequate and effective police services must include law enforcement***

From PSA :

Core police services

4. (2) Adequate and effective police services **must include**, at a minimum, all of the following police services:

1. Crime prevention.
2. **Law enforcement.**
3. Assistance to victims of crime.
4. Public order maintenance.
5. Emergency response. 1997, c. 8, s. 3.

[emphasis added by Gammie]

***Law enforcement includes by-law enforcement when not covered by by-laws officer***

From Provincial offences act (POA) excerpt from s. 1

“offence” means an offence under an Act of the Legislature or under a regulation or by-law made under the authority of an Act of the Legislature; (“infraction”)

By-law contravention is an “offence” and a “provincial offence”.

From Provincial offences act (POA) excerpt from s. 1

“provincial offences officer” means,  
(a) a police officer,...

From Provincial offences act (POA) from s. 3

**Issuance and service**

3. (2) A provincial offences officer who believes that one or more persons have committed an offence may issue, by completing and signing in the form prescribed under section 13,
- (a) a certificate of offence certifying that an offence has been committed; and
  - (b) either an offence notice indicating the set fine for the offence or a summons. 2009, c. 33, Sched. 4, s. 1 (2).

All together means law enforcement must include by-law enforcement.

Therefore adequate and effective police services includes by-laws enforcement .

By statute law we as a municipality must provide for adequate and effective by-law enforcement.

**D. OPP are obligated by statute and agreement to enforce regulatory bylaws**

J. Jackson Report August 2, 2016 says:

Both myself and Detachment Commander Thompson wish to remind Council and the public that our OPP contract does not include responding to fireworks calls.

Commander Thompson and Mayor Jackson have made a serious error in claiming that the police services contract does not provide for fireworks by-law enforcement.

In fact the statute law and the police services contract both require that OPP enforce fireworks by-laws.

From OPP proposal:

Where a municipality chooses to receive police services from the OPP under contract, the OPP will ensure that the municipality

receives adequate and effective police services in accordance with the police services act and regulations.

And

Where a municipality chooses to receive police services from the OPP pursuant to a contract, the OPP will provide the level of police services required to provide adequate and effective policing.

And

Value for the town of south bruce peninsula

- Assurance of adequacy and effectiveness of police services

***From agreement recitals:***

(a) Under section 4 (1) of the police services Act, RSO 1990 c P15, as [amended], the Municipality is required to provide adequate and effective police services in accordance with its needs; ...

General Provisions

3. Ontario shall provide adequate and effective police services in accordance with the needs of the Municipality in compliance with the terms and conditions of the Agreement.

***Made clear in Police Services Act (“PSA”) s. 42 (1) that OPP are required to enforce regulatory bylaws when no coverage of bylaws officer***

Duties of police officer

42. (1) ***The duties of a police officer include,***

- (a) preserving the peace;
- (b) preventing crimes and other offences and providing assistance and encouragement to other persons in their prevention;

- (c) assisting victims of crime;
- (d) apprehending criminals and other offenders and others who may lawfully be taken into custody;
- (e) laying charges and participating in prosecutions;
- (f) executing warrants that are to be executed by police officers and performing related duties;
- (g) performing the lawful duties that the chief of police assigns;
- (h) in the case of a municipal police force and in the case of an agreement under section 10 (agreement for provision of police services by O.P.P.), **enforcing municipal by-laws**;
- (i) completing the prescribed training. R.S.O. 1990, c. P.15, s. 42 (1); 1997, c. 8, s. 28.

[emphasis added by Gammie]

***agreement 17-2015 is OPP enforce “mutually agreed upon by-laws”***

There is according to the clerk no “formal” agreement regarding which bylaws the OPP are to enforce. But there is an agreement.

Indicators that the list includes fireworks and noise include:

***i. Conclude from general rule and two exceptions***

Section 6 b of agreement implies two exceptions – dogs and building code –

The presence of two exceptions suggests that there are no other exceptions. By analogy from interpretations act if a general rule is provided and exceptions are given then the law is to be interpreted as there being no other exceptions.

Noise and fireworks are not excepted. Paragraph 6b is in effect the agreed upon list.

It makes sense because dogs and building code are different than other by-laws.

Makes sense for dogs because the by-laws officer can during business hours investigate a complaint made in off-hours and can charge for the complaint.

Building code violations do not disappear during the day so can be enforced without OPP help, even if complaint is made after hours.

So for dogs and building code stuff the town can and does provide “adequate and effective” law enforcement services in almost all cases without needing the OPP.

Not so with noise and fireworks etc.

***ii. Clerk implied that by-laws other than fireworks are on the list.***

The Clerk cautioned that negotiations could mean no response to any by-law related calls. (Oct 20, 2015 minutes)

Implies that some by-laws are currently being responded to and are thus on the agreed upon list.

Manager of Financial Services Humble explained that in a quick review of the calls for service, there are no notations of response for the Fireworks By-Law. . (Oct 20, 2015 minutes).

Implies that there may be or is data on other by-law responses.

***iii. Town website says at least noise is on “the list”***

**AFTER HOURS NOISE BY-LAW COMPLAINTS**

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If you have a complaint regarding a violation of the Noise By-Law and it is outside of normal Town business hours, please contact the OPP by calling 1-888-310-1122.

***iv. Lots of anecdotal evidence police respond to noise and fireworks calls.***

Charges are rare, but the OPP do attend to fireworks and noise complaints.

***v. Update requirement***

Agreement says:

The parties shall annually review this part of the Agreement with a view to revising or updating the list of by-laws requiring O.P.P. enforcement.

The agreement was signed into bylaw February 3, 2015, a year and a half ago. There is no indication that an annual review has taken place.

We are not following the agreement. If we had we would have clarified (not determined) that noise and fireworks “require OPP enforcement.

***even if noise and fireworks not on list then PSA 4. (1) overrides the by-law agreement***

Even if there is a list and fireworks is not on the list, it doesn't matter as PSA s. 4 overrides the agreement.

PSA s. 4 as above requires that the municipality, through its council, provides adequate and effective police services, which means law enforcement, which means by-law enforcement .

From police services contract by-law 17 2015:

6. (a) For the purposes of S. 10(6) of the police services act, ***the O.P.P shall provide police services to the municipality, including the enforcement of mutually agreed upon by-laws.*** The parties shall annually review this part of the Agreement with a view to revising or updating the list of by-laws requiring O.P.P enforcement.

6. (b) ***Municipal Building code violations overseen by the municipality's building code inspector and those by-laws related to animal control will not form part of this agreement.***

[emphasis added by Gammie]

The agreement is a bylaw.

As argued above, I say PSA 4.2 and the agreement require enforcement of noise and fireworks bylaws after hours.

It may be in dispute what the agreement requires regarding by-law enforcement.

But if there is no fireworks bylaw enforcement in the agreed list, or no fireworks or noise bylaw enforcement implied in the agreement, as some may argue, then the by-law is in conflict with PSA s. 4.2.

Any bylaw (e.g. 17- 2015) or part thereof in conflict with a statute (e.g. PSA s.4) is null and is of no effect per Municipal act s. 14:

**Conflict between by-law and statutes, etc.**

14. (1) A by-law is without effect to the extent of any conflict with,

- (a) a provincial or federal Act or a regulation made under such an Act; or
- (b) .....

**Same**

(2) Without restricting the generality of subsection (1), there is a conflict between a by-law of a municipality and an Act, regulation or instrument described in that subsection if the by-law frustrates the purpose of the Act, regulation or instrument. 2006, c. 32, Sched. A, s. 10.

So if there is a conflict (which is in dispute) the statute prevails.

That the statute prevails is confirmed by the agreement. Agreement Clause 23 (f) confirms that the statute prevails:

The rights of the municipality and the board pursuant to the agreement are subject to the Municipality's obligations under s. 4 of the police services act

“subject to” means section 4 of the police services act prevails. The act says “must include.... law enforcement”. There is no provision in law for an agreement to override this. The agreement cannot override this.

The agreement itself says the statute prevails.

**OPP must enforce noise and fireworks by-laws (at least these) when no coverage**

Failure to provide for enforcement of regulatory by-laws when by-laws officers are unavailable is a failure to provide adequate and effective police services, and as such is a contravention of the police services act on our part.

We must provide adequate and effective police services. Instead our mayor says those who complain are the villains for asking simply for what the law entitles them to, namely “adequate and effective police services”.

**Should be no extra Costs**

J. Jackson says (August 2) it costs extra every time someone calls the OPP. This is unverified. But even if it were true maybe if the OPP laid some charges when they find violations we would get some revenue to cover costs and the violations and calls would be reduced.

And long term we could cut costs by hiring another bylaws officer to work a later shift, instead of telling people who are suffering:

“Suck it up goofus – don’t you realize that this is a tourist town – my duty is to make sure the hooligan tourists are protected – I have no such duty to the affected residents”

Adequate and effective policing services, which includes by-law enforcement, is included in the contract pricing.

OPP should not be charging extra for calls for enforcement of fireworks or noise by-laws.

**Options:** 1) follow report recommendations

2) not follow recommendations in report

Inter-departmental Impact: not known

Budget Implications: not known  Approval of Manager of Financial Services

Expected Date of Completion: not known

Respectfully submitted,



\_\_\_\_\_  
Councillor Craig Gammie

\_\_\_\_\_  
Department Head

Date: August 10, 2016

Date: \_\_\_\_\_