## *Failed Litigation Costs*

Ref: SGC-06r0
Submitted by James Taaffe
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Further to my Delegation to Council in September:

In 2021 Southgate and our CAO were found "reprehensible" by an Ontario Superior Court Justice, related to those individuals' unlawful firing of an employee. That Justice clearly stated those individuals told "malicious, sexist, falsehoods" in committing that unlawful firing.

Southgate Policy 10, Section F Rule 10 defines: "Fraud is defined as any act committed through deceit or falsehood which deprives the Township of its assets, property, or other resources". The illegal firing was committed by fraud, as defined by the bylaw and the words of the Justice. The total costs of the litigation, damages, and any other amounts related to those actions are assets and resources of the corporation, with us no longer. With no communication otherwise, costs assumed approaching $1M, the 2020 audit report mentioned a risk exceeding $850k, before it failed.

There is absolutely no ambiguity in the operational obligation held by Council in that case, as stated further in that bylaw: "The Township of Southgate will not tolerate any acts of fraud or theft, and any such actions will be viewed as acts of criminal activity and will be dealt with accordingly." Council is fully aware, and as the bylaw states prescriptively, Council must view that as a crime against the township and act accordingly. Council are required to act as though a crime has been committed against us, fraud worth maybe $1M, and so far just act as though nothing at all even happened back then. Silence is absolutely unacceptable, of course; this is Ontario.

I have not been provided with any reasons, on several requests in several forums, why Southgate has not attempted to recoup those huge litigation costs, by the mechanism clearly outlined in that referenced bylaw, for that very, and important, purpose. Even a request to the Integrity Commissioner was ignored, for a spurious reason.

Southgate has an obligation to collect money owed it's body corporate. Ignoring this obligation, in this case, with no reasons even proffered upon specific interrogation, is an absolute abdication of Council's obligations under Policy 10, and Policy 9, and further under Southgate bylaws dealing with accountability and transparency.

And further, given Council's direct involvement in the litigation matter itself, in choosing to support the firing by recorded vote; not pursuing that proper recoup of those litigation costs, cannot appear an unbiased decision to any reasonable person. In fact, given that Policy 9 clearly indicates all Councillors are fully within a conflict of interest in any decisions related to this litigation matter, and by further consideration of Policy 10 that the CAO is also further so encumbered, does raise a significant spectre of governance indeed.

With the entire leadership of the township not ethically able to make this decision, obviously, Council appealing to the courts for help would seem the only ethical recourse available. And that recourse has been available to Council, for the entire duration that the matter has sat unresolved, coming up on a year.

As a result of my previous inability to gain traction on this matter through legislative means, the cost recoup matter now sits as a topic in litigation with me and Mr. Brown, Southgate counsel. I have informed Mr. Brown, who I'm sure will concur, that I am trying to relieve that burden on the Court, and am taking this action of appearing by delegation to Council, to resolve it, instead.

I have only just learned of an Owen Sound Sun Times article titled "Is Southgate situation a SLAPP?", from February 2013, in which Councillor Milne speaks about the importance to Southgate of seeking every dollar it is owed from litigation outcomes. In that article Mr. Milne states "In all fairness, I think Southgate would have been obliged to pay", when asked about litigation costs recovery. It seems Mr. Milne is keenly aware of the obligation to recover litigation costs due to Southgate from opposing parties in those litigations, but takes an entirely different stance, along with the rest of Council, when the payer may be within the Southgate executive level.

To ensure the proper progress of this discussion in my delegation, Council will of course need to properly prepare, by reading and understanding the relevant bylaws, indicated herein, to address the specific questions below. That limitation impeded my last delegation, I trust with this forewarn it will not again.

1. It must be stipulated by Council, that the wording of the 2021 Superior Court decision, leaves no doubt that the firing found unlawful therein, was committed by fraud as defined in Policy 10.

2. Council has stated previously, that they are satisfied with the outcomes of that matter overall, and find no issues with how they managed it. The first item that seems incongruous between the Policy prescription and Council actions, is pursuing that matter as a criminal matter. Has Council taken any steps to pursue that matter, that they must view as criminal activity?

3. The second item that seem incongruous is of course the proper recouping of the costs of these events, possibly Councillor Milne could address this, and why things are different now that the targets of these costs may be the CAO and Council, including Mr. Milne?

4. Council must stipulate what is proved clearly herein: each Councillor and CAO is in a conflict of interest, by their respective bylaws governing that, regarding any matter related to the failed litigation, including recouping costs of that.

Summary

Unless we can resolve these outstanding items I put: all of Council and the CAO are fully entangled in an obvious conflict of interest, in any decision related to the obligations noted as being stated clearly in Policy 10, to recoup litigation costs from the individual defendants in that litigation, the CAO named therein, that fired the employee. Each of these individuals, the CAO and Southgate, are named defendants in the failed litigation, and for these intents and purposes Council is Southgate, per s. 5, 224, 225, 226.1 et al. of the Municipal Act.

There is no ambiguity: Council is clearly prescribed to act on an operational obligation they hold, to execute the policy to treat the matter as criminal, and recoup any costs we suffered as a result of that entire matter.

Council has only one decision they may make; the only one that will avoid an only entirely reasonable perception of bias, and lift their decision into the realm of credibility; they must call for a judicial investigation per s. 274 (1) of the Municipal Act.

Council cannot make the cost recoup decision due to the conflict, and are prescribed not to hold the position they put, to do nothing; they do not hold that right. Only that s. 274 mechanism is an option of any reason; easily available for just an ask by Council for that help, from the wise Court; that section is contained within Council's empowering statute for that very purpose.

Should Council wish to engage with me in resolving this matter at the meeting, or prior even, I am fully at your service in that endeavour. Otherwise, I will proceed with the original plan of course, and Mr. Brown and I will take that away as our duty together.

The legislation that enables the very municipality, and the power of each Councillor, offers just this one way out of the situation in which Council finds itself; I put to you, is plainly obvious. Or you execute the policy 10 Rule yourselves; get our money back; just those two actions, are reasonable at all.

James Taaffe