

**REPORT ON AN ORGANIZATIONAL, CULTURAL  
AND PROCESS AUDIT**

of the

**ESQUIMALT FIRE  
RESCUE SERVICES**

Delivered to the Council of the Township of Esquimalt

on  
November 30, 2009

by

Ted Hughes, OC, QC  
Auditor

At a special in-camera meeting of the Council of the Township of Esquimalt (The Township), held on June 15, 2009, the following motion was carried unanimously.

*WHEREAS the current proposed structural changes to Esquimalt Fire Rescue were not perceived to have been developed as part of a fully consultative process; and*

*WHEREAS the Council of the Township of Esquimalt has concerns regarding the sustainability of increasing costs in the fire department; and*

*WHEREAS the Council of the Township is committed to providing the highest level of service while maintaining fiscal sustainability;*

*IT IS HEREBY RESOLVED that an Organizational, Culture and Process Audit of Esquimalt Fire Rescue services be undertaken which will include full consultation with IAFF Local 4264 and all of its members, exempt and management staff and Council.*

At an in-camera meeting of Council on July 6, 2009, I was appointed to conduct that Audit. Subsequently, following consultation, my Terms of Reference my finalized as follows:

- 1. review in a consultative manner [including full consultation with IAFF Local 4264 and all of its members as well as exempt and management staff of the Township and members of Council] the current culture, functioning, decision making, fiscal sustainability, structure, leadership, communications, relationships within the Department as well as between the Local and the Township senior management and Council and, lastly, the overall stability and well-being of the Department as a unionized stand alone Department within the organizational structure of the Township of Esquimalt;*
- 2. report to Council upon the completion of my review with the detail of my findings arrived at with respect to each of the areas directed to be reviewed and as set out above; and*
- 3. make recommendations deemed warranted as a result of my review that will lead to improvements in the Department's functioning including relationships therein as well as with the Township's senior management and the Council.*

I have met the requirements of consultation. I have held one to one discussions with 41 individuals. They are all 24 members of IAFF Local 4264; the Chief and Deputy Chief of Esquimalt Fire Rescue (the Department); the Chief Administrative Office (CAO) and the Director of Human Resources; Her worship the mayor and all 6 Councilors of the Township; the Vice-President, 6<sup>th</sup> District IAFF (AFL-CIO-CLC); the Manager and Chief Negotiator, Greater Victoria Labour Relations Association; the Chief of the Oak Bay Fire Department; the OIC West Division of the Victoria Police Department; the immediate past CAO of the Township and the now immediate past Confidential Secretary of the Department. I conducted second interviews with several of those individuals and, in a few instances, third interviews.

Some long serving councilors will have more background information than I do with respect to the formation of the Department. Nevertheless, some details that have come to my attention will, I believe, assist in an appreciation of the challenges that were presented by the decision to formulate the Department – immediate challenges at the time and, as will be seen, challenges that have lingered ever since.

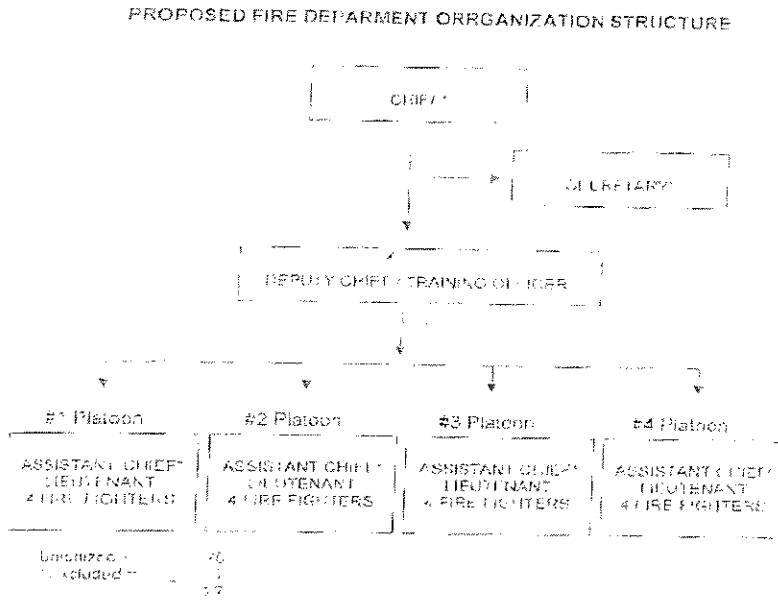
Historically, police and fire protection services were provided to the residents of the Township by a joint and unified force, with most officers trained and available in both disciplines. Early in this decade, Council deliberated on the possible separation of police and fire fighting services. It appears that a decision to split was made sometime prior to May 2002. While the deliberations leading to the split were being carried on, a review of police/management processes at the Esquimalt Police Department was carried out by the Police Services Division, Policy and Community Safety Branch, Ministry of Public Safety and Solicitor General. It reported in July of 2002. That and associated factors, in turn soon led to a Victoria and Esquimalt police force amalgamation Planning Order by the Lieutenant Governor in Council. The result of that Order and subsequent Provincial Cabinet Orders was the amalgamation of the police forces of the two communities

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effective, January 1, 2003. Within the same 2002 time frame, negotiations were carried out that would provide for the City of Victoria supplying firefighting duties to the Township of Esquimalt on a contractual basis. As with police services, discussions were undertaken with respect to the continuity of employment of those officers, who until that time, had been in the employ of the Township or its Police Board.

Municipal elections were held across the province in mid-November 2002. Planning for a possible stand alone Fire Department, in place of the proposed contractual arrangement with the City of Victoria, commenced almost immediately after that occurrence. On the 9<sup>th</sup> of December, a Memorandum of Agreement was entered into by the bargaining representatives of the Greater Victoria Labour Relations Association on behalf of the Township and the bargaining representatives of the Esquimalt police union, addressing the transfer of staff from the Esquimalt Police Board to the Township. Concurrent with the completion of that document was the signing of the following document bearing the signatures of parties who had signed the transfer agreement of the same date, one on behalf of the employer and one on behalf of the union.

Figure 1: Proposed Fire Department Organization Structure



**NOTES**

- Assistant Chief - 12870 (21 First Class Fire Fighters (10 year qualified)
- Lieutenant - 11000 (12000 First Class Fire Fighters (10 year qualified)
- 3 days of staff 14000 per year on the employees' own time with all other personnel included.
- Lieutenant Chief and receive 2 days off while performing the functions of a lieutenant. In addition to Assistant Chief.

Dated in agreement to the CFO on December 2009

*[Signature]*  
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*[Signature]*  
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On December 11, 2002 the Township Council reviewed letters of that day from the Mayor of Victoria on the subject of the Fire Services Agreement that previously had been entered into between the parties. On December 13, 2002 a motion of the Council was carried that made provision for the establishment of a stand alone Fire Department to have a full compliment of staff and be operational by January 1, 2003 in accordance with the terms of the Memorandum of Agreement signed by the Greater Victoria Labour Relations Board and the Township signing officers.

At or about this time, a hiring blitz for the new Fire Department was underway. A Chief (Rory Thompson) and 10 others previously serving as both police officers and fire fighters for the Township, opted to leave police work and join the new Fire Department. Initially Thompson was appointed in an acting capacity but was subsequently confirmed as Chief. The positions of Assistant Chief and Lieutenant were filled by those with previous experience within the Esquimalt police and Fire Department who had opted to move to the new stand alone Fire Department. Six firefighters who were then employed by the Department of National Defence in Esquimalt were hired as well as nine new recruits which included one or two transfers from fire departments in the lower mainland. At this time the position of Deputy Chief was left vacant. The first president of the union was Gordon Anderson, who now serves as Deputy Chief of the Department. He moved from the joint police/fire department and assumed the position of lieutenant when the new stand alone Fire Department opened January 1<sup>st</sup>, 2003.

I have no doubt that those charged with recruitment did the best they could given the time schedule they faced. Ranking for seniority purposes of those coming from outside the employ of the Township has been a contentious issue. Some have held the view that merit, following and interview and assessment of credentials was the criteria adopted. Others take the position that the placement on the seniority list was

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as of the time and day that an offer of employment was accepted. The matter was resolved by a subsequent vote by union members, but unhappiness lingers in the minds of some. One officer who assisted with the recruitment and assumed a position in the new Department, observed in his interview with me, "looking back, the biggest mistake we made, we hired officially on one day, several people, I think it was 14 or 15."

A more serious outcome has been the difficulty in melding individuals with these differing backgrounds into a unified Department with what has been as described to me as a "Fire Department mindset." One firefighter made the following assessment:

"The cultures don't mesh very well in my mind. We are all emergency services, but when police show up at a call, if they are lucky, one party wants them there. If they are unlucky, nobody wants them there. When firefighters show up at an incident, everybody wants us there. We are received like heroes and kings when we show up at calls. Police are treated as something completely different when they show up. The mindset is very different."

Another whom I interviewed, expressed his views on this issue in the following way:

"With the fire service there tends to be a team approach, where we think a little bit more global. It is not about by my own circumstances, it is about my team's circumstances. With policing there tends to be a little bit more individual circumstances that tend to influence discussions, debates, decisions."

It was explained to me that there is a continuing clash of ideas and ideals between those with a police background and those who have only been firefighters. I was told that it is very difficult to adopt backwards into a team environment. Unfortunately because of the lingering of the different mindsets, the Fire Department has not yet evolved into a force with a typical firefighting culture but there is an expectation that the time has arrived when that should be achieved. I agree. Regrettably separate little groups continue to

exists. The firefighter who made the observation to me that "we are too small of a Department to have two or three groups" was quite correct in his assessment.

Time will of course, ultimately resolve this divisive component, but I would hope that a sincere effort henceforth by all those employed in the Department to achieve harmony and a sense of togetherness will replace, "time" as the solution that will take the Department to where it must go on this issue. Coupled with that should be an acceptance by all those involved, both management and staff, that the recruitment door be open to qualified women, of which there are none presently serving in this Department. I add that because I have reason to believe that there are some now on the force who would have difficulty with that objective. I suggest that the mental process of those with such a mindset should begin now in preparation for the arrival of that day.

The first Collective Bargaining Agreement between the Township and the International Association of Fire Fighters (Local 4264) was signed on the 9<sup>th</sup> of July 2003, covering the period January 1 to December 31, 2003. The agreement did not reflect the provision of the December 9<sup>th</sup>, 2002 proposed organizational structure in that the excluded positions were reduced from seven to three. Those remaining in the excluded category were the Chief, Deputy Chief and Secretary. The four Assistant Chiefs became unionized employees. I believe it is important that the content of the document reflecting this change, "Letter of Understanding #3" and attached to the Collective Bargaining Agreement, be fully understood and I include it herein.

## Figure 2: Letter of Understanding #3

### LETTER OF UNDERSTANDING #3

BETWEEN

CORPORATION OF THE TOWNSHIP OF ESQUIMALT  
(hereinafter referred to as the "Employer")

AND

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS LOCAL 4264  
(hereinafter referred to as the "Union")

#### ASSISTANT CHIEF CLASSIFICATION

The purpose of this Letter of Understanding is to establish guidelines where the Assistant Chief may be and remain, a member of the bargaining unit with full rights and privileges of the collective agreement while, at the same time carrying out confidential responsibilities as assigned by the Fire Chief, without incurring conflict of interest between the confidential responsibility and obligations to the bargaining unit and its representative, the Union.

1. This Letter of Understanding shall constitute a part of the collective agreement between the parties and shall be attached to the collective agreement.
2. The classification of "Assistant Chief" shall be a classification within the bargaining unit for which the International Association of Fire Fighters Local 4264 is certified as bargaining agent.
3. With the exception of those matters set out in Section 4 below of this Letter of Understanding, any employee of the rank of Assistant Chief will enjoy all rights and shall be subject to all obligations of a member of the bargaining unit, including, without limiting the generality of the foregoing, the right to grieve and the obligation to respect Union discipline with respect to strikes, lockouts and picket lines.
4. The parties agree and for clarity purposes, employees of the rank of Assistant Chief shall be exempt or restricted in their capacities as members of the Union as follows:
  - (a) An Assistant Chief shall be excluded from attendance at Union meetings, except for the purpose of participating in the election of officers, ratification of collective agreements and consideration of one's own grievance or assessments under the terms of the collective agreement.
  - (b) An Assistant Chief shall be excluded from participation on Union committees and from holding Union office.
  - (c) An Assistant Chief shall not be subject to any penalty which may arise for non-involvement, or lack of involvement in internal Union business.
  - (d) An Assistant Chief shall not be subject to any penalty, sanction, or discipline by the Union as a result of acting in a confidential capacity, and
  - (e) An Assistant Chief shall not be required to participate in job action, other than legal strikes, legal lockouts, and the recognition and maintenance of legal picket lines arising there from.
5. Off-duty attendance at meetings shall be reimbursed at the straight time rate of pay to be taken as time off work.

IN WITNESS WHEREOF the parties hereto have caused this Letter of Understanding to be signed on this 9<sup>th</sup> day of July 2003.

FOR THE EMPLOYER:

  
\_\_\_\_\_  
CHAIRMAN, GVLRA

  
\_\_\_\_\_  
DIRECTOR, GVLRA

  
\_\_\_\_\_  
MANAGER, GVLRA

FOR THE UNION:

  
\_\_\_\_\_  
PRESIDENT, IAFF LOCAL 4264

  
\_\_\_\_\_  
SECRETARY, IAFF LOCAL 4264

It appears that prior to the signing of the Collective Bargaining Agreement, there was genuine concern that some merger of the firefighting services of the Township with the City of Victoria might at some time in the future occur. It was thought that if that should happen the four Assistant Chiefs would be in a very vulnerable position. The issue was negotiated and agreement reached that the four Assistant Chiefs would be brought into the union, and as a trade off an accompanying document was signed that allowed management to utilize the services of up to 8 relief firefighters when call-ins were required to replace full time employees on sick leave, WCB, vacation leave, other paid or unpaid leave, or workload requirements. Concurrently with that agreement the four Assistant Chiefs were made union members.

The position of Deputy Chief was filled at the end of December 2003. A competition was held for the position, with three applicants (1 Assistant Chief and 2 Lieutenants). Lieutenant Paul Nelson was the successful candidate. Deputy Chief Nelson remained in that position until May 2005. By that time Chief Thompson had left the force and the Township CAO, then in office, and who remained in that position until May of 2009, asked Deputy Chief Nelson to assume the duties of Acting Chief.

In January 2006, on the recommendation of the CAO, the Township Council appointed Nelson as Chief of the Esquimalt Fire Department. [REDACTED]

Soon after Chief Nelson's appointment, a competition was held for Deputy Chief. There were three applicants for the position. Two were full time Lieutenants and one was an acting lieutenant, a position that was held intermittently by that applicant from January 1<sup>st</sup>, 2003 onwards. The selection panel included Chief Nelson, the Deputy Chief of the Saanich Fire Department and the Director of Parks and Recreation

for the Township. Lieutenant Gordon Anderson was the successful applicant. Nelson and Anderson have been best friends for many years. [REDACTED]

[REDACTED] Chief Nelson recognized that because of his close association with one of the applicants his participation on the panel could be a problem. He sought the advice of the CAO who told him to remain on the panel. My inquiry of the then CAO indicates that at the time of the consultation he did not appreciate the depth of the friendship.

A Deputy Chief must always enjoy the confidence of the Chief under whose direction he works. What should have happened here is that Chief Nelson should not have been on the selection panel. Rather, once the panel had made its selection, the name of the preferred candidate should have been presented to him, for the purpose of determining whether this was a person in whom the Chief had confidence and with whom he could work. That did not happen. What did happen was certainly no favour to Deputy Chief Anderson. [REDACTED] his appointment has never met with the approval of other members of the Department. Given the culture of firefighters, Deputy Chief Anderson started at the bottom of the hill with a long climb ahead of him, in order to build loyalty from those with whom he works.

Anderson remained as President of IAFF Local 4264 until late 2005, a few months prior to his appointment as Deputy Chief. It has not been an easy time for him to climb the hill to which I have referred. One of the duties assigned to him by the Chief was to take charge of discipline within the force. Anderson said to me, "I'm the first line of discipline and investigation for everything." Perhaps to make it clear that his responsibilities to union members were no longer what they had been, within weeks of his appointment he prepared and distributed to all members of the Department a document entitled, "Expectations of

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Officers/Firefighters.” It contained an itemized list pertaining to all ranks. Unfortunately, it was widely misunderstood and poorly received by the recipients of it. The general interpretation placed on it was that it communicated a message that members were not doing their jobs in an acceptable way. Once Anderson realized the extent of the negative reaction to the document, he sent out an explanation with the hope that it would be seen in the positive light that he had intended.

The role of being the “first line of discipline and investigation,” is not only difficult, but is also very sensitive. In my judgment there has been, and continues to be, too much emphasis on “investigations” as being the route to resolution of incidents that arise in the fire hall from time to time and which could best be sorted out in a much more informal and less confrontational environment. The mentality that everything “must be investigated” that prevails in the fire hall is, to a considerable extent, a carry over from policing days. Again, because of the assignments and responsibilities he carries, the Deputy Chief has had to bear the brunt of negative responses that often arise in situations of this kind that could best be sorted out in an informal way. An incident that was detailed to me in great length by many of those interviewed, related to an accident [REDACTED] There is extensive conflict around the circumstances of the accident relating to communications between both members on shift at the time of the fire and with third parties who were present at the accident scene. I have no intention of opining on those issues, but I will say that I was not impressed with the militancy with which the internal investigation that took place, commencing some five months after the accident was carried out. By this time Anderson was in office as the new Deputy Chief, and the lead responsibility for the investigation rested with him. He explained to me that the tone and format of the investigation that I find troublesome, had been directed by the then occupant of the position of Director of Human Resources for the Township.

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Early in Nelson's tenure as Acting Chief, he was in communication on a number of occasions with the CAO of the Township about organizational matters relating to the Department. To assist the CAO in his considerations, Nelson was asked for a report, looking at the structure of unionized fire departments in British Columbia of comparable size to that of Esquimalt.

Such a document was presented to the CAO by the Acting Chief on October 19<sup>th</sup>, 2005. Detailed consideration was given to one hall fire departments in Oak Bay, Port Alberni, Powell River, White Rock, Campbell River and Whistler. The report disclosed that all of these departments, with the exception of Oak Bay and Whistler were led by both a Chief and a Deputy Chief, day shift. It was noted that Oak Bay does have a Deputy Chief, but it is a shift working position, in charge of one of the platoons. Port Alberni, Powell River and White Rock have neither Assistant Chiefs nor Lieutenants, but all have four Captains within their union locals. Campbell River is the same, except that the head of each platoon is ranked as a Lieutenant, rather than Captain. The title used in Whistler for these four positions is that of Assistant Chief, but there are no Captains or Lieutenants.

The situation in Oak Bay, because of its uniqueness, requires special consideration. I have been told that the structure envisaged for Esquimalt, when the matter was under study in December 2002, was similar to that in Oak Bay. Oak Bay has a unionized, designated fire inspector. Each of the four platoons, similar to Esquimalt, has a lieutenant. In Oak Bay, above the Lieutenants are three Assistant Chiefs and one Deputy Chief who holds a shift position like the other three Assistant Chiefs, but who also carries out duties, particularly related to a stand in for the Chief during his absence. A significant difference is that the Deputy

Chief and three Assistant Chiefs are all management, and outside the union while the reverse is the case in Esquimalt with respect to the four Assistant Chiefs.

After receiving the October 19<sup>th</sup>, 2005 report, the CAO indicated his wish to move towards Captains and firefighters, rather than retaining Assistant Chiefs, Lieutenants and firefighters. A proposal was prepared showing a management compliment of three (Chief and two Deputy Chiefs) and a unionized staff of four Captains, and four firefighters for each platoon, augmented by the addition of 3 floater firefighters. This proposal was placed before the Township Council on February 21<sup>st</sup>, 2006, and its decision was an authorization to undertake negotiations with the firefighter's union to amend the organizational structure of the Department. Neither before this time, nor immediately afterwards, was the proposal shared with the union. Rather management decided to test the new structure with an outside panel (the Deputy Chief of Victoria Fire Department, the Deputy Chief of the Saanich Fire Department, the manager and Chief Negotiator for the Greater Victoria Labour Relations Association, and the manager of Human Resources for the Township). The PowerPoint presentation of the Captain Model took place on September 8<sup>th</sup>, 2006 and was led by Deputy Chief Anderson. A report on the meeting with the panel was prepared on the same day by Deputy Chief Anderson and a reading of it, makes it clear that the proposal for the Captain Model was not well received. The following references in the report indicate that that was the reaction of those in attendance:

- In general all appeared to understand and concur with the objectives that are being pursued. The issue of methodology garnered numerous observations and suggestions, all of which support the idea of using a different approach than what is currently planned.
- The reduction of the four assistant chief officer positions will be universally seen by the union members as a negative move as the assistant chiefs are entrenched in the union, and are therefore protected from any unilateral action to eliminate the position.

- Receiving a 'presentation' on our proposed changes would be seen as "dropping a bomb" on the firefighters without their being consulted or having a chance to give input.
- The current contemplated approach (presentation) was seen as a "**non-starter**" from a union perspective. It was felt that it would generate a negative atmosphere and a confrontational situation rather than collaborative.
- It was decided that the approach that will offer the greatest likelihood of success, will be a more consultative process where the firefighters are able to have input and suggest ideas to address specifically identified issues. There is a need to ensure the union, individually and as a whole, feel that they have provided meaningful input that is taken into account in reaching an understanding on changes to be made.
- The focus will remain on meeting our objectives – we will just be using a different approach that has a higher likelihood of success, based on a larger part on the feedback received from our panel.

I will next quote two additional paragraphs in the report prepared by the Deputy Chief to which I will return later for comment and discussion.

- It was suggested to remove any reference to bringing in a new DFC, to avoid the perception of union positions being replaced by management. The creation of such a position would still be possible, but it should come into being more subtly without being directly connected to the changes.
- It was suggested that part of the original objectives could be achieved by trying to leverage the AC's out of the union (by agreement/negotiation). This would open the door for the eventual elimination of the position.

Deputy Chief Anderson's report was immediately delivered to Chief Nelson and the CAO of the Township. Discussions were held between management at the fire hall and the Township office. Chief Nelson says that the HR Manager directed that, based on legal advice, there should be no separate consultation meetings with the union, and that the matter should be conducted in the course of contract negotiations with the union, when they commenced.

The next step was the presentation of a staff report by Chief Nelson to the CAO, dated November 6, 2006, prepared by taking into account both the direction proposed by the panel and the subsequent discussions with the CAO to which I have just referred. The Chief's report was approved by the CAO on November 12<sup>th</sup> 2006 for Council's consideration. It went to Council on November 20<sup>th</sup>, 2006 and was received by Council for information. In many respects the report mirrored Anderson's September 8<sup>th</sup> report on the panel discussion, but there were differences that included the following:

- There was no reference to consultation with the firefighters giving them the opportunity for input and suggestions.
- It specifically proposed that the structural change process be implemented through the collective bargaining agreement by bringing the assistant chiefs out of the union and into exempt positions.

Notwithstanding that the CAO had approved the November 6<sup>th</sup>, 2006 report for presentation to Council and that it had been received by Council, Chief Nelson advises me that the CAO changed his mind over the following weeks and indicated he had decided to return to the original proposed structure of Captains and firefighters and the elimination of Assistant Chiefs and Lieutenants. That of course represented an "about turn" from the panel's input and what had been proposed to Council on November 20, 2006. The CAO told me that he had made this decision because he believed it to be best workable and financial arrangement for the Township. This prompted a March 28<sup>th</sup>, 2007 PowerPoint presentation to Council which resulted in support being given for the Captain only model, which would, through attrition, drop the number of union members to 20.

On each occasion that the restructure issue went before Council, it was always at an in-camera meeting. The union had no knowledge of the entire matter until the November 12, 2008 opening bargaining session to achieve a new agreement to replace the second collective bargaining agreement that ran from January

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1<sup>st</sup>, 2004 to December 31<sup>st</sup>, 2006. What they were told on that day was that the employer “seeks to discontinue the ranks of Assistant Chief and Lieutenant and utilize the rank of Captain in the organizational structure of the Department.” After this event, the Chief and Deputy Chief were asked time and again, by members of the Department for an explanation for what this was all about. They had a standard response that they had been told by the CAO that they could say nothing outside of bargaining sessions. The CAO told me that, that advice was received by his office, from the HR Department of the Township.

A PowerPoint presentation was made to the newly elected Council on December 15<sup>th</sup>, 2008. The current and proposed structures were explained by Chief Nelson, the latter making provision for three management positions (Chief and two Deputies) and 24 unionized firefighters (4 Captains and 20 firefighters). The same presentation was made at the next bargaining meeting on January 22, 2009. It appears not to have been well received, but no decisions were made with respect to it.

On February 5<sup>th</sup>, 2009, the CAO advised the IAFF Local 4264 by letter that “pursuant to Section 54 of the Labour Relations Code of British Columbia that the Township of Esquimalt plans to implement an amended organizational structure of its Fire Department on or subsequent to April 7<sup>th</sup>, 2009.” The change was identified as establishing “... a new position of Captain and the elimination of the current positions of Lieutenant and Assistant Chief.” Section 54 provides:

*“if an employer introduces or intends to introduce a measure, policy, practice or change that affects the terms, conditions, or security of employment of a significant number of employees to whom a collective agreement applies, the employer must give notice to the trade union that is party to the collective agreement, at least 60 days before the date on which the measure, policy, practice or change is to be effected.”*

After notice has been given, the employer and trade union, must meet in good faith and endeavour to develop an adjustment plan. If after meeting the parties have agreed to an adjustment plan, it is enforceable as if it were part of the collective agreement between the employer and the trade union.

On the next day, February 6<sup>th</sup>, 2009, the day following what had been communicating to the union with respect to management's plan, the union made a request under Freedom of Information legislation for documentation that relates in any way to the creation and implementation of the document entitled, "Township of Esquimalt – fire rescue – organizational structure change."

On February 11<sup>th</sup>, 2009 the Fire Chief returned to Council with another version of the proposed restructuring. Following the presentation, Council asked about the current status of the management restructuring process and then by motion received the document presented to it. There were three significant changes in this proposal from what was presented to the Council two months earlier. Firstly, the position of a second Deputy Chief was removed. Secondly, provision was made for 8 relief firefighters. Thirdly, the organizational structure of the 6 municipalities that were presented to Council in 2006 (Oak Bay, Port Alberni, White Rock, Campbell River, Powell River and Whistler) and also the structures of the municipalities of Langley City, Vernon and Penticton, which have adopted variations of the Captain Model, were included in the presentation.

In February correspondence passed back and forth between the President of the union and the CAO of the Township relating to the Township's decision to utilize Section 54 of the Code, and what that would mean with respect to process and relationships, in that the parties were then at the bargaining table, hopefully to achieve a new agreement. On March 10<sup>th</sup>, the union vice-president wrote to the CAO expressing the

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union's concerns with the lack of consultation on the proposed organizational change. The union offered to meet with management of the Township and present organizational change options to save more money than management's existing proposal, and at the same time maintaining a high level of professionalism and expertise in the Fire Department. The CAO replied on April 23, some 6 weeks later requesting that the union share its proposals on restructuring with Chief Nelson and Deputy Chief Anderson who had been instructed by him to analyze its proposals and report back to him.

By this time, in response to the Freedom of Information request, the union had received all of the information pertaining to the various management restructuring proposals that I have reviewed on preceding pages, and the responses of the Township Council to them. To say that they were infuriated by what they had learned is to put it mildly. Of particular annoyance were the references in Deputy Chief Anderson's September 8<sup>th</sup>, 2006 report on the panel presentation which called for consultation and collaboration with the union, which never occurred at any time. They were incensed by the reference to the idea of changes being introduced "more subtly" and by reference to the possible "leverage of AC's out of the union" in the two paragraphs of the September 8<sup>th</sup> report that I have quoted previously. They were now aware that the panel had rejected the Captain Model and that it had been recommended to Council on November 20<sup>th</sup>, 2006, that the existing model remain, excepting that, through bargaining, the Assistant Chiefs were to be brought out of the union into exempt positions. They also knew that, four months later, management did a complete about face and again recommended the Captain Model to Council and that that recommendation received Council's endorsement, all this occurring with no consultation whatsoever.

Particularly aggravating to union members was the stall in the upward movement to fill positions as a result of the retirement of one of the Assistant Chiefs, effective December 31, 2008. Those who, because of their

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seniority would qualify for promotions had all been at work, completing assignments and meeting the requirements that were necessary in order to make the move up. They expected that they would be deemed qualified by the Chief early in 2009. They asked management why the promotional process could not be completed. They were never given an answer. Once the Freedom of Information materials came into their hands, they speculated that the proposed restructuring, was the explanation for the stall. They were correct in their speculation. The Chief and Deputy Chief were of the mind that the restriction placed upon them, with respect to discussions about restructuring, preventing them from explaining why the promotion process was left in limbo. Clearly those involved were very unhappy with this turn of events and in my view had good reason to react in that way.

I now turn to address effect that all of the foregoing has had on the environment at the fire hall and the state of relations and communications within it. Before I do so, I will identify two occurrences that should be recorded in the chronological review of this matter.

Firstly, the CAO's suggestion of April 23<sup>rd</sup>, that the union share its restructuring proposals with the Chief and Deputy Chief was not acted upon given the turmoil of the time, which had developed to the point where the Mayor on May 4<sup>th</sup>, in a public rise and report presentation, outlined Council's position on the matter, a report prompted, as she said, "because of the misconceptions and rumors circulating in the community concerning the decision to restructure the Fire Department." The union did however make a restructuring proposal to me and I will be commenting upon it.

Secondly, the next bargaining session was on May 22<sup>nd</sup>, 2009. A diagram of management's proposal of four unionized Captains and 20 unionized firefighters and the absence of Assistant Chiefs and Lieutenants,

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was placed on the table. During discussions, reference to a second Deputy Chief was removed, leaving the Chief and Deputy Chief as the only two management positions. There was no resolution in the discussions and less than a month later, Council opted for this audit, which understandably has pre-empted any further deliberations on the matter.

Readers of the preceding pages of this report will identify with my assessment that a state of low and depressed morale exists today throughout the Department. Prior to restructure rearing its head, the Department had been, as one firefighter explained it to me, "coasting for five and a half, or six years." I have already identified issues and irritants that existed from the earliest days of the Department. I have referred to subsequent occurrences that have added discord. For most of the firefighters those factors resulted in the workplace over recent years being less than a happy environment within which to spend their working hours. [REDACTED]

[REDACTED] That factor has been a major contributor to the presence of a discordant environment that has existed in the fire hall uninterrupted [REDACTED]

Many words – toxic, icy, amongst others – were used to describe to me the worsening work environment that has intensified throughout most of 2009 due to the arrival on the scene of the restructuring issue. The level of current mistrust is palpable. I was told time and again, that there is a direct correlation between the amount of the overtime bill paid by the Township and the low morale. From what I have been told, I have concluded that it is indisputable that calling in sick occurs from time to time, simply because the caller so hates the work environment that he decides not to face it on a particular day and makes his call in to be off

sick for the next day or more. I was told by a senior firefighter that calling in sick "is the only weapon that men have to show that they are unhappy, outside of insubordination." It is clear to me that this has to stop. It is equally clear to me, that when it does stop, the overtime bill will be dramatically reduced. Change has to come that ultimately will result in the turnaround that must occur. The people involved here, are normally people of goodwill. What is going on is an aberration for nearly, if not all, of them. One firefighter gave me the following answer when I asked him how to curb the excessive overtime bill.

*"Well I think we will be starting to do it from your report that comes out. You know that overtime has a direct co-relation to morale. So it could be so divisive someone could be at home. Firefighter don't normally cry when they fall. Generally speaking guys come into work when they are sick, because they have got a job to do. They don't want to appear to be soft, or let anyone down. That is not the situation here, because it is very easy to say, 'I don't want to be there.' What an environment."*

The necessity for Township management to exert control over the Department's expanding budget due primarily to the overtime bill was a major factor why the restructuring issue ever got underway. Before I leave the overtime issue, I must record that managerial control in the fire hall over how overtime assignments are made has been very much amiss. There is no clear and recorded policy to follow. A move up within the shift is the most practical and economic procedure to follow, providing there are qualified personnel on the shift to make the move. That is not what is always done with the result that costs rise because of bringing in personnel at a senior level, from another shift, at a time and a half cost. I understand how administration of overtime must rest with the Assistant Chiefs who are on shift, but management involvement, which has been sorely lacking, certainly is required for setting the policy that is to be followed and then providing oversight over it.

Firefighters spend half their time on the job. Unlike like other professions and vocations firefighters are regularly required to have their meals at the worksite and, when all is quiet in the night hours, to sleep there as well. The health and well being of all 26 individuals, trained in firefighting and rescue duties, of itself, demands that a turnaround occur.

The Chief is well aware of the untenable existing situation. He was the first of the 26 members of the force that I interviewed, back July, 2009. Because I had learned so much in the intervening period, I had him return earlier this month for followup questions.

[REDACTED]

[REDACTED]

The Chief is correct when he says that CAO of the day, who has now departed the scene, holds responsibility for the decisions that were made surrounding the restructuring issue.

[REDACTED]

One of the two important facets of required change to which I have referred is settlement of the issue of what should be the appropriate structure of the Department. In my considered opinion it should not be a

continuation of the status quo. My reason for that conclusion is captured in the following statement made to me by one of the firefighters:

*"The AC's are half management, and half in the union. They are protected by the union, but they are half management too."*

I appreciate that the union as a whole does not see it that way, but I certainly do and my belief is that the firefighter who spoke those words is not alone among his colleagues in that assessment. Another of them told me,

*"The department by run by assistant chiefs ... the lieutenants and assistant chiefs run the fire hall. The day to day stuff gets run by them. The Chief and Deputy do the paperwork over here."*

My perception is exactly that. I appreciate that some take the position that the stand-off in the fire hall of today, which is one of 24 versus 2, is the cause of that. That may be partly true but there are a number of management functions of an ongoing nature that ideally should involve the four people who give leadership to the four platoons, one of whom will always be on duty at the fire hall.

The Letter of Understanding #3, quoted earlier in this report, is also included in the second and current Collective Bargaining Agreement (January 1, 2004 – December 31, 2006) which continues until a new agreement is signed. My reading of that document fortifies my view that the current structure should not continue. It was agreed upon in order to have the four excluded Assistant Chiefs return to the union for the reason as I have explained and which may have been a good reason at the time. I see the restrictions and exclusions in the letter as an acknowledgement that the role of Assistant Chief requires the performance of some management responsibilities. The role the Assistant Chiefs play in the administration of the overtime call-in process is just one of them. An agreement that embodies the content of the Letter of Understanding

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#3, may have a place in a larger urban Fire Department, but in my opinion not in a small one hall Department.

The current model is a hybrid that fits neither within the Oak Bay structure on which it was initially patterned, nor within the structure of other one hall fire departments in our province that utilize the Captain Model. The choice for Esquimalt must come down to one or the other of those models. I will express my preference and state my reasons, but I believe it only fair, after all that has gone on, that the choice should initially rest with the union.

To recap, the principle difference between Esquimalt and Oak Bay is that in Oak Bay the three Assistant Chiefs and the Deputy Chief hold excluded positions. The Deputy Chief functions as head of one of the four platoons with operational responsibility akin to those carried by his three Assistant Chief colleagues. The Chief and those four make up the management team. Under the Captain Model, the Chief and Deputy hold the only excluded positions and are the management team. There are no Assistant Chiefs, nor Lieutenants in the Captain Model.

It is my belief that the Oak Bay model would work best for Esquimalt. Those Assistant Chiefs in both Oak Bay and Esquimalt carry a tremendous responsibility. While the rest of the community sleeps in the dead of night, on their turn on duty, they carry responsibility for the safety of those they serve. To my mind, the Township would be best served in having a management representative on every shift who is responsible for the fire hall and service to the community. A management compliment of five (Chief, Deputy Chief, and three Assistant Chiefs), working in a team environment giving leadership to, and working in concert with,

the Lieutenants and firefighters will, in my opinion, best serve the needs and interests of the residents of Esquimalt.

If the choice is made to adopt the Oak Bay model, the three existing Assistant Chiefs in Esquimalt must be assured of continuance of their present employment, as must the acting Assistant Chief, if and when, confirmation of his appointment occurs, for so long as they each wish to stay employed up until final retirement date, providing of course, they conduct themselves in a professional and responsible manner in performing their duties and responsibilities.

Also, and certainly, if the Oak Bay model is chosen (and perhaps if the other choice is made) I would recommend that the recruitment for the new vacant position of administrative assistant, be at an upgraded level in order to attract a person who can assume, with the other responsibilities of the office, responsibility for the Township's Emergency Planning Program. There is no need for that position to be filled by a firefighter, notwithstanding that it has been carried in Esquimalt in the immediate past by the Chief and to a greater extent the Deputy Chief. All the information I have is that the administrative existing assistant position has work to consume, at most, half time of the occupant, so it seems like a logical fit to add to that full time position the Emergency Planning Program. I appreciate that Oak Bay has a fire inspector. I am satisfied that the inspection program is running well in the Township, and I see no need for such a separate position here. On the matter of cost, which was one of the drivers towards restructuring, besides what I have said about overtime, the Oak Bay model, eliminates the salary of a Deputy Chief, a stand alone position not required under that model.

I have been told by a knowledgeable person whom I interviewed that Oak Bay works with the Assistant Chiefs out of the union because of a trust that has been built in the relationship between management and the firefighters. My informant then added, "the only reason that it won't work in Esquimalt is the lack of trust." With the documents received by the union under their Freedom of Information request, I can readily understand what my informant was communicating to me and why that is so. Unquestionably trust has to be rebuilt. As a started their would have to be an acceptance by management of what I have said about the need for protection of the incumbent Assistant Chiefs and I would hope also that a long range look will be taken on the issue of trust by all those involved. A positive occurrence has been the personnel change in the Township hall with the recent appointment of a CAO who enjoys the complete confidence of the Township Council. I sincerely, believe that the required trust can return and there would be tangible advantages to taking a long range view of the benefits that will accrue from its return. Another change that will likely occur if there is an adoption of the Oak Bay model will be the removal from the collective bargaining agreement of the provision for the 8 relief firefighters. That was only inserted when management agreed with the concept of taking the four Assistant Chiefs back into the union. If the Assistant Chiefs come out, on the adoption of the Oak Bay model, it would be expected that relief firefighters would go.

Having mentioned relief firefighters, I divert to record that I am critical of management at the fire hall for not making greater use of this source of firefighting personnel when it was available to it. Had management organized, utilized and administered relief firefighters as the Collective Bargaining Agreement allowed it to do, there would have been a significant financial benefit to the municipality. I appreciate that the restructure proposal caused management to hesitate on utilization of this resource, but the provision for the

use of relief firefighters has been in the agreement since the start up of the Department and in recent years it has not had the attention it deserved from management in the fire hall.

The other choice is the Captain Model. While I personally do not think it is as workable an arrangement as the Oak Bay model, the Township is prepared to implement it, and the fact is that does seem to be working in other one hall communities in our province. Cost savings would again be found in a properly functioning overtime policy and there will be only one layer of officer positions to be remunerated (Captains), rather than both Assistant Chiefs and Lieutenants.

I should point out that the model presented to me by the union, during my interviews, substantially calls for the retention of the status quo, with four platoon chiefs, four Lieutenants, 16 firefighters and four relief firefighters. All would be in the union, as would be a fire inspector. The only excluded position would be the Fire Chief. There would be no Deputy Chief position. Certainly money saving opportunities are present. Besides the anticipated overtime reduction, there is the deletion of the Deputy Chief position and the use of relief firefighters. I have already expressed my views why I reject the retention of the status quo, but I must also say that I would never agree with a proposal that provided for only one exclusion. I believe that the Chief must have a back up for times when he is away on vacation, or for any other reason.

The process that I would recommend to achieve a new structure is the following: Give the union 45 days from the date the content of this report is communicated to it, in which to choose between the Oak Bay model or the Captain Model. Ordinarily I would have suggested 30 days, but with the holiday season intervening the longer period makes sense. Hopefully the union will make a selection. If it decides not to do so, then it would be up to the CAO of the Township, presumably in consultation with the Township

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Council to whom she reports, to make that selection and move the process forward. I believe time is an important factor. A decision should not be long delayed. I have identified that decision as one of the two important facets of required change in order to make the Fire Department into the harmonious team that it must become.

Having just made mention of the role of the CAO if the choice falls to the municipality, I will indicate my understanding of the decision making responsibilities of the holder of that office, and those of the Fire Chief in situations such as a restructuring program. The union has asked that I do so.

The question is whether the CAO of the Township has the authority to restructure the Esquimalt Fire Department, or whether this is a responsibility that rests with the Fire Chief. I have given consideration to Section 147 of the Community Charter, which addresses powers, duties, functions of the CAO of a municipality. I have also given consideration to Sections 6, 7, and 8 of the Township bylaw entitled, "Fire Protection and Regulation ByLaw, 1989, NO 1898, as amended" which sections list responsibilities and duties of the Fire Chief of the Township.

For two reasons I am satisfied that the CAO does have authority to restructure. Firstly the Fire Chief has not established a policy by way of an operational guideline or otherwise that addresses the structure of the Department. Secondly, even if he had done so, because of the cardinal rule of municipal law that bylaws are subject to the general law of the realm (in this instance the Community Charter), and are subordinate to it, then by extension such an enactment by him could not take away from the statutory power given to the CAO under the Charter for overall management of the operations of the Township.

Having provided that answer, I hasten to say that the occasions when there will be an issue over the division of the kind and level of responsibilities that I have just addressed should be rare and likely non-existent. If all that has gone on over recent times, culminating in the tumultuous events of the past year, has taught everybody anything, it must be that henceforth in all relevant relationships, including that between the CAO and the Fire Chief, the full utilization of the three C's is always, and the only way to go – collaboration, consultation, and cooperation.

Union leadership has indicated that a need arises from time to time to be in communication with the CAO and the Director of Human Resources. I believe that to be appropriate, provided the Chief has first had the opportunity to address the issue of concern.

Occasions requiring communications/relationships between union leadership and the Township Council should be very rare with a properly functioning department in place. Where such a need is felt to be present the arrangements should always be made through the CAO who must first have the opportunity to address the issue of concern.

I have covered in this report everything of significance that has been brought to my attention that I believe will assist in the achievement of the goal of a new beginning, a goal that is shared by all those who have been a part of, or have been impacted by recent events. Some matters I have not addressed are issues of the past for which there is no remedy at this late date. An example is the apparent lack of support from management to the DND transferees who were victims of an administrative error in the Township hall over their pension calculations. Other matters not addressed relate to issues that can best be sorted out when the two important facets of change have been achieved, the first of which I have addressed and the second

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of which I will speak to shortly. An example of such a matter is the role and extent of participation that the designated training officer should have in training exercises in-house, which in some situations could obviate the need for training outside the hall that carries an expense for the municipality.

I believe that a reading of this report will disclose that I have reviewed and considered most of the items to which my attention was directed in the Terms of Reference for this audit. That consideration is found woven through the recitation of what I have described as "everything of significance" that has been brought to my attention. I will do a recap of those items.

I have outlined the Current Culture as I have found it to exist and have expressed the hope that harmony and a sense of togetherness will take the Department to where it must go on this issue. Functioning has been reviewed and regrettably, dysfunctioning is, at the moment, the more applicable term. Decision making has been discussed particularly as it relates to the responsibilities of the Township FAO and those of the Chief and the expectation has been recorded that collaboration, consultation and cooperation should be the basis of the relationship between those occupying these two positions. Fiscal sustainability has received attention, but not from an indepth perspective, given that this is not a financial audit. The need for controlling the Department budget has been recognized and suggestions have been made that could assist in that endeavour. Structure has been dominant throughout these pages. Communications and Relationships are closely related and are key to the successful accomplishment of the goals of this audit. The wall between the 24 and the 2 has to come down and trust must be restored in order to enable appropriate frank and cordial discussions to occur in the workplace at all times and that includes discussions between management at the fire hall and the union leadership. There has been no discussion about the Fire Department being other than, a unionized, stand alone Department. That has not been an

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issue before me, and the Department's existence as such, has never been brought into question. Overall stability and well being, have been addressed throughout the report.

The only identified matter in my Terms of Reference remaining to be reviewed is that of Leadership.

[REDACTED]

I have indicated where decision making should rest with respect to the first facet of change and what I believe the choice to be in that regard. The decision making with respect to the second important facet of change, must involve the participation of the Mayor and Council of the Township [REDACTED]

[REDACTED]

[REDACTED] Like the other components that I was asked to review, I believe considerable communication on the subject of leadership is found on the preceding pages of this report. Because leadership inherently deals with sensitive personnel issues, I am sending to Council, concurrently with the delivery of this report, a supplemental confidential report to assist in its deliberations on this issue. Proceeding in this way will hopefully allow Council, through the full release of this report or alternatively the major and significant segments of it, to keep both the public and the members of Local IAFF 4264 informed of current developments. Council has asked that I write a report that will allow that to occur, and certainly the president of the union, on behalf of his members has made the same request of me.

Like, I am sure, members of Council and all the residents of the Township, I had a concern in the early days of this assignment, whether, given all of the turmoil and low level of morale in the Department, full emergency aid and firefighter protection was nevertheless constantly available to those who rely on the

Department for the service it provides. I asked that question of many of the firefighters whom I interviewed.

The following reassurance is representative of the answers I received:

*TH: One final question. What, if any, has all this division and difficulty had on the performance of the force when they are called to an emergency?*


*None whatsoever. The members are professional, first and foremost. I don't think they have lost sight of that, from my experience.*

*TH: You haven't seen a lack of a 100% performance, because of the unhappiness?*

*Absolutely none. Surprisingly not.*

It has been a privilege to undertake this assignment. I am hopeful that it meets the expectation of Council members and that it will play a useful role in the achievement of the expectations and goals that are shared by many, if not all of those involved.

Dated, November 30, 2009,

  
Ted Hughes, OC, QC