

HALIFAX

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Item No. 15.1.2
Halifax Regional Council
February 8, 2022

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original Signed by 
Jacques Dubé, Chief Administrative Officer

DATE: November 22, 2021

SUBJECT: Pre-Employment Polygraph Testing

ORIGIN

On June 29, 2021, Regional Council passed the following motion:

MOVED by Councillor Cleary, seconded by Councillor Blackburn

THAT Halifax Regional Council request a staff report on developing an evidence-based formal policy for polygraph testing for the purposes of human resource management, especially during the selection process for any or all employees of the municipality, that provides a jurisdictional scan and includes peer-reviewed academic literature on the efficacy of polygraph testing for employment. The report will include recommendations for the use (or not) of polygraph testing in all departments and business units of the Halifax Regional Municipality, as well as with contracted services.

MOTION PUT AND PASSED UNANIMOUSLY.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter, s. 34(1):

Council and Chief Administrative Officer Relationship

34 (1) The Chief Administrative Officer is the head of the administrative branch of the government of the Municipality and is responsible to the Council for the proper administration of the affairs of the Municipality in accordance with the by-laws of the Municipality and the policies adopted by the Council.

The Halifax Regional Municipality Charter provides that:

Police Services 68 (1): The Council may provide police services in the Municipality by a combination of methods authorized pursuant to the *Police Act* and the board of police commissioners of the Municipality has jurisdiction over the provision of the police services, notwithstanding that they are provided by a combination of methods.

By-law P-100 Respecting the Board of Police Commissioners Municipality provides that:

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8 (1): The Board shall provide civilian governance in regards to strategic policy planning and policy driven budget planning for police service delivery within the communities serviced by the Halifax Regional Police and shall carry out an advisory role in respect of police matters within the communities serviced by the Provincial Police Service: (g) Make rules respecting standards, guidelines and policies for the administration of the police service and for the efficient discharge of duties by the employees.

RECOMMENDATION

It is recommended that Halifax Regional Council direct the Chief Administrative Officer to:

1. Discontinue the use of the pre-employment polygraph exam for all positions and contracted services within the Municipality by no later than September 30, 2022; and
2. Conduct a review of all positions that currently require a pre-employment polygraph and determine what selection tools to implement as a replacement for the pre-employment polygraph exam.

BACKGROUND

Positions within a police agency – both sworn and civilian – are considered to contain a higher risk and a greater severity of impact if information or intelligence is breached than positions in other organizations. Unauthorized disclosure, misuse, or breach of police data, resources or information can potentially harm an ongoing investigation, a police officer and/or their family, or a member of the public depending on the specifics of the resources, information/data breach. Because of the heightened need for integrity and confidentiality for positions within a police agency, some policing agencies across Canada use a pre-employment polygraph (PEP) as part of the security clearance process for screening potential candidates. The intent of this tool in a pre-employment capacity is to determine the honesty and integrity of the candidate and to identify the potential for susceptibility to coercion.

All positions that are part of the Halifax Regional Police (HRP) business unit require a pre-employment polygraph. Pre-employment polygraphs are also required for HRM positions and contracted services which are connected to HRP, including individuals who have non-escorted access to the building for custodian functions, computer maintenance, etc., individuals who have access to computer systems and networks which could theoretically put them in reach of sensitive material, and individuals who have access to Versadex/CPIC through the HRM computer network. No other pre-employment polygraphs are used by HRM.

DISCUSSION

A jurisdictional scan of Canadian police agencies indicates mixed results. Of the agencies who responded, three agencies require pre-employment polygraphs for all sworn and civilian employees; six agencies conduct polygraph examinations for sworn employees only and one agency conducts only a criminal record check and thorough background screening for both sworn and non-sworn positions. One responding police agency advised that the use of a polygraph is dependent on what access to information is required by the role and four of the reporting agencies indicated that their pre-employment/screening tools were implemented in the hiring process, including integrity interviews, criminal records checks, reference interviews, etc.

An Integrity Interview Process is designed to elicit the same information as the pre-employment polygraph exam but does not have a physiological component. It employs such tools as Criminal Record Checks, Child Abuse Registry Checks, Vulnerable Sector Search, Fingerprint Submission, Credit and Financial Checks, Family/Close Contacts interviews, and references. Currently, Halifax Regional Fire and Emergency use an integrity interview as part of their screening process.

All police agencies that responded to staff inquiries indicated that a rigorous screening/background check process is considered essential in the selection of candidates that will be employed in a position of public safety and trust. Most agencies cited the use of reference checks (neighbours, employers, supervisors, friends and teachers/instructors), submission of fingerprints to the RCMP, Criminal Record checks (local, provincial and national), military record checks, medical reports, WCB/ICBC/CRA, Equifax credit check, a summary of psychological/psychiatric history, verification of a candidate's qualifying credentials and background checks on immediate family (parents, siblings, in-laws, partner/spouse, and children) on CPIC and police databases.

Current academic literature on the use of the polygraph consistently questions the validity of the polygraph as a tool in pre-employment screening. Many scholars and scientists discount the process entirely while others suggest strategies for increasing its efficacy as a supporting tool (as opposed to an excluding tool) in hiring. The field of polygraphy still has strong proponents defending it as a both a science and an art form, but even within that field, there is the acknowledgement that polygraph practices, policies and processes must change if they are to be considered relevant in the current climate and be seen as a culturally and socially acceptable tool. The key concerns that researchers share with the use of the polygraph are that it is an invasive and potentially biased process and that the results produced may not be scientifically accurate. Recently, concerns have been raised that that the elements of the polygraph examination that address what could be perceived as “lifestyle choices” may be a deterrent in hiring millennials who are appropriate candidates for law-enforcement positions (Attachment 1). The Security Intelligence Review Committee (SIRC) has expressed concerns about the Canadian Security Intelligence Service's use of polygraphs as a staff-screening tool, rooting their objections in clinical research that indicates such tools were not reliable enough to be of value.¹ In December 2020, the National Security and Intelligence Review Agency (NSIRA) tabled a report that questioned the validity of polygraph testing.²

In the context of pre-employment screening, employers are expected to avoid questions which directly or indirectly invoke an applicant's protected grounds under Human Rights legislation. It is important that employers are aware that a polygraph test may make an applicant feel compelled to disclose information related to protected grounds and consequently are expected have a process for reviewing and neutralizing test answers that may intrude on an applicant's protected grounds³.

Polygraphs are explicitly prohibited in the provincial employment standards legislation of Ontario and New Brunswick. In addition, the use of pre-employment polygraph testing is uncommon outside of security-related occupations such as firefighting and policing. This, and the lack of substantial caselaw on the use pre-employment polygraph testing, make it unclear how adjudicators may approach situations where an employer attempts to use such testing in non-security-related occupations.

¹ <http://www.sirc-csars.gc.ca/opbapb/rfcrfx/index-eng.html>

² <https://www.nsira-ossnr.gc.ca/wp-content/uploads/2020/12/AR-NSIRA-Eng-Final.pdf>

³ *ES v Canada (Attorney General)*, [2017] FCJ No 1207, 2017 FC 1127, [2017] ACF no 1207

Labour arbitrators have expressed reservations about employers using polygraph tests for purposes such as workplace investigations due to concerns that polygraph testing may violate an employee's right to privacy.⁴ Ontario in particular prohibited employers from using polygraphs due to concerns regarding privacy, accuracy, and reliability.⁵ It is generally recognized that an employer's right to inquire into personal information (such as employment background or criminal records checks) about an applicant should be proportional to the degree of security and trustfulness required of the position.⁶ By implication, there are legal risks associated with using polygraph testing in business units other than HRP and within HRP for non-security related positions.

It is inconclusive and a matter of judgment as to whether the pre-employment polygraph adds another layer of certainty in determining the integrity of a candidate. While academics tend to lean towards questioning the scientific validity of the tool as a measure of truth, there is still precedence for using the pre-employment polygraph as part of the recruitment process in police and other security agencies across Canada.

FINANCIAL IMPLICATIONS

The costs associated with performing each test ranges between \$300 - \$600 in regular staff time with incremental overtime costs rarely occurring. If Council accepts the recommendation to discontinue the use of PEP exams for all positions, one of the existing resources currently performing PEP would be redeployed to conduct alternative screening processes. At this time, it is expected that the change would be cost neutral and existing staff resources can be redirected towards the new screening process.

RISK CONSIDERATION

Recommendation				
Risk	Likelihood	Impact	Risk Level	Mitigation
Removing the polygraph may increase the likelihood of hiring a candidate without the appropriate level of integrity for the role.	Rare - 1	Moderate - 3	Moderate	The alternate pre-employment screening process that will be implemented in the place of the polygraph

COMMUNITY ENGAGEMENT

No community engagement was required.

⁴ Teamsters Local Union No 419 and Loomis Armored Car Service Ltd (MacDonald Grievance), [1997] CLAD No 633

⁵ <https://www.ontario.ca/document/employment-standard-act-policy-and-interpretation-manual/part-xvi-lie-detectors>

⁶ Vancouver (City) v. Canadian Union of Public Employees Local 15 (Employment Checks Grievance), [2008] B.C.C.A.A.A. No. 4

ENVIRONMENTAL IMPLICATIONS

No environment implications were identified.

ALTERNATIVES

Halifax Regional Council could direct the Chief Administrative Officer to continue the polygraph requirement for all or specific Municipal positions.

ATTACHMENTS

Attachment 1 – Pre-Employment Polygraph Testing Report – Literature Review

A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Laura Nolan, Acting Executive Director, Human Resources & Corporate Communications, 902.490.3934

Pre-Employment Polygraph Testing Report – Literature Review

“The Emperor’s New Clothes: Application of Polygraph Test in the American Workplace by Charles R. Honts. *Forensic Reports*, 4:91-116, 1991 91

Honts argues that since the Employee Polygraph Protection Act of 1988 that banned the use of polygraphs in the private sector (US), the use of polygraph technology is increasingly controversial, particularly when used for screening in employment. He indicates that pre-employment polygraph tests are not empirically supported. Honts explains that the two main elements of the controversy over polygraphs are whether or not the invasive nature of the procedure justifies what may or may not be gained by using it and whether or not it is an effective screening tool – these are often summarized as “the civil liberties argument and the scientific accuracy argument.” The article explains that most employment testing uses the detection of deception technique as opposed to the concealed information technique. Honts concludes by outlining the concerns involved with predicting future behavior with a psychological test.

“The Modern Lie Detector: AI-Powered Affect Screening and the Employee Polygraph Protection Act (EPPA)” by Courtney Hinkle. *The Georgetown Law Journal* 109: 1201, 1202-1262.

Hinkle argues that, “despite the popularity of lie-detection technology, its accuracy has long been viewed with skepticism by the scientific community.” She explains that although there is general agreement that the tests can accurately measure physiological changes in response to the questions that are asked, the scientific community disagrees on whether the results definitely correlate to truth or deception. Hinkle cites the American Psychological Association (APA), rebuke of polygraph testing and their declaration that there is no evidence that the technology accurately determines deception. As she cites, the APA posits that “there is no evidence that any pattern of physiological reactions is unique to deception.” Hinkle argues that if a polygraph is believed to measure anxiety, then a paradox exists that may skew the results. Specifically, that an honest person may actually be nervous in their response because of a heightened preoccupation with telling the truth, whereas a dishonest person may be calm because they are less invested in the importance of truth. As such, the more comfortable or practiced a person is at lying, the less anxious they are likely to be. Hinkle suggests that this may be one of the reasons why some tests come back as inconclusive and that explains that this has led many experts to conclude a polygraph can be “tricked” by people with training in lying and deception.

Federal Government Employee Screening Practices: A Qualitative Case Study on the Influence of Hiring Millennials by Valorie Dawn Weakley Eppard, Dissertation, University of Phoenix, 2017.

Eppard’s findings suggest that the use of polygraph testing is not a deterrent to Millennials seeking employment in government departments and agencies that use this form of screening, but that it is a deterrent for hiring Millennials. The lifestyle component of the polygraph interview was identified as the factor preventing Millennials from successfully completing the polygraph screening requirement, thus exposing an element of bias in the screening process and those conducting it.

“Ethical Considerations of Providing Polygraph Countermeasures to the Public” by Paul M. Menges. *Polygraph Published Quarterly*, American Polygraph Association, 2002. 254-263.

Menges, a licensed polygraph technician and a member of the American Polygraph Association staunchly defends the use of the polygraph in this article and speaks out against those who attempt to threaten the

validity of the polygraph by teaching countermeasures. He argues that “the Constitution of the United States provides all citizens with the right of free speech. We enjoy the freedom to challenge government policies and to openly debate issues. However, bounds have been set by our society to protect individuals and the greater good for all citizens.” He takes the position that polygraphy is scientifically valid and a tremendous investigative tool available to law enforcement and security personnel and that those who threaten the validity of the process through teaching countermeasures should not be allowed to continue.

“Polygraph Theory and the Problematics of Postmodern Truth” by Richard Grego. *Polygraph Published Quarterly, American Polygraph Association, 2002. 263-272.*

The author (a licensed polygraph technician) explores how the science of the polygraph is rooted in modern beliefs and assumptions and is thus challenged on an ontological level by the new beliefs and assumptions ushered in by post-modernity. The article argues that it is crucial for practitioners and researchers to pay attention to how bias impacts their work and reconsider their assumption that their field of work exists in a “culturally neutral intellectual vacuum” (272). The author explains that, in addition to being a science, it is also a social practice and thus must ensure sensitivity to ethical, cultural, and religious dimensions. It concludes that even if it is true that the conscious state the polygraph measures may be infinitely complex and completely unfathomable, embracing the subjectivity of the process may in fact make it more objective in practice.

“Police Candidate Selection: Assessing the Effectiveness of Pre-employment Polygraph Screening” by Daniel Linn White. *Policing 14:4, 2018. 1138-1150.*

This article focuses on the use of pre-employment polygraph screening as criterion for police officer screening in the United States. It argues that the polygraph has a number of practical and theoretical issues that are especially pronounced when used as a pre-employment screening tool. Gesturing to the National Research Council literature of 2003, the author concludes that there is a high risk of erroneously excluding a large number of otherwise suitable candidates at a time when police departments face increasing challenges in finding enough qualified candidates to hire. Comparing data on the arrests of police officers and the use of polygraphs in pre-employment screening in police departments across the country, the study concludes that “sole reliance on polygraph results as a pass/fail criterion for police hiring is a misguided practice” (1138).

“Making and Breaking Careers: Reviewing Law Enforcement Hiring Requirements and Disqualifiers” by McKenzie Wood. *Journal of Criminal Justice Education, 28:4, 2017. 580-597.*

This article suggests that the use of a polygraph examination may unnecessarily prevent many students of criminal justice from obtaining a role in their chosen field due to the invasiveness and the potential for candidates to either self-screen out or to be screened out inaccurately in the process.

“Integration of Pre-Employment Polygraph Screening into the Police Selection Process” by Mark Handler et al. *Journal of Police Criminology and Psychology 24, 2009. 69-86.*

This article suggests that the polygraph can be used as a tool to support hiring decisions, but that it only adds incremental value and should not be used as a sole reason to disqualify a candidate. The authors suggest that problems arise from ineffective selection of test issues, poorly constructed questions, and misguided policies. They recommend that if the polygraph is to continue as a tool supporting the

candidate selection process in law enforcement, then greater emphasis must be placed on “actuarially derived predictors” associated with increase success in law enforcement.