

Report to / Rapport au:

**POLICY AND GOVERNANCE COMMITTEE
COMITÉ DES POLITIQUES ET DE LA GOUVERNANCE**

5 October 2023 / 5 octobre 2023

Submitted by / Soumis par:

**Executive Director, Ottawa Police Services Board / Directrice exécutive,
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SUBJECT: REVIEW OF BOARD POLICY GA-8 LEGAL SERVICES

**OBJET: EXAMEN DE LA POLITIQUE DE LA COMMISSION GA-8 – SERVICES
JURIDIQUES**

REPORT RECOMMENDATIONS

The Ottawa Police Services Board's Policy and Governance Committee receive this item for discussion.

RECOMMANDATIONS DU RAPPORT

Que le Comité des politiques et de la gouvernance de la Commission de services policiers d'Ottawa prend connaissance de ce point afin d'en discuter.

BACKGROUND

In March of 2022, the Ottawa Police Services Board (Board) requested the assistance of the City's Auditor General in reviewing the response of the Ottawa Police Service to the convoy protest that took place in January and February 2022. The Auditor General accepted the request and in February 2023, delivered her reports to the Board, the Service, and the City, depicting key events and describing how all parties could improve from similar future events. The Board subsequently accepted her report and developed an action plan to address all eleven of the recommendations directed at the Board.

The final report, including the Board's action plan, is available [online](#).

One recommendation arising out of the Auditor General's (AG) review concerned advice of the City Solicitor to the Board and potential conflicts of interest (Recommendation 6).

In particular, the AG recommended:

“The Board should, at a minimum, review the role of the City Solicitor and outline instances in which it would be inappropriate for the City Solicitor to provide advice or be present in meetings where there is the potential for a perceived or actual conflict of interest given the City Solicitor's role as legal counsel for the City. This review could include performing a cost-benefit analysis of retaining regular, independent, Board counsel moving forward to eliminate the potential for perceived or actual conflicts of interest.” (p. 19 of the Audit of OPS' Response to the Convoy Protest – The Role of the Ottawa Police Services Board)

In response to the AG's recommendation, the Board committed to having its Policy and Governance Committee conduct a review of the Board's Legal Services policy in order to consider the role of the City Solicitor and outline instances in which it would be inappropriate for the City Solicitor to provide advice or be present in meetings where there is the potential for a perceived or actual conflict of interest given the City Solicitor's role as legal counsel for the City. The Board also committed to conducting a cost-benefit analysis of retaining regular, independent Board counsel to eliminate the potential for perceived or actual conflicts of interest.

DISCUSSION

The City Solicitor for the City of Ottawa also acts as the Board's Solicitor and in addition to exercising their delegated authority as outlined under Board Policy GA-8 Legal Services (attached as Document 1), they also regularly attend meetings of the Board, both in-camera and public, and provide legal and procedural advice.

The Committee is being tasked with the review of the role of the City/Board Solicitor with the objective of outlining instances where the Committee feels it may be inappropriate for the City/Board Solicitor to provide advice or be present in meetings where there is the potential for a perceived or actual conflict of interest given their primary role as legal counsel for the City. This could include situations where the solicitor may become privy to privileged information that could impact decision making for both parties.

The [Law Society of Ontario](#) notes that client conflicts may or will arise when legal counsel is acting:

- For opposing parties in a dispute

- In a joint retainer where the interests of the parties diverge
- For more than one client in separate but related matters, or
- For clients in unrelated matters where the duties owed to one client conflict with the duties owed to another client.

In light of the above, the Committee may wish to recommend changes to the Board's policy which would direct the City/Board Solicitor not be present for discussions, receive documents, or provide advice when it is known that matters meeting the above criteria are being considered. An example of an instance which would be captured by the above criteria includes potential budget disputes between the Board and City Council.

Cost benefit analysis: Board Solicitor vs. External Counsel

As part of the Committee's review of the role of the Board/City Solicitor, the AG suggested a cost-benefit analysis of retaining regular, independent, Board counsel to eliminate the potential for perceived or actual conflicts of interest.

In the last few years, the Board has adopted the practice of regularly engaging external, independent Board legal counsel on a variety of matters requiring *Police Services Act* expertise, including labour and complaint matters. This practice is done on a case-by-case basis.

The Board is not charged for the services provided by the City/Board Solicitor while attending meetings or when providing advice on matters. Where the City/Board Solicitor is exercising their delegated authority per the Board's policy and leveraging internal legal resources from the City to manage legal matters involving the Board, the Board is charged for the hours spent by lawyers within the City's Legal Services department. Depending on capacity or required expertise, some files are managed by external legal firms.

CONSULTATION

Not applicable.

FINANCIAL IMPLICATIONS

Financial implications will depend on the recommendations by the Committee. If the Committee were to recommend that external legal counsel be used more regularly at meetings of the Board or for more general advice, there would be an added cost as the Board/City Solicitor does not currently charge for these services.

SUPPORTING DOCUMENTATION

Document 1: Board Policy GA-8 Legal Services

CONCLUSION

The Policy and Governance Committee is being asked to conduct a review of the Board's Legal Services policy in order to consider the role of the City Solicitor and outline instances in which it would be inappropriate for the City Solicitor to provide advice or be present in meetings where there is the potential for a perceived or actual conflict of interest given the City Solicitor's role as legal counsel for the City.