

Report to / Rapport au:

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

17 May 2024 / 17 mai 2024

Submitted by / Soumis par:

**Executive Director, Ottawa Police Service Board / Directrice exécutive,
Commission de service de police d'Ottawa**

Contact Person / Personne ressource:

**Krista Ferraro, Executive Director / Directrice exécutive
*Krista.Ferraro@ottawa.ca***

SUBJECT: UPDATE: REVIEW OF BOARD POLICY GA-8 LEGAL SERVICES

OBJET: MISE À JOUR : EXAMEN DE LA POLITIQUE DE LA COMMISSION GA-8 – SERVICES JURIDIQUES

REPORT RECOMMENDATIONS

That the Ottawa Police Service Board's Policy and Governance Committee:

- 1) Receive this item for review and input.**
- 2) Forward the updated policy to the Board for approval and adoption at the May meeting.**

RECOMMANDATIONS DU RAPPORT

Que le Comité des politiques et de la gouvernance de la Commission de service de police d'Ottawa :

- 1) prenne connaissance de ce point aux fins d'examen et de formulation de commentaires.**
- 2) transmette à la Commission la politique mise à jour aux fins d'approbation et d'adoption à la réunion de mai.**

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 (P&G) 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 Board's P&G Committee met on October 5, 2023, and received a report from the Executive Director outlining potential criteria from the [Law Society of Ontario](#) that could be included in the Board's Legal Services policy that could be used to 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 Committee provided further

direction to the Executive Director to consult with the Board Chair and Board Solicitor to incorporate the criteria in the policy as well as include a role for the Chair in the policy to provide oversight and govern a potential or perceived conflict of interest.

The Committee directed no further action with respect to the completed cost-benefit analysis, advising there was presently an appropriate balance in terms of the Board's use of internal versus external legal counsel on matters.

Consultation has since taken place with both City of Ottawa Legal Services as well as external legal counsel to further amend the policy.

In the interest of bringing to a close the outstanding recommendation from the AG's report, the focus of the proposed policy changes is to outline instances in which it would be inappropriate for the City Solicitor, or another lawyer employed by the City of Ottawa, to provide advice or be present in meetings where there is the potential for a perceived or actual conflict of interest given their roles as legal counsel for the City.

Some additional changes have also been made to the policy to enhance clarity and consistency, including reorganizing content in some cases under different headings.

Aside from the new Section 1 related to conflicts of interest, the only addition to the policy that is not part of the overall reorganization or updating of language for clarity/consistency, is Section 2.1.4 External Legal Service Providers. This section was added to address any requirements of the Board to retain external counsel in the event of a conflict of interest involving the Board Solicitor.

Over the course of the review of the policy, it was noted that the policy may benefit from further development in some areas, namely: the appointment of Board Solicitor; the delegation of certain legal matters to the Chief; the retention of external legal services providers for non-litigation matters; and who may communicate on litigated matters. These areas have not been addressed in this policy review however can be considered in future reviews.

CONSULTATION

Not applicable.

FINANCIAL IMPLICATIONS

In an instance where a conflict of interest may arise involving the Board Solicitor or another City of Ottawa lawyer, a potential financial implication might be the additional cost of retaining external counsel.

SUPPORTING DOCUMENTATION

Document 1: Board Policy GA-8 Legal Services, *no tracked changes*

Document 2: Board Policy GA-8 Legal Services, *with tracked changes*

CONCLUSION

The Policy and Governance Committee is being asked to review the proposed updated to the Board's GA-8 Legal Services policy and provide input, as well as forward the updated policy to the Board for approval and adoption at the May meeting.