

Report to / Rapport au:

POLICY AND GOVERNANCE COMMITTEE

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Submitted by / Soumis par:

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SUBJECT: ASSISTANCE IN THE PROVISION OF POLICING

OBJET: ASSISTANCE EN MATIÈRE DE FOURNITURE DE SERVICES POLICIERS

REPORT RECOMMENDATIONS

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

- 1. Receive this item for review and input.**
- 2. Forward the draft policy to the Board for approval and adoption at the September 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 version préliminaire de la politique aux fins d'approbation et d'adoption à la réunion de septembre.**

BACKGROUND

The *Community Safety and Policing Act, 2019* (CSPA) which entered into force on April 1, 2024, has significantly altered the legislative and regulatory framework under which police service boards, including the Ottawa Police Service Board (Board), operate. The

Act and its Regulations include provisions that have impacted the conditions under which the Board may request the assistance of other policing entities, notably when dealing with major events.

Under the CSPA, as a general rule, police service boards are required to use internal resources to provide policing functions in their area of jurisdiction, but there are several ways a police service board may receive assistance from another police service:

- In emergency situations, a chief of police may request that the OPP Commissioner or another chief of police of an entity that employs First Nation Officers provide emergency assistance with policing in the area for which the police service board has responsibility (CSPA, 2019, s. 19(4)).
- Outside emergency situations, temporary assistance may be requested from another police service (CSPA, 2019, s. 19). In this case, the CSPA requires the requesting board to pass a resolution. This is a new requirement.
- Assistance may also be provided under an Alternative Provision Agreement between the Board and another police service board or the Commissioner (CSPA, 2019, s. 14 and O. Reg 398/23).

As the nation's capital, the City of Ottawa is frequently the site of both planned and unplanned major events such as celebrations and demonstrations which extend beyond the scope of day-to-day policing operations. These situations require substantial resources, advance planning, and collaboration with other police services, including police services from neighbouring municipalities and the Ontario Provincial Police (OPP). Since the CSPA came into effect on April 1, 2024, the Board has made 10 requests for temporary assistance in relation to the policing of major events.

The Board's policy on Major Events (CR-17), which pre-dates the CSPA, includes provisions governing joint operations related to a major event. Under CR-17, a formal agreement signed by the Board is required when another police agency is assisting the Ottawa Police Service (Service) in policing a major event in Ottawa. This policy does not reflect the three options offered by the CSPA.

As part of the Board's efforts to address the changes introduced by the CSPA, a new policy framework is required to address the three avenues for requesting assistance in the provision of policing.

DISCUSSION

Scope of the CSPA provisions on inter-service assistance

The scope of the CSPA provisions relating to assistance under the three avenues (emergency assistance, temporary assistance, assistance under alternative provision agreements) is limited to assistance in the provision of adequate and effective policing. The processes and conditions in these provisions apply only to the policing functions listed in section 11(1) of the CSPA and O. Reg. 392/23. The scope of alternative provision agreements is even more restricted as O. Reg. 398/23 provides a narrower list of prescribed policing functions that can be provided under such an agreement.

It is generally understood that assistance relating to functions that fall outside the scope of adequate and effective policing is not subject to sections 14 and 19 of the CSPA.

Maintaining adequate and effective policing: s. 14 vs s. 19

Section 10(1) of the CSPA requires that police service boards ensure the provision of adequate and effective policing in their area of jurisdiction. Section 13(1) of Act states that a police service board must use members of the police service maintained by the police service board to provide policing functions. Sections 14 and 19 provide exceptions to this rule. Maintenance of adequate and effective policing seems to be the Inspector General's primary concern when monitoring the utilization of these exceptions. The choices boards and chiefs make are indeed highly scrutinized and are likely to be consequential.

Although the CSPA does not explicitly impose a limit on recourse to temporary assistance, the Inspectorate of Policing has indicated that recurrent use of requests for temporary assistance to provide specific policing functions may be viewed as indicative of a gap in the provision of adequate and effective policing. The Inspector General is actively monitoring requests for temporary assistance and may sanction excessive and recurrent use of requests for temporary assistance requests when such requests cover policing functions that could be provided under a section 14 Alternative Provision Agreement.

When the CSPA came into effect, it was unclear whether section 14 agreements may only be used for outsourcing policing functions that a police service board does not have the capacity to provide for itself. It has since been clarified by the Inspector General that such agreements may provide that a specified policing function:

- Is to be provided (i) on a regular basis or (ii) as may be requested on an *ad hoc* basis;
- Will be provided (i) because one police service lacks the capacity to perform it independently or (ii) intermittently by members of another police service, but is

generally a function that the police service of jurisdiction has the capacity to perform.

Section 14 agreements may, therefore, serve as a framework for *ad hoc*, occasional or recurrent, provision of policing functions that the Board generally has the capacity to provide but may need to supplement from time to time.

Further, such agreements should be the preferred avenue for obtaining temporary assistance as they provide a structured framework for obtaining assistance. Recurrent section 19 requests may signal that a police service board has failed to make durable arrangements to address predictable – in other words, failing to address a structural gap in capacity. By contrast, section 14 agreements ensure that a board has worked with its chief of police “to proactively articulate what functions may be provided with the assistance of another board or service,”¹ and the conditions under which such assistance may be sought.

Decision-making process under section 19

Under the *Police Services Act*, 1990, temporary assistance was loosely regulated and did not require the Board’s direct intervention. Requests were, instead, handled by the Chief. The CSPA now requires the Board to pass a resolution on behalf of the Service in order to request temporary assistance outside emergency situations. Requests are now made board-to-board rather than chief-to-chief.

Pending the conclusion of section 14 agreements that would comprehensively cover the Board’s assistance needs, a large number of requests for temporary assistance may be needed to manage major events which are increasingly frequent and complex. The requirement for a Board resolution, which may be adopted at a regular or special meeting, may not be aligned with the timeline of operational needs. Recognizing this, the Inspector General recommends that Boards consider a delegation of authority to streamline this process:

*“The practicality of convening the entire board to consider s. 19 temporary assistance requests should be considered by each board. Subsection 42(1)(a) of the CSPA enables a police service board to **delegate** its powers by by-law to a committee of at least two members of the board. Our advice is that boards should establish this committee approach to support a more expeditious process.”²*

The Board may therefore delegate authority to approve both incoming and outgoing requests for temporary assistance, by by-law, to a committee. If the Board opts to do so,

¹ Inspector General of Policing, *Advisory Bulletin 1.1.: How Policing is Delivered in Ontario and Associated Compliance Requirements*, August 1, 2024.

² *Idem*.

it would be recommended that the committee be required to report back to the Board in keeping with past practice.

Assistance under section 14 agreements

Section 14 agreements are key to securing external assistance while also durably ensuring that adequate and effective policing is maintained. Because of the streamlined process they offer – no Board resolution needed – and the structure they provide, section 14 agreements are the ideal route for assistance.

However, such agreements are expected to be complex and should be underpinned by deliberate choices as to what policing functions can be delivered with external assistance, and under what conditions this may be done, including the application of board policies to members of an assisting service, cost recovery, human rights considerations etc. This would require extensive consultations between the Board and the Chief, and between boards and services across the province. Both bilateral and multilateral agreements may be envisaged.

Recognizing the central role section 14 agreements will play, the proposed policy would lay the ground for their negotiation by directing the Chief to initiate a needs assessment which would be the basis of a collaborative approach to negotiating agreements. The evidence-based needs assessment would notably identify recurrent needs and policing functions that may not be solely delivered with the Service's internal resources. Special attention would be given to trends and demands that impact the ability to provide adequate and effective policing.

Although the CSPA does not require the Chief to report utilization of external resources under a section 14 agreement, doing so would enable the Board to adequately discharge its monitoring duty, in keeping with the spirit of the Act.

Emergency assistance

Section 19(4) of the CSPA allows the Chief to request temporary assistance without going through the Board if, in the Chief's opinion, an emergency exists.

While the Chief would have latitude to unilaterally identify an emergency, the definition of "emergency" that would apply is found in section 1 of the *Emergency Management and Civil Protection Act*:

"a situation or an impending situation that constitutes a danger of major proportions that could result in serious harm to persons or substantial damage to property and that is caused by the forces of nature, a disease or other health risk, an accident or an act whether intentional or otherwise"

The CSPA requires the Chief to provide notice to the Inspector General when emergency assistance is requested. To ensure accountability and enable the Board to discharge its monitoring duty, the proposed policy would require the Chief to also provide notice to the Board concomitantly with the Inspector General.

The information to be provided with the notice would notably include details as to how the situation identified by the Chief as an emergency meets the legal definition.

Risk management

In alignment with guidance provided by the Inspector General, the proposed policy would require the Chief to articulate risks every time assistance is requested, regardless of the chosen assistance route. This is to enable the Board to make an informed decision in the case of section 19 requests, and to discharge its monitoring duties. Further, the policy would require the Chief to provide the Board with an update whenever risks assessments are updated, risks materialize, incidents occur, or the scope or nature of the required assistance changes due to any circumstances.

Annual reporting

The policy would create a requirement for the Chief to submit a semi-annual report on assistance in the provision of policing. This report would include statistics and analyze trends in the utilization of external assistance. Its primary aim would be to enable the Board to make evidence-based decisions regarding how policing is delivered in Ottawa, and the conditions under which it may be outsourced. This periodic reporting is expected to provide a basis for re-assessments and adjustments of the Board's mix of section 19 requests and section 14 agreements, and to help the Board identify areas in which investments are required to bolster internal capacities.

CONSULTATION

The Board and Acting Executive Director have engaged extensively with the Inspectorate of Policing with regard to the interpretation of relevant CSPA provisions. The Inspector General's Advisory Bulletin dedicated to this matter was reviewed by the Acting Executive Director and has informed the development of the draft policy.

Consultations were also conducted with the Service, notably the legal department and the policy development team.

FINANCIAL IMPLICATIONS

N/A

SUPPORTING DOCUMENTATION

Document 1: Policy No. CR-X: Assistance in the Provision of Policing

Document 2: Inspector General Advisory Bulletin 1.1.: How Policing is Delivered in Ontario and Associated Compliance Requirements, 1 August 2024,

CONCLUSION

Adopting this policy is recommended as it would:

- Enable the Board to make informed decisions regarding assistance in the provision of policing;
- Enhance accountability with respect to the use of external assistance;
- Ensure the continued provision of adequate and effective policing in Ottawa;
- Support the Inspector General of Policing's monitoring mission.