

Report to:

POLICY & GOVERNANCE COMMITTEE

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Submitted by:

Executive Director, Ottawa Police Service Board / Directeur Exécutif, Commission de service de police d'Ottawa

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SUBJECT: BY-LAW TO AMEND PROCEDURE BY-LAW #3 of 2014 – INQUIRIES AND MOTIONS FOR FOLLOW-UP

OBJET: RÈGLEMENT MODIFIANT LE RÈGLEMENT DE PROCÉDURE N° 3 DE 2014 – DEMANDES DE RENSEIGNEMENTS ET MOTIONS NÉCESSITANT UN SUIVI

REPORT RECOMMENDATIONS

That the Ottawa Police Service Board's Policy and Governance Committee recommend that the Ottawa Police Service Board adopt the proposed amendments to Section 28 of the Procedure By-law, as set out in the attached draft.

RECOMMANDATIONS DU RAPPORT

Que le Comité des politiques et de la gouvernance de la Commission de service de police d'Ottawa recommande à la Commission d'adopter les modifications proposées à l'article 28 du Règlement de procédure, telles qu'énoncées dans l'ébauche ci-jointe.

BACKGROUND AND PURPOSE

Section 28 of the Board's current Procedure By-law allows individual members to introduce inquiries at a meeting without requiring the approval of the Board. These

inquiries are recorded in the minutes and forwarded to the Chief of Police or another responsible party by the Executive Director, but they are not voted on and therefore do not carry the formal authority of the Board.

This practice creates an important ambiguity under the *Community Safety and Policing Act, 2019* (CSPA). Section 40 of the CSPA provides that only the Board, acting as a whole, may issue directions to the Chief of Police. Subsection 40(3) expressly prohibits individual Board Members from directing the Chief.

If an inquiry from a Member is framed in a way that directs a response from the Chief, it may risk contravening this provision unless it has been approved by the Board as a collective body.

Conversely, if the inquiry is not considered a direction – because it has not been approved by the Board – then it does not benefit from the protections and enforcement mechanisms set out in section 40 of the CSPA. In such cases, the Chief is not legally obligated to respond. While the Board's oversight authority under the Act includes the ability to seek information necessary for governance and accountability, the current procedure leaves inquiries in a legal grey zone: they are potentially too directive for individual Members to issue unilaterally, yet too informal to compel a response.

This gap diminishes the effectiveness of inquiries as a tool of civilian oversight, particularly in matters where the Board requires timely and accurate information to assess the adequacy and effectiveness of policing.

While the Chief has consistently and constructively responded to inquiries from individual Members, the current process – where such inquiries are not formally approved by the Board – means they do not carry the legal status of a direction under the CSPA. The proposed amendment does not reflect any concern with the Chief's approach to date, but rather acknowledges that, under the Act, only directions issued by the Board collectively are binding. The proposed amendment is intended to formalize the inquiry process, strengthen its alignment with the new legislative framework, enhance procedural clarity, and reinforce the Board's role as a collective governance body.

DISCUSSION

Clarifying the Legal Status and Oversight Function of Inquiries

The proposed amendment to Section 28 of the Procedure By-law is intended to clarify the status and authority of inquiries within the framework of the CSPA and resolve the ambiguity created by the current practice.

Subsection 40(1) affirms the Board's power to give directions to the Chief. Subsection 40(4), however, limits this power in certain respects, specifying that the Board may not direct the Chief with respect to specific investigations, the conduct of specific operations, the discipline of individual officers, or the day-to-day operation of the Service.

While subsection 40(4) prohibits the Board from directing the Chief in relation to certain matters, these limitations are generally understood to apply to substantive directions to take or refrain from taking action, i.e. operational directives. They do not negate the Board's right to seek information, including information about operations. This interpretation is supported by the structure of section 40 itself, which separately addresses the Chief's ability to decline a direction to provide information in subsection 40(8). The fact that the Act includes a distinct provision allowing the Chief to decline to provide information – only if regulations permit it – reinforces this view.

As of the date of this report, no such regulation under subsection 40(8) exists. This obligation to respond is further subject to subsections 40(5) and 50(6) which limit access to personal information unless necessary for the Board's purpose. Therefore, any direction of the Board to provide information – if made in accordance with the Act – is binding on the Chief of Police. This legal obligation reflects the fundamental principle that effective civilian governance must be informed governance.

This understanding was reinforced by public comments made by the Inspector General of Policing on July 10, 2024, which acknowledged that inquiries related to operational matters are not only permissible but necessary for the Board to discharge its statutory

duties.¹ While the Act safeguards against inappropriate interference in operational decision-making, it does not insulate the Service from legitimate inquiries or oversight into how operations are managed.

The proposed amendment to Section 28 of the Procedure By-law would address the current gap by requiring that any inquiry intended for the Chief of Police be approved by resolution of the Board before it is forwarded. Once approved, the inquiry would constitute a formal direction of the Board under subsection 40(1) of the Act, carrying with it a legal obligation to respond unless a statutory or regulatory exemption applies.

Inquiry Submission, Review, and Response Process

The proposed amendment introduces a clear and practical process for submitting and approving inquiries. It allows Board Members to bring forward inquiries in two ways: by submitting them in writing to the Executive Director at least 24 hours in advance of a meeting, or by proposing them orally during the meeting itself.

While not required, written submission 24 hours in advance is encouraged, as it provides several benefits:

- Enables administrative and, where appropriate, legal review;
- Allows Board Members to consider the subject matter in advance;
- Contributes to effective meeting management.

At the same time, the amendment recognizes that policing is dynamic and that circumstances may arise requiring the Board's attention on short notice. Accordingly, Members may introduce oral inquiries during the meeting, subject to approval by resolution of the Board. This balanced approach preserves flexibility while ensuring that all inquiries carry the legal authority of the Board.

As a point of comparison, Ottawa City Council requires that all inquiries be submitted to staff in writing at least 24 hours in advance. While this promotes predictability, the Board's

¹ Comments made by the Inspector General of Policing during the Canadian Association of Police Governance (CAPG) webinar "*Ontario's Inspectorate of Policing – Navigating the New Legislation & Implementing Regulations*", held on July 10, 2024.

more flexible model – allowing both advance written and same-day oral inquiries – would support responsiveness to emerging developments in policing while ensuring that all inquiries carry the legal authority of the Board.

Once approved, an inquiry constitutes a direction of the Board, which the Chief is obligated to respond to unless a statutory exemption applies.

Where a response may involve the disclosure of information that falls within the protected categories listed in section 44(2) of the Act – such as personal matters, public security, or confidential legal advice – the Chief may request to respond in camera. The final decision on whether to accept an in camera response rests with the Board.

Two additional provisions are introduced to further support clarity and good governance. First, when an inquiry is approved, the Board may identify a desired timeframe for response, which may be amended as needed at a subsequent meeting. This allows the Board to signal the urgency or priority of specific matters while remaining flexible. Second, the amendment clarifies that nothing in section 28 precludes individual Members from asking clarifying or factual questions during meetings, provided such questions do not amount to directions under section 40 of the CSPA.

The proposed amendment maintains the existing requirement for the Executive Director to track and report on all outstanding inquiries and motions for follow-up, ensuring transparency and continuity in Board oversight.

CONSULTATION

The prioritization of this amendment responds to a recommendation from the Inspectorate of Policing that the Board align its rules of procedure with the CSPA. While a comprehensive review of the Procedure By-law against the CSPA has not yet been completed, the treatment of inquiries was identified early on as a significant procedural gap requiring prompt attention.

The Inspectorate of Policing was further consulted on the development of the amendment, particularly with respect to the process for submitting inquiries, the interpretation of section 40 of the Act, the appropriate scope and status of Board inquiries.

The Ottawa Police Service was made aware of the intention to propose this amendment. As the changes relate solely to how the Board structures and authorizes its own inquiries

– without impacting the Chief’s existing responsibilities or process for responding – the focus remained on ensuring internal procedural alignment with the CSPA.

FINANCIAL IMPLICATIONS

There are no financial implications associated with the proposed amendments.

CONCLUSION

Under the Board’s current Procedure By-law, any Member may make an inquiry without Board approval. As a result, inquiries – some of which may be essential to fulfilling the Board’s mandate – lack formal authority and fall outside the protections and enforcement mechanisms of the CSPA.

The proposed amendments to Section 28 address this gap by requiring all inquiries to be approved by the Board before being referred to the Chief. This ensures that such inquiries carry the full authority of the Board under section 40(1).

By aligning the Procedure By-law with both the letter and spirit of the CSPA, this amendment would strengthen the Board’s collective authority and minimize the risk that inquiries could be perceived as directions from individual Members rather than as decisions of the Board as a whole.

SUPPORTING DOCUMENTATION

Document 1 – Section 28 of By-law No. 3 of 2014

Document 2 – Draft By-law No. XX of 2025 amending section 28 of By-law No.3 of 2025