



Toronto Police Services Board

40 College Street, Toronto, Ontario, Canada. M5G 2J3
(416) 808-8080 FAX (416) 808-8082
www.tpsb.ca



May 9, 2016

Minister Yasir Naqvi
Ministry of Community Safety and Correctional Services
18th Floor
25 Grosvenor Street
Toronto ON
M7A 1Y6

Dear Minister Naqvi:

The Toronto Police Services Board (the Board) welcomes the opportunity to contribute to the process of amending the Ontario Police Services Act (the *Act*).

Prior to identifying specific aspects of the legislation for possible amendment, the Board wishes to raise a number of general principles that it believes the Province should consider as part of the overall amendment process. These are;

- Although it is difficult to do given the static nature of legislation, the *Act* should be constructed, as much as possible, to allow for flexible responses to the dynamic and evolving concept of policing in our modern world;
- Community safety is now, rightly so, viewed as a shared responsibility, while the legislation remains rooted in a dated perspective that does not adequately incorporate the role of the community. Police exist to serve and protect the community and the community's views and expectations must form an integral part of policing policy;
- Society is changing, and with it, police and its role in law enforcement and crime prevention. The vision that underpins the new legislation must be both modern and transformative. In addition to the traditional role of police, additional roles have emerged, with police officers now being responsible for community mobilization and engagement, among other things;

- The legislation also requires change to take into account new and emerging technology, to include options to deliver service in novel and innovative ways;
- The legislation must deal with the rising and unsustainable cost of policing;
- The *Act* should explicitly deal with how police interact with communities' most vulnerable people, including children, the elderly and individuals experiencing mental illness or personal crisis;
- Proper and meaningful civilian oversight and governance has been impeded by legislative language that is too broad, too vague, too imprecise or too rigid. Oversight of policing is critical in a democratic society and the *Act* must be amended to ensure that such oversight is both meaningful and robust. Strengthened civilian governance requires boards to be comprised of members who bring a variety of skills and backgrounds to their positions, hence the need for competency-based appointments and mandatory training. In addition, boards cannot simply rely on police services for information, data and analysis; boards must be adequately staffed and resourced, in order to effectively support governance; and
- The discipline system should be overhauled, so that the public's expectation that officers who break the law or commit misconduct are appropriately punished, resulting in real deterrence, both specific and general. The system must also be sufficiently transparent so that the public can be assured that these incidents are treated with the severity they warrant.

In light of these general considerations, the following outlines the Board's proposed specific amendments to the *Act*:

Strengthening Civilian Governance

The appointment process of board members should ensure that board members are qualified when measured against a set of competencies and that Board members receive mandatory training that fully prepares them for the work they will be undertaking. Further, boards must be given a greater role in articulating the competencies required in new board members, so that the board as a whole can operate more effectively. We recommend that, when vacancies occur, the appointing bodies be required to consult with boards in order to determine the competencies that should be the focus of the appointment process.

Furthermore, the provincial structure of accountability must be strengthened so that boards are truly accountable to the public. Currently, the Ontario Civilian Police Commission has jurisdiction over the Board but rarely asserts its authority, or gives necessary direction. The role of OCPC needs to be clarified and fortified, so that it can provide the required oversight of boards.

Board and Chief Responsibilities

Section 31(1) outlines the board responsibility for the provision of adequate and effective police services in the municipality while section 41(1)(a) outlines the duties of the Chief of Police. According to Justice Morden¹, prior to 1990, the statute did not provide clear direction or definition of the roles and responsibilities of boards and chiefs of police. Further, Justice Morden states that “there was a general understanding that policies which were for the Board and operations which were for the Chief of Police must always be kept separate.” Morden further states that “this general understanding has been carried forward after 1990 although there is no statutory foundation for it and that, in fact, it is clearly inconsistent with the provisions of the *Act*, in particular, sections 31(1)(b), 31(1)(c), and 41(1)(a).” Because the *Act* is not consistently interpreted, we are proposing that greater clarification of the aforementioned sections is required in order to simplify and communicate the appropriate roles of boards and chiefs respectively and foster greater accountability.

In addition to clarifying roles, consideration should be given to whether or not boards should have the authority to appoint and terminate auxiliary members, as well as the authority to appoint special constables. Currently, section 52 authorizes boards to appoint and terminate auxiliary members. To be consistent with the chief of police’s responsibility for the discipline of uniform members, chiefs should have the responsibility for auxiliary members. Section 52 gives the OPP Commissioner the authority to appoint, suspend and terminate the appointment of an auxiliary member. The same authorities should be given to the chief of a municipal police force. With regard to the appointment of special constables, consideration should be given to whether or not boards have a role to play in appointing special constables, with a view to granting the ability to appoint special constables to chiefs. As well, section 53(1) should be amended to state what criteria or factors the Solicitor General should consider when granting approval of appointments, including whether there should be legislated controls for the use of special constable authority and legislated minimum standards (e.g. training).

Interest Arbitration

The Emergency Services Steering Committee (ESSC) was formed in 2005 on the recommendation of senior staff from municipalities represented by the Mayors and Regional Chairs of Ontario (MARCO), the Large Urban Mayors Caucus of Ontario (LUMCO) and the OAPSB in response to rapidly increasing emergency services costs across Ontario. Its membership is comprised primarily of Chief Administrative Officers and staff from legal services, human resources and communications from member municipalities, the OAPSB and municipal liaison groups. The primary objective of the ESSC is to provide a clear picture of the state of emergency services labour costs and how their escalation potentially impacts municipal budgets.

The ESSC has identified significant factors that it believes are contributing to rising emergency services labour costs (wages and benefits) and the effects that they are having on Ontario municipalities and the public services they provide. It is the position of the

ESSC that these cost increases are not sustainable in the long-term and that they are being driven higher by arbitration awards that have not fully considered or properly accounted for the current Ontario and local economies or the taxpayers' ability to pay, and the influence of such awards on negotiated settlements. Arbitrators and arbitration boards are obliged by law to consider these factors to ensure that their awards provide a balance between a fair compensation increase and the public's ability to pay. However, arbitrated salary awards in the emergency services have consistently exceeded the rate of inflation, cost of living and wage increases negotiated with other unionized staff in the same municipality. Ontario's interest arbitration system no longer reflects what free collective bargaining would otherwise have produced as an outcome; even when employers in the emergency services "freely" negotiate settlements they are constrained by the outcomes that would be awarded if they referred the agreement to arbitration. Labour cost increases in policing cannot continue without jeopardizing other components of the police service as well as other essential services and infrastructure needs of municipalities.

As a result, the Board recommends that the interest arbitration provisions of the *Act* be amended to:

- Improve accountability and transparency of arbitration awards by requiring arbitrators to consider a comparison of the freely negotiated bargaining settlements in the same municipality, including those of bargaining units with the right to strike. The criteria for comparison of wage settlements should not be limited to only police in other municipalities; and
- Enable either party to request written reasons for an arbitrator's award, and ensure such reasons demonstrate that the arbitrator gave due and proper consideration to the criteria.

In addition, procedural changes are required to ensure that the arbitration system is timely and fair to both parties.

Therefore, it is recommended that section 122(1)(6) be amended to reform the interest arbitration provisions to restore balance in the arbitration system, and increase accountability and transparency of awards.

Labour Relations and Human Resources

Part VII of the act should be amended to give Boards greater flexibility in managing human resources to enable them to operate more efficiently. Currently, section 118(2) obliges boards to enter into collective bargaining with a Senior Officers' Association which, in the case of the Toronto Board, includes its own Director of Human Resources Management. Since the Director of Human Resources Management acts as a resource and provides expert advice to the board, we question the validity of the inclusion of this position in an association. Similarly all management staff from the rank of Inspector and above, and specifically those responsible for human resources, labour relations, senior

finance personnel, and legal advisors should be excluded from the bargaining unit in a manner similar to that provided for in the Ontario *Labour Relations Act*. These management members would receive salaries and bonuses tied to specific performance objectives. As is currently the case, the board will direct the chief and monitor his or her performance and the chief will be responsible for ensuring that his or her employees meet the established performance objectives. This amendment will ensure that the chief can incent his or her team to attain excellence.

Additionally, further amendments to Part VII, should include the deletion of sections 120(1) and (2), to enable police services boards and/or the municipality responsible for police services to determine how it will conduct its collective bargaining. The *Act* is the only statute in Canada to dictate the composition of the bargaining committee. This provision restricts the ability of the employer to determine how to resource its bargaining committee. There is no rationale for this provision and it should be deleted to give both parties the right to determine the composition of their own bargaining committees. Police services boards should have the same right as the associations and employers in other sectors to draw on expertise and resources they deem appropriate.

Extension of Probationary Period

Police services boards should have the authority to extend the probationary period of police officers by an additional six months, if, in the board's view, this would be necessary to thoroughly assess the officer's suitability. The act currently provides for a 12 month probation period with no provision to extend in the event of interruptions in training. We propose an amendment to section 44(1) of the *Act* to provide police services boards with the ability to extend the probationary period to provide for a longer probationary period, greater management oversight and scaled responsibilities, which would provide boards with adequate time to determine the suitability of officers.

Advancement through the Ranks

Currently a sworn officer progresses through the ranks from fourth-class to first-class constable in five years with no requirement for additional training, skills or education as the progress occurs. This is not consistent with career progress in other professions which require additional training and education to advance. Consideration should be given to amending section 8(3) of O.Reg 268/10 to extend the period of time for progression from fourth to first class constable. The overall period of advancement should be increased from five to eight years, and additional education and skill requirements should be imposed in order to reach the rank of first-class.

PART V Discipline and Tribunal Processes

Tribunal Proceedings

Part V of the *Act* establishes the processes for disciplinary hearing and imposes tribunal rules of procedure established under the *Statutory Powers and Procedures Act*. Sworn

police officers are not currently subject to discipline in a manner similar to civilian employees. Rather, the statutory regime for discipline of sworn officers significantly restricts the employer's ability to impose appropriate discipline in response to misconduct. This creates inequity within the police service between uniform and civilian employees, and affords officers with essentially "jobs for life," a privilege not afforded to any other employees in Ontario. The current process has entrenched discipline procedure into a quasi-judicial structure which has insulated officers and limits boards' role with respect to an employer/employee relationship regarding disciplinary matters. Therefore, Part V of the *Act* should be amended to remove the tribunal structure currently in place and replacing it with a more traditional labour relations model.

Suspension without Pay

Ontario is the only province in Canada that does not give Chiefs the discretion to suspend without pay an officer charged with an offence, or even convicted of an offence if the conviction is under appeal.

The Board recognizes that an allowance for suspension with pay helps to protect officers in the good faith performance of their duties, but we also believe that this allowance was never intended to shield police officers from the consequences of serious criminal conduct unrelated to the performance of their duties. Suspension without pay should apply to all officers who have committed a serious misconduct that breaches the public trust and that significantly impacts their continued performance of their duties as a police officer as well as when charged with a criminal offence or in custody or on bail.

Increased public awareness of cases involving serious charges has eroded public trust and confidence in the police, and the financial impact can create significant pressure on constrained police budgets. The Association of Municipalities of Ontario has reported that from 2005-2009, Ontario's "Big 12" police services boards paid \$16.9 million in salary to suspended officers.

In addition, police officers are compensated for the office held and not for the duties performed, consideration should be given to legislative amendments that would remove the office holder status from police officers and change their employment status from office holders to employees. These amendments would give boards more autonomy over their employees and would give chiefs the ability to maintain discipline and accountability within the police service and would promote public trust.

Notices of Hearing

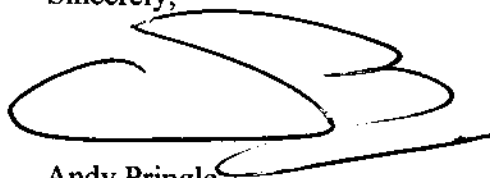
We are proposing an amendment to section 83(17) of the *Act* to extend the limitation period for serving notices of hearing from the current six months to nine months. The internal investigations that police services are required to conduct are often too complex to be reasonably expected to be completed within the current limitation period. As well, the *Act* does not provide much guidance as to the interpretation of what is deemed "reasonable" under the circumstances.

Conclusion

Thank you for the opportunity to participate in the Ministry consultations for the Strategy for a Safer Ontario. We look forward to a new blueprint that will provide an effective, sustainable, and community-based policing model that will allow us to provide effective governance for the people of Toronto.

Recognizing that these issues are complex and nuanced, we welcome the opportunity to meet with you to engage in further discussion with respect to the issues we have raised.

Sincerely,

A handwritten signature in black ink, appearing to read 'Andy Pringle', written over a white background.

Andy Pringle
Chair
Toronto Police Services Board

cc. Board Members

¹ Independent Civilian Review into Matters Relating to the G20 Summit. Honourable John W. Morden, June 2012. Page 4