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|  | <p>OTTAWA POLICE SERVICE SERVICE DE POLICE D'OTTAWA</p> <p><i>Working together for a safer community</i> <i>La sécurité de notre communauté, un travail d'équipe</i></p> | <p>REPORT RAPPORT</p> |
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DATE: 22 June 2015

TO/DEST: Executive Director, Ottawa Police Services Board

FROM/EXP: Chief of Police, Ottawa Police Service

SUBJECT/OBJET: **AUTHORIZATION TO ACT IN RELATION TO THE BOARD'S COURT SECURITY RESPONSIBILITIES**

RECOMMENDATION

That the Ottawa Police Services Board authorize all Ottawa Police Service (OPS) officers, special constables, auxiliaries or other persons assigned and authorized by the Chief of Police to act in relation to the Board's responsibilities under subsection 137(1) of the *Police Services Act* upon the proclamation of the *Security for Courts, Electricity Generating Facilities and Nuclear Facilities Act, 2014, S.O. 2014, c. 15 Sched. 2, s. 1* and the corresponding amendments to Part X of the *Police Services Act*.

BACKGROUND

On June 24, 2015, the *Public Work Protection Act (PWPA)* is being repealed and, as it concerns court security, replaced by amendments to Part X of the *Police Services Act (PSA)*. In accordance with the new subsection 138(1) of the *PSA*, persons who are authorized by the Board to act in relation to the Board's court security responsibilities under subsection 137(1) of the *PSA*, may exercise certain prescribed powers for the purpose of fulfilling those responsibilities.

DISCUSSION

In 1939, the Province of Ontario enacted the *PWPA* in an emergency session of the Legislature after Canada's entry into the Second World War. Enacted to protect hydroelectric facilities and other critical infrastructure, the *PWPA* empowers peace officers and persons appointed as "guards" to require people to identify themselves and state their business before being granted entry to a public work, to search those people and their vehicles and, where necessary, refuse entry and forcibly remove those who have been denied entry.

In the absence of court security specific legislation, police services in Ontario rely upon the powers conferred under the *PWPA* to maintain court security.

On June 14, 2010, Ontario Regulation 233/10 was enacted and the site of the G20 Summit was designated a “public work” for the purpose of the *PWPA*. The G20 Summit was held on June 26 and 27, 2010 and the regulation was revoked on June 28, 2010. Unfortunately, this new regulation was poorly publicized and widely misinterpreted. Ontario’s Ombudsman would later conclude that this regulation “appears to be contrary to law and not in accordance with the provisions of any Act. It was also unreasonable to support the adoption of that regulation, given that it conferred unnecessary and constitutionally suspect police powers in the volatile and confrontational context of inevitable public protest.”

The Honourable Roy McMurtry was retained by the provincial government to review the *PWPA* and, in April of 2011, he released his report recommending that it be repealed and replaced with tailored statutes for court security and electricity generating facility security.

Bill 35, *Security for Courts, Electricity Generating Facilities and Nuclear Facilities Act, 2014* was introduced on October 30, 2014 and received royal assent on December 11, 2014. On June 24, 2015, the day to be named by proclamation of the Lieutenant Governor, the *PWPA* will be repealed and Part X of the *PSA* will be amended to add sections 138 to 142 and the following court security powers:

- Requiring any person seeking entry to a courthouse to produce identification and provide information for the purpose of assessing the security risk, if any, posed by the person;
- Searching any person who wishes to enter a courthouse as well as their vehicle;
- Refusing to allow a person to enter or bring property into a courthouse and using reasonable force if necessary;
- Demanding that a person leave a courthouse or remove property from the courthouse and using reasonable force if necessary; and
- Arresting a person with respect to new offences under Part X of the *PSA*.

While the *PWPA* automatically confers its powers upon peace officers, the new subsection 138(1) of the *PSA* indicates that a person who is authorized by the Board to act in relation to the Board’s court security responsibilities may exercise the above noted powers. Therefore, out of an abundance of caution, the OPS is recommending that the Board authorize all police officers, special constables, auxiliaries or other persons assigned and authorized by the Chief of Police to act in relation to the Board’s court security responsibilities under subsection 137(1) of the *PSA*.

FINANCIAL STATEMENT

There are no financial implications to this report.

CONCLUSION

By approving the recommendation in this report the Board will ensure that OPS officers will be able to lawfully exercise their security duties at courthouses.

(Original signed by)

Charles Bordeleau
Chief of Police