

Report to / Rapport au:

**OTTAWA POLICE SERVICES BOARD
LA COMMISSION DE SERVICES POLICIERS D'OTTAWA**

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Submitted by / Soumis par:

**Executive Director, Ottawa Police Services Board / Directrice exécutive,
Commission de services policiers d'Ottawa**

Contact Person / Personne ressource:

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

**SUBJECT: FEEDBACK REGARDING PROPOSED REGULATIONS UNDER THE
COMMUNITY SAFETY AND POLICING ACT, 2019**

**OBJET: COMMENTAIRES SUR LES RÈGLEMENTS PROPOSÉS
CONFORMÉMENT À LA LOI DE 2019 SUR LA SÉCURITÉ
COMMUNAUTAIRE ET LES SERVICES POLICIERS**

REPORT RECOMMENDATIONS

That the Ottawa Police Services Board provide the feedback outlined in this report, developed in consultation with the Ottawa Police Service, to the Ministry of the Solicitor General regarding proposed draft regulations under the Community Safety and Policing Act, 2019.

RECOMMANDATIONS DU RAPPORT

Que la Commission de services policiers d'Ottawa transmette au ministère du Solliciteur général les commentaires sur les règlements proposés conformément à la Loi de 2019 sur la sécurité communautaire et les services policiers. Ces commentaires, élaborés en consultation avec le Service de police d'Ottawa, figurent dans le présent rapport.

BACKGROUND

In March 2019, the government passed the Community Safety and Policing Act, 2019 (CSPA), as part of the Comprehensive Ontario Police Services Act, 2019. Once in force, the CSPA will replace the current Police Services Act (PSA).

In order to bring the CSPA into force, the Ministry of the Solicitor General (Ministry) has been working on developing regulations and engaging with policing, community and Indigenous partners, on a number of matters under the CSPA.

At this time, the Ministry is requesting public and stakeholder input on proposed regulations related to:

1. Oaths and affirmations for police officers, First Nation Officers, special constables, auxiliaries and Ottawa Police Services Board (Board) members;
2. Composition of the Ontario Provincial Police (OPP) Governance Advisory;
3. A review and revision period for community safety and well-being (CSWB) plans;
4. Suspension without pay, and;
5. Chief's referral to the Law Enforcement Complaints Agency.

DISCUSSION

The Ministry of the Solicitor General is currently requesting public and stakeholder input on proposed regulations under the CSPA.

Below is a summary of the proposed regulations and the feedback that is being recommended to be provided:

1. Oaths and affirmations for police officers, First Nation Officers, special constables, auxiliaries and Board members.

The CSPA requires police officers, First Nation Officers (currently known as "First Nations Constables" under the Police Services Act), special constables, auxiliary members of police services and Board members to take an oath or affirmation of office. Police officers, First Nation Officers, special constables and auxiliary members of police services are also required to take an oath of secrecy.

The Ministry is proposing to align the oaths and affirmations to reflect changes in the CSPA and ensure consistency with other public sector oaths and affirmations.

Recommended feedback on proposed regulation: The OPS does not take a position on this matter and therefore no feedback is being proposed on this draft regulation.

2. Composition of the Ontario Provincial Police (OPP) Governance Advisory

The CSPA requires that an OPP Governance Advisory Council be established to advise the Solicitor General regarding the use of his or her powers with respect to the OPP under sections 59 to 62 of the CSPA and perform any other prescribed duties. The proposed regulation would require the new OPP Governance Advisory Council to have a minimum of eleven (11) and a maximum of twenty (20) members. The regulation also proposes restrictions on eligibility for membership that are similar to those for police service boards.

Recommended feedback on proposed regulation: This regulation does not impact the Board. Further, the OPS does not take a position on this matter. No feedback is being proposed on this draft regulation.

3. A review and revision period for community safety and well-being (CSWB) plans

Municipalities are required to develop and adopt community safety and well-being plans, working in partnership with police services/boards and various other sectors, including health/mental health, education, community/social services, and children/youth services.

The Ministry is proposing to set a time period of four years for municipalities to review and, if appropriate, revise their CSWB plans.

Recommended feedback on proposed regulation:

Community Safety and Well Being Plan is currently under development in partnership with the City of Ottawa. The plan is intended to be a continuously reviewed and renewed document. As such, communities should have a mechanism to address any new and emerging issues or correct the plan for responsiveness in the moment.

For an overall review, in order to be timely and responsive to needs, the plan should be reviewed, revised and approved on a yearly basis. Any longer and emerging issues can become systemic.

4. Suspension without pay

The CSPA will enable a chief of police to suspend an officer without pay as an interim measure prior to a discipline hearing when specific criteria prescribed in the *Act* are met. This includes the ability to suspend an officer without pay when they have been charged with a "serious offence".

The Ministry is proposing to define 'serious offence' as any offence that may carry a prospective penalty of five years of imprisonment or more.

Recommended feedback on proposed regulation:

At the September 28, 2020, monthly meeting, the Board passed a motion to send a letter to the Provincial Government to declare in force those sections of the CSPA as soon as possible, that are necessary to provide Chiefs of Police or Police Services Boards, as applicable, with the discretion to suspend a member of the police service, without pay, who is charged with or convicted of a serious offence, in those circumstances set out in the statute. The Board also requested that the Province further amend the legislative scheme governing police services so as to streamline the process for the termination of a police officer who is found guilty of serious or criminal misconduct.

Although not directly related to the proposed regulation, it is recommended that this ongoing consultation period be leveraged to reiterate the Board's position and requests to the Ministry on suspension without pay and the process for terminations.

The OPS further recommends that feedback be provided that proposes that a Chief may order an officer suspended without pay in the following circumstances:

1. The officer has committed a "serious offence"; or,
2. The officer has committed an offence, other than a "serious offence", if they have a history that indicates a pattern of either outstanding charges or findings of guilt.

This will enable to Chief of Police to suspend an officer without pay if the officer is charged with an offence that qualifies as a serious offence, if there are strikingly similar outstanding charges or, if the officer is a repeat offender under the PSA.

The definition currently proposed in the regulation is relatively consistent with the definition of "serious offence" under the Criminal Code of Canada (CCC) and the Youth Criminal Justice Act.

Criminal Code of Canada

serious offence means an indictable offence under this or any other Act of Parliament for which the maximum punishment is imprisonment for five years or more, or another offence that is prescribed by regulation.

Youth Criminal Justice Act

serious offence means an indictable offence under an Act of Parliament for which the maximum punishment is imprisonment for five years or more,

The Ottawa Police Service proposes maintaining the proposed definition of "serious offence" under the regulations, and should also include:

- Violations of the *Ontario Human Rights Code* including racial profiling; and

- Sexual harassment.

Note: Several Senior Officers and legal counsel have raised concerns about including these two additional circumstances. The comments received thus far have reflected a desire to ensure that the definition of a “serious offence” is narrow. Suspension without pay is a violation of procedural fairness and potentially *Charter*-infringing action: the circumstances should be narrowly circumscribed to serious criminal conduct or significant pattern of offending.

5. Chief’s referral to the Law Enforcement Complaints Agency

This regulation relates to when a chief of police is required to provide notice of misconduct to the Complaints Director of the Law Enforcement Complaints Agency (LECA). The LECA will replace the Office of the Independent Police Review Director, and the Complaints Director represents the former Independent Police Review Director.

The Ministry is proposing the following circumstances for which chiefs of police would be mandated to provide notice of misconduct to the Complaints Director of the LECA:

- Breaches, found by a court or tribunal, of the Charter of Rights and Freedoms (that are not justified under s. 1 of the Charter) or Human Rights Code; and
- Allegations of any contravention to the police officer code of conduct that is committed in relation to, or is witnessed firsthand by, a member of the public*

Note: members of the public other than those restricted from complaining to LECA are defined under CSPA s. 154.

Recommended feedback on proposed regulation: The OPS does not take a position on this matter and therefore no feedback is being proposed on this draft regulation.

CONSULTATION

Board staff consulted with staff at the OPS in order to develop recommended feedback that can be provided to the Ministry on the regulations they are proposing under the CSPA.

FINANCIAL IMPLICATIONS

There are no financial implications.

SUPPORTING DOCUMENTATION

Document 1 – Proposed Regulation: Oaths and affirmations for police officers, First Nation Officers, special constables, auxiliaries and Board members;

Document 2 – Proposed Regulation: Composition of the Ontario Provincial Police (OPP) Governance Advisory;

Document 3 – Proposed Regulation: A review and revision period for community safety and well-being (CSWB) plans;

Document 4 – Proposed Regulation: Suspension without pay, and;

Document 5 – Proposed Regulation: Chief's referral to the Law Enforcement Complaints Agency.

CONCLUSION

In March 2019, the government passed the CSPA, as part of the Comprehensive Ontario Police Services Act, 2019. Once in force, the CSPA will replace the current PSA.

In order to bring the CSPA into force, the Ministry of the Solicitor General (Ministry) has been working on developing regulations and engaging with policing, community and Indigenous partners, on several matters under the CSPA.

The Ministry is currently requesting public and stakeholder input on specific draft, proposed regulations and it is recommended that the Board provide the feedback outlined in this report to the Ministry as part of their consultation exercise. This will include reiterating the Board's position on the broader issues of suspension without pay and streamlining the process for the termination of a police officer who is found guilty of serious or criminal misconduct.