



DURHAM REGIONAL POLICE SERVICES BOARD

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February 24, 2016

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

Dear Minister Naqvi:

On behalf of the Durham Regional Police Services Board, I am writing to offer our views on the proposed legislative amendments to the *Police Services Act*. We are aware of the Province's intentions to consult broadly on its legislative proposals as part of its Strategy for a Safer Ontario, and we sincerely appreciate the opportunity to participate in this process. Our input is offered in the spirit of constructive dialogue and partnership. We believe that this is a tremendous opportunity to ensure that our collective investments are effective, and that the appropriate legislative and regulatory tools are in place to support high quality service delivery. Given the considerable impact that such changes will generate at the local level, we are pleased at your commitment to consider the perspectives of Boards and municipalities as changes are proposed and considered.

At the outset, I would like to advise you that our viewpoints are informed by one Board member in particular. Mr. Stindar Lal, Q.C., was appointed by Regional Council to the Durham Regional Police Services Board for a term of four years in February 2015. As you may know, Mr. Lal had a distinguished career in the Ontario Public Service, serving as a deputy minister in six different ministries. Most notably, he was the Deputy Solicitor General at the time the current *Police Services Act* was enacted. He led the process which resulted in a consensus of the draft Bill among all segments of the police community. His knowledge and experience have been invaluable to our Board in many respects and in this exercise in particular, and we believe his contribution enhances the credibility of our submissions to you.

I would like to begin by stating that the Durham Regional Police Services Board values the safety of our communities as a foundation for social wellbeing and economic prosperity. We owe a large debt of gratitude to the professional police officers and civilians across Ontario whom we entrust to prevent crime, enforce the law, ensure public order, assist victims and respond to emergencies. Like many other Boards across the Province, however, we recognize that police services must be modernized to ensure that they remain accountable, relevant and sustainable to our citizens. Indeed this sentiment was reflected in the Premier's mandate letter to you dated September 25, 2014, in which she identified the development of a new strategic vision for community safety and policing and control over the rising cost of policing as priorities for your Ministry.

As you are aware, the costs of policing have risen dramatically over the last decade. As reported by the MacDonal Laurier Institute in its report "The Blue Line or the Bottom Line of Police Services in Canada?", police budgets have increased at a rate double that of GDP in the last ten years. In Ontario, the Province and municipalities now spend more than \$4 billion annually on policing, and taxpayers are saddled with the highest per capita policing costs in Canada. While a myriad of factors have contributed to police cost increases, the significance of our collective financial investment is indisputable.

While cost is an important factor in the development of a new policing model for the Province, we submit that there are many others that have precipitated the need for reform: decreases in crime, increasing complexity factors to public safety challenges, technological advancements, and higher expectations among the public for accountability. It is a well-documented reality that very significant and rapid changes are occurring in the makeup of Ontario society which will have a profound impact on how Police Services are delivered in the Province. The current *Police Services Act* identified the coming changes in its opening Statement of Principles when it referred to the 'need for sensitivity to the pluralistic, multiracial and multicultural character of Ontario Society and the need to ensure that Police Forces are representative of the communities they serve.' It is a credit to the leadership of the policing community that most police services have some representation from the racialized community. However, with the rapid demographic changes occurring in Ontario today and in the very near future, concerted efforts need to be undertaken by the Police leadership to ensure that police services of tomorrow reflect the demographics of the society they serve.

The other reality in the Ontario Society of tomorrow is the significant increase in the ageing population of Ontario. This vulnerable segment of Ontario Society will require special skills and understanding from the Police community to meet their needs. Other service providers in Ontario have undertaken detailed studies to prepare themselves for tailoring their services to the unique challenges of an ageing society.

In addition to the ageing population, Ontario society is becoming increasingly aware of the devastating impact of mental illness. Recent events in Ontario have highlighted the need for the policing community to understand and handle situations arising from the impact of mental illness. Unfortunately it is a reality that requires all service providers and society generally to show compassion and understanding in dealing with these situations.

The practice of 'carding' and the use of force by the police have been issues at the forefront of our public discourse. We would encourage you to create a legislative imperative to address these and other critical realities which will have a significant impact on how police services are delivered in Ontario. It is equally important that the training programs undertaken by the Police College in Ontario are significantly enhanced to equip Police officers with the understanding of these critical issues and the ability to deal with them with compassion.

With this context in mind, we would suggest that amendments to the *Police Services Act* be guided by three overarching, mutually-reinforcing objectives:

1. Enhancing public trust and police legitimacy
2. Improving the quality of police service delivery
3. Providing opportunities for greater efficiency

I would like to expand on possible amendments to the *Act* and its associated Regulations that would support the achievement of these objectives.

1. Enhancing public trust and police legitimacy

It is well understood that in order for the police to be effective, they must earn the confidence and trust of the people they serve. Public trust is the foundation for effective policing, and in its absence, it is impossible for the police to attain their goals. Many citizens would assert that over the past several years, we have witnessed, to a certain degree, an erosion in the trust and esteem in which our police are held. This trend was noted in the recent publication by the Council of Canadian Academies, "Policing Canada in the 21st Century: New Policing for New Challenges". While the police do maintain strong public approval ratings overall, any diminution in trust and subsequent legitimacy cannot be left unchecked. At its core, amendments must seek to restore and maintain

high levels of public trust in our police. We would offer the following suggestions in order to foster this objective.

a) Strengthen civilian governance

An effective system of governance that places the citizen at the forefront is essential for the public to preserve trust in its police service. We believe that the legislative framework should clearly reflect this principle, so that the values and expectations of citizens are integrated more comprehensively into police service delivery. While the Adequacy and Effectiveness of Police Services Regulation (the Adequacy Regulation) prescribes the consultations that the Board must undertake as part of its Business Plan, engaging with the public and community groups on an ongoing basis should become a more entrenched feature of police governance. For example, consultative committees composed of citizens may generate greater public engagement and help to cultivate trust and build police legitimacy. While the current *Act* does not preclude such mechanisms, we believe that there is a need for the new *Act* to take innovative approaches to instill a greater degree of public representation into governance processes.

As you know, following Justice Morden's Independent Civilian Review Into Matters Relating to the G20 Summit Report in 2012, the role of the Police Board came under intense scrutiny. As part of the public dialogue on this issue, a central question arose about the appropriate level of direction a Board may give to its Chief of Police. While it is apparent that there is a lack of clarity in this area, we believe this is promulgated by a promotion of an inaccurate interpretation of the *Act*, rather than a lack of clarity in the *Act* itself. As Justice Morden astutely expressed in his report:

"It is sometimes said, in simple and general terms, that policies are for the Board and operations are for the chief of police and that the two must always be kept separate. Apart from being impossible to apply in its own terms, this statement does not represent what the statute provides" (page 54).

And further:

"The 1990 legislation... was intended to strengthen the role of the police services board and give a more precise definition of its role and responsibilities. The responsibilities of the Board under the *Police Services Act* with respect to determining "after consultation with the chief of police", objectives and priorities respecting police services in the municipality (section 31 (1)(b)), and establishing policies for the effective management of the police force (section 31 (1)(c)) dovetailed with the Chief's duty under section 41 (1)(a) to administer "the police force and oversee its operation in accordance with the objectives, priorities, and

policies established by the Board under subsection 31 (1)", are clearly inconsistent with any right on the part of the Chief not to discuss fully with the Board both contemplated and completed police operations." (page 55).

We agree with Justice Morden that the assumption that Boards may not be involved in operational matters represents an inaccurate reading of the law. The *Act* states the Board shall not direct the Chief with respect to "specific operational matters" or with respect to "the day-to-day operations of the Police Service." We believe that this interpretation is paramount, and that the Board's existence is premised on an informed understanding of the operations of the Police Service. Indeed, the policies of the Board are intended to affect the manner in which the police operate in the municipality, and it is the Board that determines priorities and objectives for policing in the community, after consultation with the Chief of Police. It is not reasonable that the Board assume this function in the absence of an operational context. We would therefore emphasize that the fact that the *Act* is not consistently interpreted by those who work within its parameters requires attention in the upcoming legislative review. We believe that Boards should retain the authority that is currently invested in them as representatives of the public, and we are pleased that the Province intends to offer greater precision and clarity that will communicate the appropriate roles of Boards and Chiefs and therefore foster greater accountability.

Given the significant role played by the Board, we would also advocate for mandatory education for new Board members, provided by the Province. A standard curriculum would enable Board members to understand their roles, the context in which they assume them, and the rules by which they must abide. We would also propose that the majority of members of the Board continue to be appointed by the local municipality, as we communicated to you in a letter from the Big 12 dated May 22, 2015, given it is the local taxpayer who pays for policing. It would be extremely difficult for us to accept a departure from this practice. Further, all appointees to a Board should be assessed according to a set of competencies and be subject to a background check. We believe that these measures would provide a strong foundation in which Boards can operate and contribute to greater public confidence in our police services.

b) Address shortcomings in the complaints and disciplinary system

Part V of the *Police Services Act* establishes the processes that must be followed for complaints and disciplinary hearings. As you know, this part of the *Act* was subject to a major overhaul in 2009 to create the Office of the Independent Police Review Director (OIPRD). It is our position that additional changes are needed to this area of the *Act* to improve the accountability framework for policing. Most egregious within the current system is the prohibition to suspend a police officer without pay. This has been a source of frustration

for Police Chiefs and Boards for many years, and in many communities has caused significant consternation among the public. We would add that Ontario remains the lone Province that prevents a Chief from having this authority. We believe strongly that the *Act* should be amended to enable officers to be suspended without pay and that this step would enable us to preserve the public trust to a higher degree. Furthermore, we would ask for consideration of a review of the OIPRD investigation of complaints to ensure the process is as efficient and responsive as possible.

In Durham we have had cases that languish through a litigious and costly disciplinary process that undermine public trust. When an officer is able to earn his full salary over eight years, despite a criminal conviction, there is something clearly wrong. We would suggest to you that the entire process for resolving conduct matters is overly rigid, and that a lack of accountability weakens the perception of the police as guardians of fairness and justice. Penalties for misconduct are based upon case law, and in the mind of the public, may not reflect the seriousness of the misconduct. The process to dismiss an officer is far too lengthy, and too often police officers are treated differently than they would if they were employed in an alternate field. This practice serves to reinforce the perception that police officers are subject to a different set of rules, to the detriment of public trust in their profession. As former OPP Commissioner Chris Lewis noted in a recent on line article, "If an applicant with a conviction for most criminal offences isn't going to be considered for employment in policing to begin with, that shouldn't change once hired". Offences for which conduct will result in dismissal should be articulated clearly in the law. We believe that this would set clear expectations and demonstrate to the public that uniform members who are entrusted to serve them will be held to a high standard of behavior, both on and off-duty.

2. Improving the quality of police service delivery

a) Clearly define what police roles are (and what they are not)

As noted earlier, the public expectations of the police, and the society in which they wield their powers, has changed considerably over the past quarter century when the *Police Services Act* was conceived. Quite simply, it is no longer practical for a fully armed and trained police officer to assume many of the roles that we now ask of them. Many roles could be undertaken by other agencies, or by civilians within a police agency. The recent study by the Council of Canadian Academies articulated the emergence of a security web, including many service providers, as its central theme.

"Both the demands on police and the context in which they work have changed considerably since police were initially institutionalized to provide public security in Canada. Foremost among these changes has been the growth of the safety and

security web. The web comprises an increasing number of non-police organizations — including private security, local health professionals, community and municipal groups, and other government organizations — that now interact with one another and with police in the provision of safety and security. The safety and security web presents both the central challenge and the central opportunity for Canada's police in the 21st century" (page xi).

When the Future of Policing Advisory Committee was struck in 2012, its primary goal was to determine core and non-core police services in support of effective, efficient and sustainable police service delivery. We believe that the imperative of this task remains and that this exercise is crucial to our reform efforts. While we appreciate that the Strategy for Safer Ontario envisages a much broader framework, the importance of clearly articulated police duties, activities and functions should not be overlooked. You will recall that the Commission on the Reform of Ontario's Public Services Report in 2012 (the Drummond Report) also recommended a review of the core responsibilities of police to eliminate their use for non-core duties, and an examination of alternative models of police service delivery. We believe that there remains significant opportunity to pursue alternative ways to provide community safety, and we expect that this will be a key feature of the legislative modernization that you are embarking on.

b) Increase the professionalization of policing

Our current method of hiring a police officer and then sending him or her to training to qualify as a police officer is not entirely rational. We believe that the accreditation of police officers would strengthen the quality of recruits and the delivery of the services that they provide. Successful completion of an accredited program prior to being hired would go a long way toward creating a more professional model of policing, and augment the level of knowledge, skill and ability a police employee will bring to their career. Indeed, such a system is already in place for the vast majority of professions, from engineers to nurses, to teachers and accountants. There is no compelling argument for why policing should be different. A higher level of professional sophistication, education and experience is required of police officers to meet the complex challenges that they will face during their careers. The Quebec model for police training may be an example that the Province could look towards as it explores this possibility.

Our position is that a departure from the generalist model of police organization to greater specialization would also strengthen police practices and improve service delivery. Threats such as cybercrime require unique skill sets, ones that vary significantly from those required for other forms of police work, such as specialized

investigation or general patrol. The Association of Municipalities of Ontario (AMO) 2015 report on Policing Modernization expands upon this theme in greater detail, and concludes that greater civilianization would benefit policing by offering cost savings and by enabling greater specialization of labour. It is noted that in Mesa, Arizona, civilian investigators are responsible for home and car burglaries that are no longer in progress. We believe that changes to how labour is organized in the police setting will support better decision making and service delivery, and we ask that sufficient flexibility be built into the new legislative regime.

c) Support evidence-based decision making

An enhanced approach to performance measurement is necessary for the police sector to make more evidence-based decisions. This need has been well articulated in various studies, including the AMO report, the study by the Council of Canadian Academies, and the MacDonald Laurier Institute report. The adoption of uniform measures will support innovation and apply a more “business savvy” lens to evaluating the effectiveness of police programs and services. We recognize the challenge associated with measuring the impact of police work; assessing the value of human service is fundamentally different than quantifying the value of a private company, whose motivation is profit. Nonetheless, we believe that this area has been neglected for too long and that a standardized measurement framework would be a valuable tool that would assist police services across the Province in providing safer communities. We hope that your Ministry places priority upon the current performance measurement deficit as it renews the current legislation.

3. Providing opportunities for greater efficiency

a) Enable greater local autonomy

While we appreciate the Province’s interests in ensuring appropriate levels of police service across Ontario communities, we believe that there are areas of the *Act*, and in particular, in the Adequacy Regulation, which are overly prescriptive and affect our ability to manage local policing. For example, the Adequacy Regulation requires that a Board develop a Business Plan at least once every three years. In other sectors, such as education and health care, five year plans (or longer) are generally the norm. The ability to decide upon our own timeframe, according to our own local needs, in matters such as this would be beneficial. This Regulation also stipulates a lengthy number of requirements for processes and procedures, and we would question their utility as we advance towards more outcome focused objectives that are supported by rigorous performance measurements.

Other areas of the *Act* that infringe upon local independence include the requirement that the Ontario Civilian Police Commission to approve a layoff of a police member should a decision be made to reduce the size of the Service. While we are certainly not contemplating this option at this point in time, we would hold that this obligation is unnecessarily constraining and does affect our ability to operate efficiently.

b) Facilitate alternative Means of Service Delivery

There are sections of the *Act* that dictate that a Board is responsible for the provision of service when alternatives would be far more viable. For example, the Board is required to provide court security under the *Act*. While we appreciate that the Province has uploaded a portion of the cost of these services, the current system is far less efficient than if a centralized model existed across the Province. The emergence of public safety officers, who are not fully trained and armed police officers, is another area we would like to see explored more fully. Such officers have been deployed in communities such as Winnipeg and Vancouver, and more recently in Sudbury. While we understand that the *Act* may not prohibit such positions, an expression within the statute of what their duties may be and the accountability regime governing the conduct of such officers may generate a greater willingness to implement these positions locally.

c) Modify the labour relations scheme set out in the Act

We have previously expressed our dissatisfaction with the arbitration system, and the need for reform to arrest the pattern of leapfrogging that pervades collective bargaining in our sector. Quite simply, arbitrators are not held accountable for how they apply the criteria in the *Act*. Because of the replication factor, an imbalance at the bargaining table has occurred and police members have enjoyed salary increases that far outpace those received by other municipal employees, at significant cost to the taxpayer. Legislative amendments that would provide municipal police services greater flexibility in managing human resources would also enable us to operate more efficiently. More specifically, the exclusion of certain police members, beyond the chief and deputy chiefs, from membership in a bargaining unit to minimize the effects of conflict of interest situations would be an important consideration. As it currently stands, the Board is obligated to negotiate a collective agreement with a Senior Officers' Association that includes its own Director of Human Resources and the Director of Finance, the very people who control the information the Board relies upon to conduct collective bargaining effectively. We question the reasonableness of the requirement to conduct collective bargaining with our senior managers, and hope that an alternative can be conceived. We would also suggest that there would be value to examining changes to the *Act* that would expand the ability of Boards to rely upon the expertise and knowledge

of civilian staff, for example, at the level of deputy chief. Boards should also be able to delegate the bargaining function to municipal staff, should they so desire.

In closing, while the current *Police Services Act* has served its purpose well for the last quarter century, the evolution of our society, combined with changes to the types of public safety challenges that confront us, require the development of new approaches. We are enthusiastic about the future of policing and we are keen to work with all stakeholders to ensure we build a new model that places greatest value upon trust, fairness and sustainability.

We intend to work with our Big 12 colleagues and the Ontario Association of Police Services Boards in the coming months to advance these and other proposals further. We would welcome the opportunity to meet with you or your representatives to discuss these ideas. Once again, thank you for your commitment to consultation on this very important initiative.

Sincerely,



Roger Anderson
Chair

c.c.: Chief Martin
President Bain, Ontario Association of Police Services Boards
Big 12 Chairs
Local MPPs