

Bill 175, the Safer Ontario Act, 2018

This document provides an overview of those legislative changes under Bill 175, the *Safer Ontario Act, 2018*, that will largely affect Council's roles and responsibilities with respect to the Ottawa Police Services Board when the provisions come into force at a later date. As noted in the 2018-2022 Governance Review report, Bill 175 received Royal Assent on March 8, 2018.

Bill 175 Provisions in Effect as of January 1, 2019 – Changes to the Existing Police Services Act

1. Mandatory community safety and well-being plan and advisory committee

As noted in the sections of the 2018-2022 Governance Review report relating to Advisory Committees and Crime Prevention Ottawa, Bill 175 will require municipal councils to prepare and adopt a community safety and well-being plan. This process requires that a municipality establish a community safety and well-being advisory committee.

This particular provision is to come into force on January 1, 2019, and will amend the existing *Police Services Act*. Councils must adopt the plan before the second anniversary of the provision taking effect [i.e., before January 1, 2021].

Recommendations to address these requirements are made in the above-noted sections of the 2018-2022 Governance Review report.

These requirements will continue under the new *Police Services Act, 2018*, that will come into force on January 1, 2020.

Bill 175 Provisions in Effect as of January 1, 2020 – The New Police Services Act, 2018

1. Name change for municipal police boards

Under Subsection 31(1) of the new *Police Services Act, 2018*, municipal police boards shall be known as the “(insert name of municipality) Police **Service** Board”, rather than the “... Police **Services** Board”.

Bill 175 included a consequential amendment to the *City of Ottawa Act, 1999* to amend the Ottawa Police Services Board's name accordingly. This change is to come into force upon proclamation, a date for which has not been announced.

2. Council appointment matters

A. *Increased focus on diversity, including requirements to develop a diversity plan and consider diversity in making appointments to police boards*

Bill 175 includes a number of new measures relating to diversity. Generally, under Subsection 10(1) of the *Police Services Act, 2018*, police service boards will be required to “provide adequate and effective policing in the area for which they have policing responsibility **in accordance with the needs of the population in the area and having regard for the diversity of the population in the area**” [emphasis added]. Currently, the *Police Services Act* provides that a municipality “shall provide adequate and effective police services in accordance with its needs,” [Subsection 4(1)] and that a police services board, “is responsible for the provision of adequate and effective police services in the municipality ...” [Subsection 31(1)].

Among specific new requirements relating to diversity, Council will be required to establish a mandatory diversity plan regarding the members it appoints to the police board. Specifically, Subsection 28(1) of the new *Police Services Act, 2018* will require municipal councils that maintain a municipal board to “prepare and, by resolution, approve a diversity plan to ensure that the members of the municipal board appointed by the council are representative of the diversity of the population in the municipality.” Subsection 28(5) of the legislation requires that the municipal diversity plan must be approved before the **later** of:

- 12 months after the day that Section 28 of the *Police Services Act, 2018* comes into force; and
- 12 months after the municipal Council constitutes its municipal board.

The municipal diversity plan must be reviewed by Council and, if appropriate, revised at least once every four years [Subsection 28(3)]. Council will also be required to publish reports on the implementation of the plan in accordance with the regulations [Subsection 28(4)], which have not been released at the time of this writing.

Section 33 of the *Police Services Act, 2018* also includes specific matters that Council will be required to consider when appointing or reappointing a police service board member. Specifically, these considerations include as follows:

- a) the need to ensure that the police service board is representative of the area it serves, having regard for the diversity of the population in the area;
- b) the need for the police service board to have members with the prescribed competencies, if any; and
- c) any applicable diversity plan.

Furthermore, Subsection 29(1) of the *Police Services Act, 2018* provides that, if the need to appoint a new member of a police service board by resolution of Council is “reasonably foreseeable,” Council shall, “take reasonable steps to promote the availability of the appointment to members of demographic groups that have been historically underrepresented on police service boards, including racialized groups and First Nation, Inuit and Métis communities.”

B. New requirement for Council to consider the results of a police record check when making an appointment

Bill 175 introduces a new, mandatory requirement for Council (or any other appointing person or body) to consider the results of a potential appointee’s police record check that was prepared within the past 12 months before appointing him or her as a member of a police service board [Subsection 33(2) of the *Police Services Act, 2018*].

C. New restrictions on board member eligibility

Under another new provision set out in Subsection 33(5) of the *Police Services Act, 2018*, a former member of a police service is not eligible to be a member of a police service board unless the board does not maintain a police service that the person was a member of, and at least two years have passed since the person ceased to be a member of any police service. Also ineligible are a judge or justice of the peace; a member of a police service, a special constable or a First Nation officer; any person who practices criminal law as a defence counsel or as a prosecutor; or a director, officer or employee of a prescribed policing provider.

Currently, Subsection 27(13) of the *Police Services Act* provides that “a judge, a justice of the peace, a police officer and a person who practises criminal law as a defence counsel may not be a member of a board.”

D. New requirements for prescribed police service board member training

Under Subsection 35(2) of the *Police Services Act, 2018*, police service board members will be required to complete prescribed training with respect to the specific matters as follows:

- The role of a police service board;
- Human rights and systemic racism;
- Training that promotes recognition of and respect for,
 - the diverse, multiracial and multicultural character of Ontario society, and
 - the rights and cultures of First Nation, Inuit and Métis Peoples; and
- Any other prescribed training.

Currently, Subsection 31(5) of the *Police Services Act* requires that, “The board shall ensure that its members undergo any training that the Solicitor General may provide or require.”

3. Board size – New requirements and options

Bill 175 includes a number of new provisions related to the size of police service boards, including increased authority for municipal Councils to determine the size of the board by resolution. Under the changes, police service boards may be composed of five members, seven members or nine members [Subsection 31(3) of the *Police Services Act, 2018*]. The default size of a board will be five members unless a Council passes a resolution to increase the size [Subsection 31(2)].

The current *Police Services Act* [Section 27] generally prescribes the size of a police services board to be three or five members, with seven-member boards permitted in certain circumstances. Specifically, a municipality with a population of more than 300,000 may apply to the Lieutenant Governor in Council for an increase in the board size to seven members.

The Ottawa Police Services Board currently includes seven members – Subsection 6(3) of the *City of Ottawa Act, 1999* provides that, “On January 1, 2001, the city shall be deemed to have applied for, and the Lieutenant Governor in Council to have approved, an application ... to increase the size of the Ottawa Police Services Board to seven members.”

Under the existing *Police Services Act*, a seven-member board is composed of:

- (a) the head of the municipal council or, if the head chooses not to be a member of the board, another member of the council appointed by resolution of the council;
- (b) two members of the council appointed by resolution of the council;
- (c) one person appointed by resolution of the council, who is neither a member of the council nor an employee of the municipality; and
- (d) three persons appointed by the Lieutenant Governor in Council.

As noted above, Bill 175 states that police service boards will have a default size of five members, unless a Council passes a resolution to change the size. A municipality that passes such a resolution may determine whether its board is composed of five, seven, or nine members. A nine-member board would have the same composition as a current seven-member board, but would include one additional Member of Council and one additional provincial appointee.

There are transition provisions set out in Subsection 31(13) of the *Police Services Act, 2018*, that provide for a municipal board to continue to have the number of members that it had under the current *Police Services Act* until the earlier of,

- a) the day the municipal council passes a resolution to increase the board size; or
- b) the day that a new municipal council is organized following the first regular municipal election after the day the relevant provision comes into force. If council does not pass a resolution before the day that the new council is organized, the default number of five members will apply to the board as of that day [Subsection 31(14)].

Staff will continue to review these requirements and transition provisions in Bill 175 to determine whether Council may need to confirm the current size of the Ottawa Police Services Board by way of resolution once the relevant sections come into force, should Council wish to maintain the current seven-member board.

4. New provisions regarding board reporting and information sharing with Council

Bill 175 includes some new requirements with respect to board reporting and information sharing with Council. Some of the provisions appear to add new language

or amend language that is present in current requirements under the *Police Services Act* and/or its regulations.

For example, Bill 175 requires a police service board to “make best efforts to negotiate and enter into a protocol with its municipal council ... that addresses the sharing of information with the council, including the type of information to be shared and the frequency for sharing such information” [as set out in Subsection 41(3) of the *Police Services Act, 2018*]. It is noted that, further to existing requirements with respect to information sharing under *Ontario Regulation 3/99 regarding Adequacy and Effectiveness of Police Services*, that Council and the Ottawa Police Services Board have a “Protocol for Sharing Information With Council” (Policy Number: GA-6), which was last reviewed in 2017 and is due to be reviewed in 2020.

Under Section 39 of the *Police Services Act, 2018*, the police service board will also be required to adopt a strategic plan. The plan must address a large number of prescribed matters, including how the police service board will ensure the provision of adequate and effective policing in accordance with the needs of the population in the area; the objectives, priorities and core functions of the police service; quantitative and qualitative performance objectives and indicators of outcomes relating to a number of topics; interactions with youth, members of racialized groups, members of First Nation, Inuit and Metis communities; and more. In preparing or revising the strategic plan, the police service board is required to consult with a number of groups, including the municipal Council. Currently, *Ontario Regulation 3/99 regarding Adequacy and Effectiveness of Police Services* provides that the police services board must develop a “business plan” that includes some, but not all, of the same information.

In addition, Subsection 41(1) of the *Police Services Act, 2018*, provides that the police service board is required to file an annual report with its municipal council or band council regarding,

- a) the implementation of the board’s strategic plan and the achievement of the performance objectives identified in the strategic plan;
- b) the affairs of the police service;
- c) the provision of policing as it relates to any community safety and well-being plans adopted by the municipalities or First Nations that are in the board’s area of policing responsibility; and
- d) any other prescribed matters.

The board shall also publish the annual report in accordance with the regulations, which have not been published at the time of this writing [Subsection 41(2)].

5. Agreement to provide additional policing; prescribed policing providers

Bill 175 includes options relating to the provision of certain policing functions, including provisions with respect to the potential use by a police service board of prescribed “policing providers” to provide certain policing functions that do not need to be provided by members of a police service [see Subsection 14(1) of the *Police Services Act, 2018*]. Details would be set out in regulation.

Under Subsection 17(1) of the *Police Services Act, 2018*, a police service board may also enter into a written agreement with a municipal council (or with any other person), “to provide policing that is not required as a component of adequate and effective policing, or to provide other specified services, in the area.”

6. Budget matters

Bill 175 provides that a municipality that maintains a police service board shall provide the board with sufficient funding to provide adequate and effective policing in the municipality, and to pay the expenses of the board’s operation, other than the remuneration of board members [Section 50 of the *Police Services Act, 2018*].

If the police service board is not satisfied that the budget established for it by the municipal council is sufficient for these purposes, Bill 175 provides that the board may give the municipal council written notice referring the matter to arbitration. The board and the council may jointly appoint an arbitrator within the prescribed period after the notice is provided to the municipal council. If they do not jointly appoint an arbitrator within prescribed period, either party may apply to the chair of the Arbitration Commission to appoint an arbitrator.

If the municipal council demonstrates during arbitration that the police service board could reasonably have entered into an agreement with another entity to have policing functions provided in a manner that meets the applicable standards for adequate and effective policing and at a lower cost than is set out in the estimates, “the arbitrator shall not find that the budget is insufficient to the extent of the amount that could have been saved by entering into the agreement” [Subsection 50(9) of the *Police Services Act, 2018*].

In addition, a Council “shall amend the budget for the municipal board in accordance with the arbitrator’s decision” [Subsection 50(10) of the *Police Services Act, 2018*].

Under the current *Police Services Act*, if the board is not satisfied that the budget established for it by council is sufficient, “to maintain an adequate number of police officers or other employees of the police force or to provide the police force with adequate equipment or facilities,” the board may request that the Ontario Civilian Police Commission determine the question [Subsection 39(5) of the existing *Police Services Act*]. The current legislation requires that the Commission – which is an independent, quasi-judicial agency that hears appeals, adjudicates applications, conducts investigations and resolves disputes regarding the oversight and provision of policing services – shall hold a hearing regarding same.

7. Board meetings – New provisions with respect to notice and closed meetings

Bill 175 includes new provisions with respect to meetings of police service boards. This includes a new requirement for a police service board to publish notice of a meeting, including the proposed agenda for the meeting, at least seven days before the meeting, except in “extraordinary circumstances,” as set out in Subsection 43(6) of the *Police Services Act, 2018*. Under Subsection 35(3) of the current *Police Services Act*, notice of board meetings and hearings “shall be published in the manner that the board determines.”

Furthermore, Bill 175 also expressly provides that meetings of the police service board, or of a committee of the board, shall be open to the public, subject to new, revised closed meeting provisions that are similar to those in the *Municipal Act, 2001* and more specific than those contained in the current version of the *Police Services Act*.

Specifically, Subsection 43(3) of the *Police Services Act, 2018* states that, “Subject to section 44, meetings conducted by the police service board, or by a committee of the board, shall be open to the public.” Section 44 states as follows:

“When meetings may be closed to public

44 (1) A meeting or part of a meeting of a police service board, or of a committee of the board, may be closed to the public if the subject matter being considered is,

- (a) the security of the property of the board;
- (b) personal matters about an identifiable individual, including members of the police service or any other employees of the board;

- (c) a proposed or pending acquisition or disposition of land by the board;
- (d) labour relations or employee negotiations;
- (e) litigation or potential litigation affecting the board, including matters before administrative tribunals;
- (f) advice that would be inadmissible in a court by reason of any privilege under the law of evidence, including communications necessary for that purpose;
- (g) information explicitly supplied in confidence to the board by Canada, a province or territory or a Crown agency of any of them, a municipality or a First Nation;
- (h) a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (i) a trade secret or scientific, technical, commercial or financial information that belongs to the board and has monetary value or potential monetary value;
- (j) a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the board;
- (k) information that section 8 of the *Municipal Freedom of Information and Protection of Privacy Act* would authorize a refusal to disclose if it were contained in a record; or
- (l) an ongoing investigation respecting the police service board.

When meetings must be closed to the public

(2) A meeting or part of a meeting of a police service board, or of a committee of the board, shall be closed to the public if the subject matter being considered is a request under the *Municipal Freedom of Information and Protection of Privacy Act*.

Educational or training sessions

(3) A meeting of a police service board, or of a committee of the board, may be closed to the public if the following conditions are both satisfied:

1. The meeting is held for the purpose of educating or training the members of the board or of the committee.
2. At the meeting, no member of the board or committee discusses or otherwise deals with any matter in a way that materially advances the business or decision-making of the board.

Resolution

- (4) Before holding a meeting or part of a meeting that is to be closed to the public, the police service board or committee, as applicable, shall state by resolution,
 - (a) the fact of the holding of the closed meeting and the general nature of the matter to be considered at the closed meeting; or
 - (b) in the case of a meeting under subsection (3), the fact of the holding of the closed meeting, the general nature of its subject-matter and that it is to be closed under that subsection.”

Currently, Subsections 35(3) and 35(4) of the *Police Services Act* provides only that “Meetings and hearings conducted by the board shall be open to the public...,” and that the board, “may exclude the public from all or part of a meeting or hearing if it is of the opinion that,

- (a) matters involving public security may be disclosed and, having regard to the circumstances, the desirability of avoiding their disclosure in the public interest outweighs the desirability of adhering to the principle that proceedings be open to the public; or
- (b) intimate financial or personal matters or other matters may be disclosed of such a nature, having regard to the circumstances, that the desirability of avoiding their disclosure in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that proceedings be open to the public.”

8. Establishment of new Inspector General of Policing to oversee police service boards

Under Subsection 79(1) of the *Police Services Act, 2018*, the Lieutenant Governor in Council shall appoint an Inspector General of Policing and may appoint one or more deputy Inspectors General.

Among other things, the Inspector General's duties as set out in Subsection 79(3) of the *Police Services Act, 2018*, include as follows:

- Monitoring and conducting inspections of police service boards to ensure they comply with the *Police Services Act, 2018* and the regulations;
- Consulting with and advising police service boards regarding compliance with the *Police Services Act, 2018* and the regulations;
- Monitoring and conducting inspections of members of police service boards to ensure that they comply with their applicable code of conduct;
- Dealing with complaints that a member of a police service board is not complying with the applicable code of conduct; and
- Dealing with complaints regarding a variety of policing matters under the new *Police Services Act, 2018*. These include matters such as the adequacy and effectiveness of policing provided under the Act or regulations; a failure of a police service board, chief of police, police service or prescribed policing provider to comply with the Act or the regulations, other than professional misconduct; the policies of a police service board; or the procedures established by a Chief of police.