

York Regional Police Services Board
Independent Police Oversight Review – Questions for Police Services Boards

1. What role does your organization play in relation to police oversight?

The Police Services Board (the “Board”) is the civilian body that oversees York Regional Police. The Board ensures the effective management of the police service and establishes objectives and priorities for the police service in consultation with the Chief of Police (the “Chief”). The Board directs the Chief through policy and the Chief implements or operationalizes the Board’s direction. The Board monitors compliance with legislation and with board objectives through reporting requirements for the Chief.

The following are examples of provisions in the *Police Services Act* (the “Act”) that engage Boards directly in civilian oversight:

- The Board is required to establish guidelines for dealing with public complaints under Part V of the *Act* and to monitor the Chief’s administration of the public complaints system.
- The Board is also required under the *Act* to review complaints against the Chief or Deputy Chiefs when such complaints are referred by the OIPRD and to make determinations based on its review. If there is a finding of misconduct and the Board views the complaint as serious, it must hold a hearing into the matter or refer it to the Ontario Civilian Police Commission (“OCPC”) for a hearing.
- The Board is also responsible for review of the Chief’s disposition of a police policy complaint or service complaint if a complainant requests.
- Under Section 83 of the *Act*, disciplinary proceedings must be commenced within six months unless, upon referral by the Chief, the Board is of the opinion that the delay beyond this period was reasonable.
- The Board is required to develop a Business Plan for York Regional Police (“YRP”) every three years.
- The Board is responsible for approving the operating and capital budgets for YRP.

2. Ideally, what role should your organization have in relation to police oversight?

The Board’s role, as the body that exercises civilian governance over the police service that it oversees is, and properly should be, limited to the specific areas mandated for Boards pursuant to section 31 of the *Act*. As noted, those areas include:

- recruiting, appointing, directing and monitoring the Chief and Deputies
- determining the objectives and priorities of the police service
- establishing policies for the effective management of the police service
- dealing with complaints pursuant to Part V of the *Act*.

In its submission to the province on the *Police Services Act* reform our Board made the following recommendation: Given the significant role that police services boards play in ensuring police accountability and public confidence in the police, our Board

recommends that the quality of police governance and oversight in Ontario needs to be strengthened and more vigorously supported by the Province.¹

While the Board submits that the current model of oversight by three separate bodies could be streamlined, the Board believes that the model of third party oversight supports and promotes public confidence in police services.

With respect to the Board's review and oversight role, the Board is of the view that it would be appropriate to remove the Board's role under s. 83(17) of the Act as it relates to public complaints. The role of the Board under s. 83(17) as it relates to Chief's complaints is appropriately within its purview.

3. What interaction does your Board have with the three police oversight bodies: the Special Investigations Unit, the Office of the Independent Police Review Director, and the Office of the Civilian Police Commission?

The Board does not deal with the SIU directly but receives mandated reports from the Chief pursuant to Section 11 of Ontario Regulation 267/10. These Section 11 reports highlight any issues or concerns found in the internal investigation.

The Board's interaction with OIPRD is related to the public complaints process. All public complaints received by the Board must be forwarded to OIPRD for screening. The interaction with OIPRD is limited to public complaints against the Chief or Deputy Chiefs and with respect to the review of service or policy complaints. In 2015, the OIPRD consulted with police services boards in relation to the new OIPRD Rules and Procedures, and our Board made submissions directly to OIPRD. Our Board's recommendations were not included in the final version of the OIPRD Rules as enacted in July 2016.

As noted in the response to Question #1, Section 83 of the *Act* sets out procedures governing disciplinary hearings involving misconduct by police officers. Section 83(17) of the *Act* provides:

If six months have elapsed since [the chief of police or the board received the complaint referred by the OIPRD] no notice of hearing shall be served unless the board, in the case of a municipal officer...is of the opinion that it was reasonable, under the circumstances, to delay serving the notice of hearing.

In accordance with Board procedure, in matters that have been retained and investigated by the OIPRD, the Chief will request submissions from OIPRD explaining the delay and include those submissions as part of the Delay Application. The Board will consider the OIPRD's submission.

The Board has not had any interaction with OCPC in recent years and is accordingly not in a position to comment on this issue.

¹ The Regional Municipality of York Police Services Board's Submission to Minister Yasir Naqvi, April 29, 2016, with respect to Strategy for a Safer Ontario.

4. What is the role of these oversight bodies in relation to the oversight provided by the boards? What should it be?

Our Board believes that the separation between police services boards and other oversight bodies be clearly maintained. The overall oversight role of police boards relates to the performance of the police service, relates to police service delivery to the public and to fulfilling its role under Section 31 of the Police Services Act. Boards are not legislated to oversee or investigate police wrongdoing unless it is referred by OIPRD for a complaint against a Chief or a Deputy Chief or by way of an internal investigation against the Chief or Deputy Chief.

The oversight of public complaints about police misconduct is the responsibility of OIPRD. However, our Board office has received queries and concerns from the public about police misconduct including why an oversight body i.e., the police services board, does not get actively involved in police wrongdoing. Complainants on a few occasions have questioned whether boards care about police misconduct and wrongdoing. To address the public's concerns, the public should be made fully aware of the role of OIPRD and the OCPC in order to promote and enhance public trust and confidence in the transparency and accountability of police services boards. Police oversight bodies need to engage the public further in relation to their respective roles and increase the public's awareness of their mandates through outreach and better communication.

5. Are the police oversight bodies transparent and accountable? Do they preserve fundamental rights?

In its defined oversight role pursuant to the provisions of the *Police Services Act*, the decisions and processes of the Board are public, pursuant to the limited exceptions described in section 35 of the *Act*. Accordingly, transparency and accountability are legislatively mandated.

In generally promoting transparency and accountability, the role of the respective oversight bodies should not infringe or overlap on the authority provided to police services boards, to the extent possible. Rather, the roles should be clearly defined and areas of redundancy and overlap should be avoided and, if they exist, they should be addressed. In particular, with respect to the most recent amendments to the OIPRD *Rules and Procedures*, there are concerns that the Director may be exceeding the jurisdiction conferred upon him by the *Act*, and there is at least the perception that there is little, if any, public accountability with respect to the changes which were unilaterally imposed.

With respect to accountability concerns relating to the OIPRD, as noted above, the Board identified concerns with the new OIPRD *Rules* which came into effect in July, 2016. Again, as noted, the Board was invited to comment on the proposed changes to the *Rules* in 2015 specifically as they relate directly to the functions and roles of Police Services Boards, and had particular concerns with Rules 12, 13 and 15. In each case, the Board was of the opinion that the Director imposed obligations or prohibitions upon Boards which exceeded his legislative mandate or which ran counter to the provisions of the *Act*.

Rule 12, which deals with extensions of time to serve notices of hearing pursuant to section 83(17) of the *Act* where complaints have been made against individual officers, Chiefs or Deputy Chiefs, now requires that the Director, who is not a party, be notified and allowed to make submissions on the issue of whether the delay was reasonable. This determination is, pursuant to the provisions of the *Act*, entirely within the purview of the Board and, as such, the Board should be entitled to determine substantive issues relating to the exercise of its discretion in coming to the requisite opinion, notwithstanding section 56(1)(b) of the *Act* which allows the Director to establish procedural rules for the handling of complaints by chiefs of police and boards.

Rule 13 deals with the Director's review of complaint investigations. In particular, Rule 13.6 directs a Chief not to apply to a Board pursuant to section 83(17) of the *Act*, despite the fact that the language in section 83(17) is mandatory in that no notice of hearing shall be served unless the Board is of the opinion that the delay in serving the notice of hearing was reasonable. By prohibiting the Chief from applying to the Board, the Director has improperly circumscribed a power specifically delegated to Boards pursuant to the *Act*.

Similarly, Rule 15.4 prohibits the Board from inviting or receiving submissions from any party other than the complainant during its review of a complaint about a Chief or Deputy Chief. In doing so, the Director has improperly curtailed the Board's discretion to review and deal with complaints as mandated by the *Act*.

With respect to the SIU, there have been concerns about the length of time for the completion of investigations. In 2015, the Board supported a resolution with respect to the adequate resourcing of the SIU. It is in the interest of all involved parties, including the public, for the SIU to complete its investigations in a thorough and timely fashion. The Chief of Police is unable to commence his/her own investigation, under section 11 of Ontario Regulation 267/10, until the Director reports the findings of the SIU investigations to the Attorney General. This delay compromises the Chief's ability to manage risks and undertake measures with respect to discipline or training, which impacts accountability. The Board supports more expeditious completion of investigations to minimize the impact on all involved parties, including interested members of the public.

6. Following a Section 11 review by a Chief of Police where SIU mandate has been triggered, should the identity of subject officers or any part of the Chief's report be released?

There is significant public interest in matters where the SIU mandate has been invoked therefore transparency and accountability are very important considerations to be weighed against privacy, confidentiality and legal interests that also arise with respect to subject officers and witness officers. This is an area where legislative amendments to, among other statutes, the *Police Services Act*, Ontario Regulation 267/10 (SIU) the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act* could potentially clarify and balance these competing interests.

While the Board supports and promotes more transparency in policing matters in particular with respect to use of force, it does not support the release of the identity of

subject officers following a section 11 review by the Chief. A section 11 report is triggered where the SIU investigation has concluded that criminal charges will not be laid and the officer has been “cleared” of any wrongdoing; if, on the other hand, criminal charges are laid by the SIU, or a formal internal discipline hearing is engaged, the public interest and confidence in policing will be properly promoted through scrutiny of the subsequent prosecution.

The Board supports the current language in Section 11 which leaves the decision up to police services boards – the civilian governing body that represents the public and the public’s interests; however, if the release of section 11 reports is legislatively mandated, the Board is of the opinion that the public reports should be redacted to remove identifying personal information of subject and witness officers.

7. Are the mandates of the police oversight bodies effective and clear?

The Board has previously supported the proposition that the mandate of the civilian oversight body, i.e. police service boards, could be made clearer. This could also apply to OCPC and OIPRD. The OCPC’s mandate as it is described on its website is very similar to the mandate of police services boards:

The Ontario Civilian Police Commission (OCPC) is an independent oversight agency tasked with ensuring that adequate and effective policing services are provided in a fair and accountable manner under the Ontario Police Services Act.

The role of the OCPC seems more of a catch-all versus a role with a distinct and clear purpose. It also needs to be clearly differentiated from the OIPRD. One example is section 25(1) of the *Police Services Act* which states:

“the Commission, may, on its own motion or at the request of the Solicitor General, the Independent Police Review Director, a municipal council or a board, inquire into and report on (a) the conduct or the performance of duties of a police officer, a municipal chief of police, an auxiliary member...or a member of a board.”

The distinction between the oversight role of OIPRD and the OCPC when it comes to police conduct becomes less clear.

The Board also recommends more clarity and perhaps more outreach with respect to the role of the OIPRD, OCPC and SIU. As indicated, police boards receive numerous calls with respect to police misconduct and complainants are often confused about the process and question the role of the board as the overseer in relation to police wrongdoing. Members of the public should be made more aware of where they can go should they have a concern or complaint.

8. Are there areas of overlap and inefficiency between the police oversight bodies?

As detailed above, there are currently areas where the respective mandates of the oversight agencies, particularly that of Boards and the OIPRD, overlap and may come into conflict. Aside from being inherently inefficient, such overlap does not enhance public trust and confidence in the successful delivery of police oversight. Clarification of roles, responsibilities and authority should be addressed, particularly where overlap leads to uncertainty and inefficiency.

As well, where there are overlaps, this leads to the issue of whose responsibility it is to resolve any differences between the various oversight agencies, and to whom the respective agencies are accountable. For example, while the SIU is subject to Ombudsman review, there does not appear to be any clear accountability process for oversight bodies like OIPRD and OCPC. This begs the question, what recourse does a member of the public have if they are not satisfied with services or the conduct of an oversight body? As noted in the response to Question # 4 of this submission, if the IPRD exceeds his jurisdiction, as expressed, is there any recourse or does the Board have to challenge the application of the *Rules* in court? While the IPRD operates under a Memorandum of Understanding with the Ministry of Attorney General, there is no clear oversight function of the substantive actions of the IPRD.

The Board respectfully submits, for consideration by Justice Tulloch, the concept of potentially amalgamating the SIU, OCPC and OIPRD. The Board suggests that a careful review of the respective responsibilities and functions of each body could strip away areas of overlap, inefficiency or potential conflict and reconstitute what remains into a single civilian agency or tribunal.

The concept of professional policing—i.e. that police be considered to be “professionals”, in much the same way that, for example, physicians, teachers, lawyers, or dentists are—supports the notion of having a single, statutorily mandated and circumscribed regulating body responsible for receiving, investigating, and adjudicating complaints and subsequently disciplining members of the professional body, where warranted. Potentially, in cases that engage criminal investigation, the SIU would still have an important role, either as a separate or appropriately independent body, to insure that police are not investigating police.

There are numerous models in existence throughout the Province already including the Law Society of Upper Canada, the College of Physicians and Surgeons, the Royal College of Dental Surgeons or the Ontario College of Teachers are examples of self-regulated governing bodies whose general complaint handling, investigative, and adjudicative functions could be comfortably grafted onto an appropriately independent amalgamated civilian oversight body dedicated to responding to and dealing with public policing complaints.

Under a merged model, there would be inherent or built-in oversight mechanisms through self-regulatory practices and regulations. To further public accountability, the regulatory body can report to a Board made up of members of the public who are both representative of the communities and who allow the rights of all stakeholders to be considered.