



Submission to the Standing Committee on Justice Policy

Stronger reforms to the current interest arbitration process than provided in this proposed legislation are necessary to provide a better balance between fair remuneration and local economic conditions, the ability of municipalities to pay as well as making interest arbitration awards more transparent and accountable.

Arbitrated salary awards in the emergency services have consistently exceeded the rate of inflation, cost of living and wage increases negotiated with other unionized staff in the same municipality. Recent collective agreements in the police sector have been in a moderate decline in the rate of wage increase but recent increases in the fire sector are likely to reverse that trend and push police wages back in an upward trend. Police wages remain in an upward trend – they are just increasing at a slower rate.

In response to the government's consultation on the "**Strategy for a Safer Ontario**," ESSC worked with the Ontario Association of Police Services Boards and the Association of Municipalities of Ontario to advocate for reforms to the labour relations provisions of the *PSA* including interest arbitration. Up to 90% of the budget of a police service is comprised of wages and benefits, matters that are often determined through interest arbitration if an agreement cannot be reached during collective bargaining. Despite the high percentage of agreement achieved through collective bargaining, wages and benefits in the police and fire sectors are heavily influenced by arbitration awards. As a result, restoring balance to the interest arbitration system is a key priority for municipalities and police services. It must form part of the reform of the *PSA* if reform is to have a meaningful impact on the fiscal sustainability of policing.

In order to ensure balance, transparency and accountability to the interest arbitration system, there must be substantive and meaningful reform to:

- Improve accountability and transparency of arbitration awards by requiring arbitrators to consider a municipality's capacity to pay based on a comparison of the freely negotiated bargaining settlements in the same municipality, including those of bargaining units with the right to strike and demonstrate such consideration in their awards. The criteria for comparison of wage settlements should not be limited to only emergency services.

- Establish clear, measurable criteria that include the evaluation of the economic health of the municipality, to be considered on the basis of the labour market characteristics, property tax and socio-economic factors.
- Enable either party to request written reasons for an arbitrator's award, and ensure such reasons demonstrate that the arbitrator gave due and proper consideration to the criteria.
- Deliver procedural changes to ensure that the arbitration system is timely and fair to both parties including limits on submissions and time limits for the delivery of written decisions.

Our submission to the consultations is attached as an appendix.

We further submit that more flexibility in the composition of Policy Services Board bargaining committees is required to ensure a fair playing field in arbitration processes.

Lastly, we also call upon the Legislature to provide more impactful changes to the ability of police chiefs to suspend officers without pay than are currently provided for in the proposed legislation.

We have attached our submission to the **Strategy for a Safer Ontario** consultations to provide you with detailed background on the amendments to Bill 175 that the ESSC respectfully requests be made by the Committee.

These are:

Exclusions from the Bargaining Unit

Part VII – Section 118 be amended to create additional exclusions from the bargaining unit for those personnel who are engaged in labour relations or whose jobs require them to provide labour relations advice to the Chief and/or Board in support of collective bargaining, grievance and arbitration and disciplinary matters. This would mimic similar provisions in the Labour Relations Act.

Bargaining Committee

Amend Part VII by deleting sections 120(1) and (2) to enable police services boards and/or the municipality responsible for policy services to determine how it will conduct its collective bargaining.

The Police Services Act remains the only statute that dictates the composition of the employer's bargaining committee. This provision restricts the ability of the employer to determine how to resource its bargaining committee. Police services boards should

have the same right as the associations and employers in other sectors to draw upon expertise and resources they deem appropriate.

Interest Arbitration

Amend Part IX the Police Services Act (sections 122-127) to provide for the following:

Procedure

Time and place of proceedings

(#) (1) Subject to subsection (2), the board of arbitration shall fix the time and place of the arbitration hearing and shall notify the Minister of the time and place and the Minister shall notify the parties. The arbitration hearing shall occur within the municipality in which the Service provides services.

When proceedings commence

(2) The board of arbitration shall begin the proceedings within thirty (30) days after he or she is appointed.

Time for submission of Issues

(#)(1) Upon confirmation of the date of the arbitration hearing, the board of arbitration shall convene a conference call within thirty (30) days, or such other time as the board of arbitration, in consultation with the parties, determines is appropriate, with the parties' representatives to discuss and direct the appropriate hearing procedure, and to resolve any preliminary issues regarding such process.

(2) Following the discussions required by subsection (1) above, the board of arbitration shall direct that:

(a) the parties exchange a written list of all of the matters that they intend to submit to the arbitrator, in the form of the proposed amendments to the collective agreement, thirty (30) days prior to the arbitration hearing or such other time as the board of arbitration, in consultation with the parties, determines is appropriate;

(b) a party shall not be entitled to raise any matter(s) at the arbitration hearing that were not disclosed in accordance with subsection (#)(a) except where the board of arbitration concludes that the failure to raise the issue previously was as a result of a material change in circumstances beyond the control of the party seeking to raise the matter(s);

(c) any other direction that the board of arbitration may determine is appropriate in the circumstances.

(3) The process determined pursuant to subsections (1) and (2) above shall be binding on the parties and the arbitrator shall not be entitled to relieve any party of their obligations set out therein except as expressly provided.

Limit on submissions

(#) (1) Subject to subsection (#) (2), a party shall not be entitled to raise any submissions or evidence following the arbitration hearing that would have been properly the subject of submissions either in the party's primary submissions or through oral submissions at the arbitration hearing.

Idem

(2) A party may provide arbitral awards and/or judicial decisions decision to the arbitrator post-hearing if,

(a) the arbitral award and/or judicial decision was not available prior to the arbitration hearing;

(b) the arbitrator permits the submission of same; and

(c) the other party is given an opportunity to make written submissions concerning the arbitral award and/or judicial decision.

(3) Where the opposing party is afforded the opportunity to make written submissions in accordance with subsection (#)(2)(c), any such submissions shall be made within twenty-one days from the date of the arbitrator's order permitting the submission of the decision. Following the opposing party's submissions, no further submissions may be made with respect to the arbitral award and/or judicial decision in question by either party.

Duty of arbitrator

(#). (1) The arbitrator shall convene an oral hearing to decide on the matters that are in dispute, but the arbitrator shall not decide upon the following: the employer's obligation to provide certain levels of services, the employer's obligation to provide certain types of equipment, the employer's obligation to provide or ensure certain levels of staffing or deployment.

Powers of the Arbitrator

(2) The arbitrator shall have all the powers of a chair and the members of a board of arbitration under the *Labour Relations Act, 1995*. SO 1995, c 1, Sch A

(3) In exceptional circumstances, the arbitrator shall be entitled to refer specific matters still in dispute back to the parties for further bargaining and direct that the parties do so. If so directed, the parties shall forthwith meet and bargain in good faith to attempt to resolve the matter(s) still in dispute. Within thirty (30) days of being directed to bargain, the parties shall advise the board of arbitration of the results of their bargaining. No information will be provided to the board of arbitration except to advise that the parties were successful, and the specific matter is no longer in dispute, or that the specific matter remains in dispute. The parties are not permitted to alter their remaining items in dispute after the bargaining process described in this subsection.

Criteria for Board of Arbitration's Decision

Repeal section 122(5) and replacing with the following:

122 (5) In making a decision or award, the arbitrator or arbitration board shall take into consideration all factors it considers relevant, including all of the following criteria:

- a) A comparison, as between the employees and other employees in the public and private sectors, of the terms and conditions of employment;
- b) Replication of freely negotiated collective bargaining settlements in the same municipality, including those who have the right to strike, and comparable municipalities having regard to the relative economic health of those municipalities;
- c) The economic health of Ontario and the municipality, including but not limited to changes to labour market characteristics, property tax characteristics and socio-economic characteristics;
- d) The employer's ability to attract and retain qualified employees;
- e) The interest and welfare of the community served by the police service; and,
- f) Any local factors affecting the community.

Time for decision

(#) The arbitrator shall give an award within 12 months after the conclusion of the arbitration hearing.

Written Reasons

(#) (1) Upon the request of either party, the arbitrator shall provide written reasons for his or her decision or award, which shall clearly demonstrate that the arbitrator has given due and proper consideration to the criteria articulated in subsections (#)(2) and (#)(3).

Idem

(2) The requirement under subsection (#)(1) shall be satisfied where the written decision or award demonstrates that the arbitrator has given appropriate weight to the criteria enumerated under subsection (#)(1) and has considered all of the criteria articulated in subsections (#)(1) and (#)(2) in light of the written and oral submissions of the parties.

Suspensions with Pay

Amend Part V to review and amend provisions relating to disciplinary proceedings.

While we acknowledge that Bill 175 does contain some improvements in the accountability of police disciplinary proceedings, sworn police officers will still not be subject to discipline in a manner similar to civilian employees. It will still restrict the employer's ability to impose appropriate discipline as an employer in response to misconduct.

While we recognize and appreciate that Bill 175 does make some changes to the existing system, we recommend an amendment to Part V Section 89 to provide Chiefs of Police the discretion to suspend a police officer without pay when charged with serious Police Services Act violations.

Advancement Through the Ranks

Amend O.Reg 268/10 8(3) to extend the period of time for progression from fourth to first class constable.

We appreciate the opportunity to provide you with this input during the Committee's deliberations on Bill 175. We would be pleased to provide any clarification on the issues we have raised.

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About the Emergency Services Steering Committee

The Emergency Services Steering Committee (ESSC) was established in 2005, as a joint committee of the municipalities of the Large Urban Mayors Caucus of Ontario (LUMCO), the Mayors and Regional Chairs of Ontario (MARCO), and the Ontario Association of Police Services Boards (OAPSB). The ESSC was formed in response to what were rapidly increasing emergency services costs across Ontario.

Today, our membership is comprised of municipal employer leaders and stakeholders involved in emergency services and municipal budgets, and we provide advocacy, background information and research on all issues relating to emergency service costs.

STRATEGY FOR A SAFER ONTARIO – CONSULTATION ON THE *POLICE SERVICES ACT*

Submissions of the Emergency Services Steering Committee

Background

The Emergency Services Steering Committee

The **Emergency Services Steering Committee (ESSC)** is a joint steering committee established by the municipalities represented by MARCO (Mayors and Regional Chairs of Ontario), and LUMCO (Large Urban Mayors Caucus of Ontario), and a number of other Ontario municipalities responsible for the delivery of emergency services. ESSC currently represents 47 Ontario municipalities as well as other municipal and emergency services agencies.

The ESSC was established to coordinate activities related to cost containment in the emergency services (police, fire and EMS). The ESSC provides a forum and resource for collaboration and strategic discussion and research on all issues relating to emergency services labour costs. Through research and data collection the ESSC provides municipal decision-makers and other stakeholders with accurate information on emergency service costs in an effort to form a coordinated, strategic approach to collective bargaining. In collaboration with the Association of Municipalities of Ontario and the Ontario Association of Police Services Boards, the ESSC has been actively engaged in advocacy for reform of legislation in the emergency services sectors since 2008, and actively leads initiatives to reduce or contain emergency services costs through more effective collective bargaining and labour relations.

The Rising Costs of Policing

Across Ontario, emergency service costs have increased about 30 per cent between 2006 and 2011. Three quarters of these costs are for wages and benefits. In fact, wage and benefit increases for emergency workers are growing faster than increases for other public sector employees in Ontario and faster than Canada's rate of inflation. Police services represent a significant portion of municipal budgets, and almost 90 per cent of a police budget is comprised of labour costs. Police employers along with municipalities responsible for fire services have long called for reforms to address the rising costs of emergency services.

The ever-increasing costs policing adversely impacts the ability of municipalities to deliver effective and efficient police services as well as other essential municipal services and programs. The recommendations contained in this submission address long-standing labour issues which impede the ability of police employers to modernize their labour structure, improve accountability and contain increases in labour costs. Communities large and small are concerned about the affordability of emergency services and the proportion of municipal spending that they are capturing. All communities in Ontario need to have access to emergency services that are safe, effective and affordable.

Board Effectiveness – Modernizing Police Labour Relations

1. Exclusions from the Bargaining Unit

Amend Part VII – section 118 to create additional exclusions from the bargaining unit for those personnel who are engaged in labour relations or whose jobs require them to provide labour relations advice to the Chief and/or Board in support of collective bargaining, grievance and arbitration and disciplinary matters. Currently all personnel with the exception of the Chief and Deputy are included in the bargaining unit(s).

Management staff, including those responsible for human resources, labour relations, senior finance personnel, and legal advisors should be excluded from the bargaining unit in a manner similar to that provided for in the Ontario *Labour Relations Act*.

2. Bargaining Committee

Amend Part VII – delete sections 120(1) and (2) to enable police services boards and/or the municipality responsible for police services to determine how it will conduct its collective bargaining.

The Ontario *Police Services Act* is the only statute in Canada to dictate the composition of the bargaining committee. This provision restricts the ability of the employer to determine how to resource its bargaining committee. There is no rationale for this provision and it should be deleted to give both parties the right to determine the composition of their own bargaining committees. Police services boards should have the same right as the associations and employers in other sectors to draw up expertise and resources they deem appropriate.

Increase Accountability of Policing

3. Interest Arbitration

Amend section 122(1)- (6) to reform the interest arbitration provisions to restore balance in the arbitration system, and increase accountability and transparency of awards.

The interest arbitration system in Ontario's emergency services, including police, needs to be reformed to ensure that it is balanced, transparent and accountable, expeditious

and accurately reflects what the parties would have negotiated had they been able to freely negotiate an agreement. Employers have long called for reform of the interest arbitration system because it no longer meets any of these criteria. Arbitrated salary awards in the emergency services have consistently exceeded the rate of inflation, cost of living and wage increases negotiated with other unionized staff in the same municipality. Ontario's interest arbitration system no longer reflects what free collective bargaining would otherwise have produced as an outcome; even when employers in the emergency services "freely" negotiate settlements they are constrained by the outcomes that would be awarded if they referred the agreement to arbitration. Labour cost increases in policing cannot continue without jeopardizing other components of the police service as well as other essential services and infrastructure needs of the municipality.

The interest arbitration provisions of the Act must be amended to:

- Improve accountability and transparency of arbitration awards by requiring arbitrators to consider a municipality's capacity to pay based on a comparison of the freely negotiated bargaining settlements in the same municipality, including those of bargaining units with the right to strike. The criteria for comparison of wage settlements should not be limited to only police in other municipalities.
- Establish clear, measurable criteria that include the evaluation of the economic health of the municipality, to be considered on the basis of the labour market characteristics, property tax and socio-economic factors.
- Enable either party to request written reasons for an arbitrator's award, and ensure such reasons demonstrate that the arbitrator gave due and proper consideration to the criteria.

In addition, procedural changes are required to ensure that the arbitration system is timely and fair to both parties.

4. Disciplinary Proceedings

Amend Part V – review and amend provisions relating to disciplinary proceedings. Sworn policers are not currently subject to discipline in a manner similar to civilian employees. The statutory regime for discipline of sworn officers significantly restricts the employer's ability to impose appropriate discipline in response to misconduct. This creates inequity within the police service as between sworn and civilian employees, and affords sworn officers with essentially "jobs for life," a privilege not afforded to any other employees in Ontario. The rights of sworn officers to due

process can be sufficiently protected without a disciplinary regime that fails to hold them to an equitable level of accountability for their conduct.

5. Suspensions with Pay

Amend Part V – section 89 to allow Chiefs of Police the discretion to suspend a police officer without pay when charged with serious *Police Services Act* violations.

Ontario is the only jurisdiction in Canada in which Chiefs of Police do not have the discretion to suspend police officers without pay when the officer is charged with an offence, or even convicted of an offence if the conviction is under appeal. There have been several examples of officers charged with serious offences who continue to receive full compensation while the charges proceed through the courts or disciplinary hearings, including appeals. These proceedings often continue for years; the police service has little control over the pace at which the court proceedings occur and officers have no incentive to move proceedings forward. Approximately 50 officers are suspended with pay in Ontario each year. The cumulative financial impact can be significant – as much as \$5 million/year in compensation.

The prohibition on suspension without pay applies regardless of whether charges arise from on duty or off duty conduct. Increased public awareness of cases involving serious charges has eroded public trust and confidence in the police, and the financial impact can create significant pressure on constrained police budgets. The Association of Municipalities of Ontario has reported that between 2005-2009, Ontario's "Big 12" police services boards paid \$16.9 million in salary to suspended officers. The Act should be amended to give Chiefs discretion to suspend officers without pay.

Education and Training Requirements of Police Officers

6. Probation

Amend section 44(1) to extend the length of the probationary period of constables and require that an officer serve the full probationary period while on active duty.

The Act currently provides for a 12 month period of probation with no provision to extend the probation in the event of interruptions in training, such as a leave of

absence. Officers should be required to serve the full probationary period on active duty to enable the employer to fully assess the officer's skill and competence.

Consideration should also be given to extending the probationary period until an officer has reached First-Class.

The Ministry's consultation guide suggests that the Ontario Basic Constable Training program should be enhanced. If this results in a longer period of training, the probation period should be extended accordingly.

7. Advancement Through the Ranks

Amend O.Reg 268/10 8(3) to extend the period of time for progression from fourth to first class constable. Currently a sworn officer progresses through the ranks from Fourth-Class to First-Class in 5 years with no requirement for additional training, skills or education as an officer progresses through the ranks. This is not consistent with career progress in other professions which require additional training and education to advance. The overall period of advancement should be increased from 5 to 8 years, and additional education and skill requirements should be imposed in order to reach the rank of First-Class.