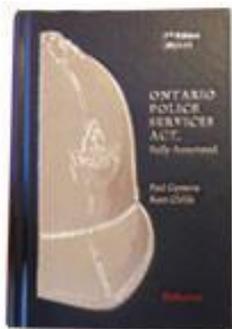




# *Safer Ontario Act, 2017*



Jason D. Fraser  
General Counsel  
York Regional Police  
November 15, 2017

**“Deeds Speak”**



# Presentation Overview

- Brief History
- Requirements for Planning
- Opportunities for Outsourcing
- Special Constables
- Accommodation of Police Officers
- Inspector General
- Discipline
- Suspension without Pay
- Public Complaints
- Ontario Special Investigations Unit.
- New Provincial Offences

**“Deeds Speak”**



# Stakeholder Consultation

- Future of Policing Advisory Committee (FPAC) established after the 2011 provincial election.
- Membership includes:
  - Provincial government (MCSCS, MAG);
  - Police management (OACP, OPP, Toronto PS);
  - Police governance (OAPSB, Toronto PSB);
  - Municipalities (AMO, Toronto).



# Public Consultation

- “Strategy for a Safer Ontario” announced in August 2015.
- Public consultation process launched in February 2016.
- Public meetings across the province.
- Online survey.
- Consultations with various stakeholders.



# Justice Tulloch Review

- Justice Michael Tulloch of the Court of Appeal was appointed in April 2016 to review police oversight bodies:
  - Special Investigations Unit;
  - Ontario Civilian Police Commission;
  - Office of the Independent Police Review Director.
- Justice Tulloch's Report of the Independent Police Oversight Review was submitted to the government on March 31, 2017.



# **Bill 175, the *Safer Ontario Act, 2017***

1. *Police Services Act, 2017*
2. *Policing Oversight Act, 2017*
3. *Ontario Policing Discipline Tribunal Act, 2017*
4. *Ontario Special Investigations Unit Act, 2017*
5. *Consequential Amendments*
6. *Coroners Act*
7. *Missing Persons Act, 2017*
8. *Forensic Laboratories Act, 2017*



# Planning - Minister

- The Minister will engage in research and analysis of various areas of policing:
  - Co-ordination with other justice sectors;
  - Effectiveness, efficiency, sustainability, etc.
  - Community safety and well-being plans;
  - Policy and program development;
  - Appointment, education, training, suspension and discipline of officers.
- Boards and Chiefs will be required to provide information to the Minister upon request.



# Planning - Municipality

- Municipality will prepare a Community Safety and Well-Being Plan through an advisory committee:
  - LHIN;
  - Mental health;
  - School boards;
  - Community and social services;
  - Municipal council;
  - The Board;
  - Any other prescribed persons;
  - Committee must be diverse.



## Planning - Municipality

- The municipality will need to consult with the advisory committee, members of the public including racialized groups and First Nations and comply with prescribed consultation requirements.



# Planning - Municipality

- The Community Safety and Well-Being Plan will need to address:
- Systemic discrimination and other social risk factors that contribute to crime, addiction, drug overdose, suicide, etc. and identify which risk factors are a priority to reduce.
- Strategies to reduce prioritized risk factors;
- Measurable outcomes;
- Other issues and information as prescribed.



# Planning - Board

- The Board will prepare a 4-year Strategic Plan.
- Must consult with the Chief, municipal council, First Nations, diverse community groups, school boards, businesses, the public, etc.
- Must consider the results of consultations, the Community Safety and Well-Being Plan and the needs of diverse communities.
- Chief will oversee the service in accordance with the Board's policies and Strategic Plan.



# Outsourcing

- The Board may outsource the following functions:
  - Crime prevention;
  - Investigative support: crime scene analysis, forensic identification, MVC reconstruction, breath tests, surveillance, Part VI interceptions, polygraph and behavioral science & explosives disposal;
  - Assistance to victims of crime.



# Outsourcing

- A budget arbitrator may take the Board's failure to outsource into consideration if the municipal council demonstrates that it would have saved money.
- Any position that does not require the use of policing powers may be civilianized.



# Special Constables

- Special constables may be hired by the Board or a special constable employer.
- Appointments are by the Board.
- Special constable appointees must meet minimum requirements including any educational and other criteria prescribed by regulation.
- The employer is responsible for investigating internal misconduct.
- Special constables will be subject to public complaints and the OSIU.



# Accommodation

- An officer who is incapable of performing essential police duties as a result of disability may, *inter alia*, be assigned as a civilian.
- The officer will return to officer status if they regain the ability to perform the essential policing duties.
- The officer may be fired or retired if they refuse the accommodated civilian position.



# Inspector General

- Will perform many of OCPC's current oversight roles and the audit and inspection functions currently done by the Ministry.
- Will consult with, monitor and inspect Boards, Chiefs, police services and prescribed policing providers to ensure compliance with the *Act* and regulations.



# Inspector General

- Will be responsible for complaints against Board members and will also handle complaints from whistleblowers within police services.
- The public will be able complain about adequacy and effectiveness of policing, non-misconduct failures to comply with the *Act*, policies of the Board or procedures established by the Chief.



# Inspector General

- The IG will be able to issue directions.
- Non-compliance will be reported to the Minister who may then undertake punitive measures against the Chief or Board, as the case may be.
- The Minister has the power to remove the Chief, dissolve the Board or even disband the police service.



# Discipline

- The Chief may investigate alleged:
  - Professional misconduct (i.e. breach of the code of professional conduct or failing to comply with or respond to the oversight agencies);
  - Workplace misconduct (i.e. contrary to terms and condition of employment or commonly accepted workplace standards); or
  - Unsatisfactory work performance.



# Discipline

- The Chief may impose any of the current sanctions, except demotion or dismissal, without a hearing.
- Officer may consent to the discipline or request a hearing before the Ontario Policing Discipline Tribunal (OPDT).
- The Chief and the officer are the parties to the hearing.
- The hearing does not operate as a stay.



# Discipline

- The Chief must refer the matter to a hearing before the OPDT if seeking demotion or dismissal.
- Either party may appeal to the Divisional Court.
- Appeals do not operate as a stay.



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# Suspension without Pay

- The Chief may suspend without pay if the officer is:
  - Convicted of a criminal offence and sentenced to jail;
  - In custody or subject to conditions that prevent him or her from performing policing duties; or



# Suspension without Pay

- Charged with a serious offence, as prescribed, and
  - It's not duty related;
  - The Chief is seeking termination;
  - Termination is the likely outcome; and
  - Failure to suspend without pay would bring discredit to the reputation of the police service.
- The officer will not receive salary, wages or other remuneration but will continue to receive benefits.



# Public Complaints

- OPIRD becomes the Ontario Policing Complaints Agency (OPCA).
- Association members and their agents are added to the list of people who cannot file a public complaint.
- Complaints director will still have the ability to conduct systemic reviews with notice to the Inspector General.
- The public will be able to complain against officers and special constables.



# Public Complaints

- The OPCA may initiate their own investigation on notice from the OSIU, the Inspector General, a Chief, a Board or the Minister.
- The OPCA may initiate their own investigation of any alleged misconduct that comes to their attention.
- OPCA will endeavor to complete their investigations within a year with updates every 60 days if they do not.



# Public Complaints

- If there are no reasonable grounds for professional misconduct, the OPCA will give notice of its decision with reasons and will post a de-identified summary on the internet.
- If there are reasonable grounds for professional misconduct, the matter will be referred to the OPDT.



# Public Complaints

- Complaints Director will be able to assign investigations to other police services for 5 years. The OPCA will then take over all public complaint investigations.
- The subject officer's or special constable's police service or employer will pay for the investigation.



# Public Complaints

- OPCA will have broad abilities to resolve complaints without a hearing.
- Resolution will be subject to the consent of the complainant and officer and consultation with the Chief.
- Complaints may also be resolved at the hearing stage with the consent of the OPDT.



# Public Complaints

- The parties to a public complaint hearing are the Minister, the subject officer / special constable, and any other person specified by the OPDT.
- The Complaints Director and the complainant may seek to intervene.
- The burden of proof is the balance of probabilities.
- Available penalties range from a reprimand to dismissal.
- Officer / special constable may be fined up to \$35,000.



# Public Complaints

- The Chief will be given notice and may make submissions on penalty.
- Any party may appeal to the Divisional Court.
- The Chief may appeal on the issue of penalty alone.
- An appeal does not operate as a stay.
- Retirement or resignation will not stop a public complaint proceeding.



# Ontario Special Investigations Unit

- SIU becomes the OSIU.
- “Official” means police officer, special constable, auxiliary or any other prescribed person.
- SIU jurisdiction clarified to include incidents where police shoot at a person and where an off-duty officer engages in policing powers or uses policing equipment and there is a prescribed injury.



# Ontario Special Investigations Unit

- “Serious injury” means an injury sustained by a person that is likely to interfere with the person’s health or comfort and is not transient or trifling in nature and will automatically include:
  - an injury that results in a hospital admission;
  - a skull, limb, rib or vertebra fracture;
  - serious burns;
  - loss of any portion of the body;
  - loss of vision or hearing;
  - a prescribed injury; or
  - an alleged sexual assault.



# Ontario Special Investigations Unit

- Police must immediately notify the OSIU of any incident:
  - within the OSIU's jurisdiction;
  - even if the seriousness of the injury cannot be initially determined; and
  - even if the official was off-duty unless it is clear that the official did not engage in policing powers or use police equipment.



# Ontario Special Investigations Unit

- Subject and witness officials must complete their notes by the end of shift, unless:
  - the Chief grants a 24-hour extension on notice with reasons to the OSIU Director;
  - a longer extension is granted by the OSIU Director.
- Notes do not include occurrence reports, arrest reports, use of force reports, duty reports, logs or canine training records.



# Ontario Special Investigations Unit

- If the subject official is charged, the OSIU will release his or her name, charges, first court date and any other prescribed information.
- The charged official's name may be withheld if the matter involves a sexual assault or in other prescribed circumstances.



# Ontario Special Investigations Unit

- If no charges are laid, the OSIU will release a public report regarding:
  - The OSIU's mandate to investigate;
  - A narrative of the events;
  - Investigative process;
  - Relevant evidence considered;
  - Relevant, de-identified, video, audio or photographic evidence;



# Ontario Special Investigations Unit

- Whether notice of the matter was given by the OSIU to the Complaints Director or the Inspector General;
  - Any other information as prescribed.
- 
- The report will not include the names of subject or witness officials, other witnesses or affected persons.



# Ontario Special Investigations Unit

- The OSIU will endeavor to ensure that their investigation is done within 120 days. If not, they will make a public status statement every 60 days thereafter.
- The Chief's "Section 11 Report" will be pursuant to section 108 of the *PSA, 2017*.



# Ontario Special Investigations Unit

- The OSIU shall report alleged professional misconduct to the Complaints Director along with access to their file once the OSIU investigation is completed.
- The OSIU will notify the Inspector General of any alleged adequacy and effectiveness, policy, procedure, etc. complaints.

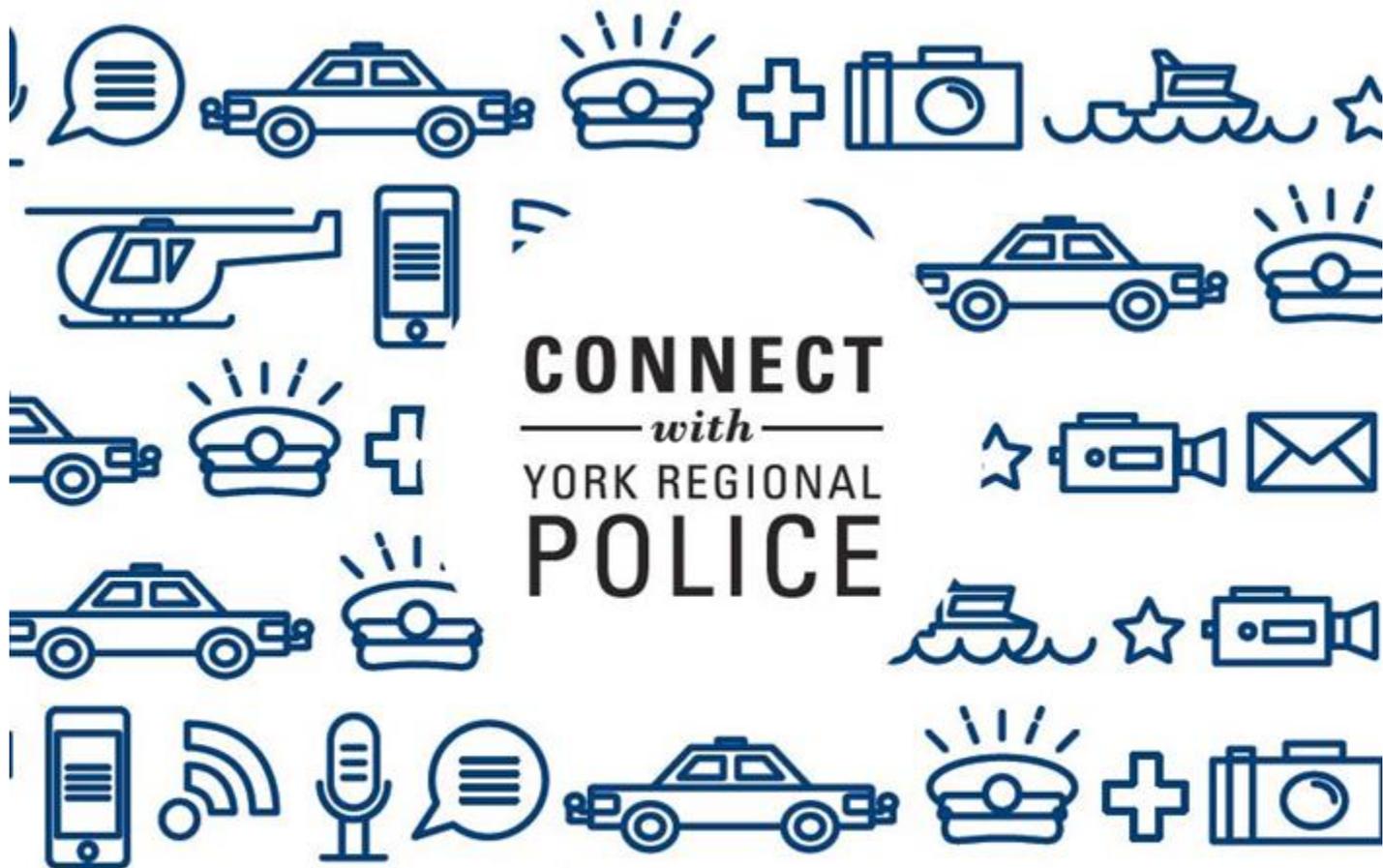


# New Provincial Offences

- Failure to comply with the Inspector General, OPCA or the OSIU is an offence punishable by up to a \$50,000 fine and/or 1 year in jail.



**Thank you**  
Questions?



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