

Attachment 1 – Summary of legislative changes: Bill 68 and Bill 102

This document provides additional details regarding legislative changes that come into force on April 1, 2024, under Bill 68, the [Comprehensive Ontario Police Services Act, 2019](#), and Bill 102, the [Strengthening Safety and Modernizing Justice Act, 2023](#), largely focusing on matters that will affect Council’s roles and responsibilities with respect to the Ottawa Police Services Board.

Matters requiring action from Council within prescribed timelines

1. Police service board size

A municipality may determine, by resolution, that its municipal board shall be composed of five members, seven members or nine members [Subsection 31(3) of the [Community Safety and Policing Act, 2019](#)]. The default size of a board will be five members unless a municipality passes a resolution to change the size [Subsection 31(2)].

Section 27 of the current [Police Services Act](#) generally prescribes the size of a police services board to be three or five members, with seven-member boards permitted in certain circumstances. 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 under subsection 27 (9) of the *Police Services Act* to increase the size of the Ottawa Police Services Board to seven members.”

Under Subsection 27(9) of the current *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.

A seven-member board under the new legislation would have the same general composition as set out above [an amendment to clause (a) adds that if the Mayor is ineligible to be a member of the board, another Member of Council is to be appointed], as set out in Subsection 31(5). A nine-member board would have the same composition as a current seven-member board, but would include one additional Member of Council, appointed by Council, and one additional provincial appointee [Subsection 31(6)]. A five-member board would include one Member of Council, appointed by Council, and two provincial appointees [Subsection 31(4)].

With respect to transition, Subsection 31(11) of the *Community Safety and Policing Act, 2019* provides that, "... the members of the municipal board who are in office immediately before the day this subsection comes into force shall continue in office as members of the board until the expiration of the terms for which they were appointed."

Further transition provisions set out in Subsection 31(13) provide that an existing municipal board may continue to have the number of members that it had under the *Police Services Act* until the earlier of,

- a) the day the municipality passes a resolution to determine 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 to set the board size 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)].

2. Mandatory diversity plan

Subsection 28(1) of the *Community Safety and Policing Act, 2019* requires every municipality that maintains 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 first municipal diversity plan must be approved before the later of:

1. 12 months after the day that Section 28 of the *Community Safety and Policing Act, 2019* comes into force; and
2. 12 months after the municipality constitutes its municipal board.

The municipal diversity plan must be published on the Internet in accordance with the regulations made by the Minister, if any [Subsection 28(2)]. The 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 on the Internet in accordance with regulations made by the Minister, if any [Subsection 28(4)].

Matters that may affect future Council processes and decisions

1. Updated language regarding a municipality's role with respect to policing

Currently, Subsection 4(1) of the *Police Services Act* provides that a municipality "shall provide adequate and effective police services in accordance with its needs." Subsection 4(2) of the *Police Services Act* provides that, "Adequate and effective police services must include, at a minimum, all of the following police services:

1. Crime prevention.
2. Law enforcement.

3. Assistance to victims of crime.
4. Public order maintenance.
5. Emergency response.”

Subsection 4(3) of the *Police Services Act* provides that, “In providing adequate and effective police services, a municipality shall be responsible for providing all the infrastructure and administration necessary for providing such services, including vehicles, boats, equipment, communication devices, buildings and supplies.”

In updated language regarding policing responsibility, Subsection 10(1) of the *Community Safety and Policing Act, 2019*, as amended by Bill 102, states that police service boards “shall ensure adequate and effective policing is provided 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.” A board is responsible under Subsection 37(1)(a) of the *Community Safety and Policing Act, 2019* as amended by Bill 102 to “ensure that adequate and effective policing is provided in the area for which it has policing responsibility,” in addition to various other duties.

In updated language regarding the meaning of “adequate and effective policing,” Subsection 11(1) of the *Community Safety and Policing Act, 2019* provides that, “Adequate and effective policing means all of the following functions provided in accordance with the standards set out in the regulations, including the standards with respect to the avoidance of conflicts of interest, and with the requirements of the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code*:

1. Crime prevention.
2. Law enforcement.
3. Maintaining the public peace.
4. Emergency response.
5. Assistance to victims of crime.
6. Any other prescribed policing functions.”

Subsection 11(2) of the *Community Safety and Policing Act, 2019* provides that “adequate and effective policing” does not include, “the enforcement of municipal or First Nation by-laws, other than prescribed by-laws,” and “providing court security in accordance with Part XV.” Subsection 11(3) provides that, “For greater certainty, a police service board or the Commissioner may provide policing or other services that exceed the standards for adequate and effective policing, including providing enforcement of by-laws.”

With respect to a municipality’s role, Subsection 50(1) of the *Community Safety and Policing Act, 2019*, as amended by Bill 102, provides that a municipality that maintains a municipal police service board shall provide the board with sufficient funding to “comply

with this Act and the regulations” and “pay the expenses of the board’s operation, other than the remuneration of board members.”

2. Council appointments to the police service board

A. New prescribed considerations

Subsection 33(1) of the *Community Safety and Policing Act, 2019* includes specific matters that Council (and any other “appointing person or body”) will be required to consider in 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.

B. New requirements regarding the promotion of an available appointment

Subsection 29(1) of the *Community Safety and Policing Act, 2019*, as amended by Bill 102, provides that if the need to appoint a new member of a police service board by resolution is “reasonably foreseeable,” the municipality “shall take reasonable steps to promote the availability of the appointment, having regard to the need to ensure that police service boards are representative of the communities they serve.”

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

Subsection 33(2) of the *Community Safety and Policing Act, 2019* requires an “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.”

D. New restrictions on board member eligibility

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.”

Under Subsection 33(5) of the *Community Safety and Policing Act, 2019*, 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 one year has 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 practises criminal law as a defence counsel or as a prosecutor; a director, officer or employee of a prescribed policing

provider; and any other prescribed persons [Subsection 33(4)].

E. *Transition provisions*

As noted above, Subsection 31(11) of the *Community Safety and Policing Act, 2019* provides that, "... the members of the municipal board who are in office immediately before the day this subsection comes into force shall continue in office as members of the board until the expiration of the terms for which they were appointed." Subsection 31(12) further provides that, "A member of the municipal board appointed by resolution of a municipality who is in office immediately before the day this subsection comes into force may continue to sit after the expiry of his or her term of office until the appointment of his or her successor."

In addition, Subsection 33(9) provides that the provisions noted above regarding ineligibility "do not prevent a person who was a member of a police service board immediately before those subsections came into force from serving the remainder of their term."

3. **Police service board budget matters and process**

Currently, Subsection 39(1) of the *Police Services Act* provides that a police services board "shall submit operating and capital estimates to the municipal council that will show, separately, the amounts that will be required,

- (a) to **maintain the police force and provide it with equipment and facilities**; and
- (b) to pay the expenses of the board's operation other than the remuneration of board members" [emphasis added].

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 "and the Commission, shall, after a hearing, do so" [Subsection 39(5) of the *Police Services Act*].

Subsection 50(1) of the new *Community Safety and Policing Act, 2019*, as amended by Bill 102, provides that a municipality that maintains a police service board shall provide the board with sufficient funding to "comply with this Act and its regulations" and "pay the expenses of the board's operation, other than the remuneration of board members."

Under Subsection 50(2), as amended by Bill 102, a police service board "shall submit operating and capital estimates to the municipality that will show, separately, the amounts that will be required to,

- (a) **comply with this Act and the regulations, including the amounts required to provide the police service with required equipment and facilities, having regard for the various ways that the board can discharge this obligation**; and
- (b) pay the expenses of the board's operation, other than the remuneration of board

members” [emphasis added].

Council is not bound to adopt the estimates provided by the board [Subsection 50(4)]. The existing inability for Council to approve or disapprove specific items in the board’s budget estimates continues under the *Community Safety and Policing Act, 2019*. If the police service board is not satisfied that the budget established for it by the municipality is sufficient for the purposes described in Subsection 50(1), Subsection 50(6) provides that:

- a) the municipal board and the municipality may jointly apply to the Chair of the Ontario Police Arbitration and Adjudication Commission to appoint a conciliation officer to attempt to resolve the matter; or
- b) the municipal board may give the municipality written notice referring the matter to arbitration. In this case, the board and the municipality may jointly appoint an arbitrator within 60 days after the notice is provided to the municipality [Subsection 50(9)]. If they do not jointly appoint an arbitrator within the prescribed period and the chair of the Arbitration and Adjudication Commission has been notified by either party, the Commission Chair shall appoint an arbitrator [Subsection 50(10)(a), as amended by Bill 102]. *Note: Under Subsection 50(8), no arbitration is permitted while conciliation is underway.*

With respect to arbitration findings, Subsection 50(11) provides that if the municipality demonstrates that the police service board could reasonably have entered into an agreement with another police service board, the Commissioner of the Ontario Provincial Police or a prescribed entity, in accordance with the legislation and any regulations, “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.”

Under Subsection 50(12), the municipality “shall amend the budget for the municipal board in accordance with the arbitrator’s decision.” Subsection 50(13), as amended by Bill 102, provides that the municipal board and the municipality shall share equally the costs and expenses of the arbitration and any prescribed types of expenses of the arbitrator.

4. Police service board planning, reporting and information sharing

The *Community Safety and Policing Act, 2019* includes various requirements with respect to board reporting and information sharing with Council. It is anticipated that the Ottawa Police Services Board will review and address any new requirements and changes to existing policies and procedures relating to Council. Certain matters may be new, or may overlap or update existing requirements.

Provisions under the *Community Safety and Policing Act, 2019* include as follows:

- Under Subsection 39(1), as amended by Bill 102, and in accordance with any

regulations, the police service board will be required to prepare and adopt a strategic plan for the provision of policing. The plan must address various 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 matters; interactions with youth, members of racialized groups, and members of First Nation, Inuit and Metis communities; interactions with persons who appear to have a mental illness or a neurodevelopmental disability; information technology; resource planning; police facilities; and any other prescribed matters. In preparing or revising the strategic plan, the police service board is required to consult with the chief of police and various entities, including the municipal council in the board's area of policing responsibility [Subsection 39(3)]. The police service board must also consider the municipality's community safety and well-being plan in preparing or revising the strategic plan [Subsection 39(4)(b)].

- Subsection 41(1) provides that on or before June 30 in each year, the police service board is required to file an annual report with its municipality 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 municipality; and
 - d) any other prescribed matters.

The board shall publish the annual report on the Internet in accordance with the regulations made by the Minister, if any [Subsection 41(2)].

- Subsection 41(3) requires a police service board to “make best efforts to negotiate and enter into a protocol with its municipality ... that addresses the sharing of information with the municipality ... including the type of information to be shared and the frequency for sharing such information.”

5. Community safety and well-being plans

Requirements with respect to these plans continue under the new legislation, as set out in [Part XVI](#) of the *Community Safety and Policing Act, 2019* as well as the new [Ontario Regulation 414/23](#): Community Safety and Well-being Plans – Publication and Review. The new legislation adds a requirement to consult with individuals who had received or are receiving mental health or addictions services in preparation of the plan [Subsection 250(7)(b)]. The new regulation requires the municipality to review and, if appropriate, revise its plan within four years after the day it was adopted and every four years

thereafter [Subsection 2(1)].

Matters applying to the Ottawa Police Services Board

1. Name change for municipal police boards

Under Subsection 31(1) of the *Community Safety and Policing Act, 2019*, municipal police boards shall be known as the “(insert name of municipality) Police **Service** Board,” rather than the current “... Police **Services** Board” [emphasis added].

Bill 68 includes a consequential amendment to the *City of Ottawa Act, 1999* to amend the Ottawa Police Services Board’s name accordingly – an amendment to Subsection 6(1) of the *City of Ottawa Act, 1999* provides that the Ottawa Police Services Board “is continued under the name ‘Ottawa Police Service Board’ in English and ‘Commission de service de police d’Ottawa’ in French” [Subsection 9(2) of Schedule 4]. This change is to come into force upon proclamation.

2. Open meeting and notice requirements

Under Subsection 43(3) of the *Community Safety and Policing Act, 2019*, meetings conducted by the police service board, or by a committee of the board, shall be open to the public. This is subject to updated 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* [see Section 44 of the *Community Safety and Policing Act, 2019*].

A police service board is required under Section 43 to publish notice of a meeting that is open to the public, including the proposed agenda for the meeting, on the Internet at least seven days before the meeting, except in “extraordinary circumstances.” 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.”

3. Board member training requirements

Under Subsection 35(2) of the *Community Safety and Policing Act, 2019*, members of the police service board or of a committee of the board will be required to complete training approved by the Minister with respect to the following matters:

1. The role of a police service board and the responsibilities of members of a board or committee;
2. Human rights and systemic racism;
3. Training that promotes recognition of and respect for,
 - i. the diverse, multiracial and multicultural character of Ontario society, and
 - ii. the rights and cultures of First Nation, Inuit and Métis Peoples; and
4. Any other training prescribed by the Minister.

A new code of conduct regulation for board members has also been published and comes

into force on April 1, 2024 ([O. Reg. 408/23](#)). The current code of conduct is set out in [O. Reg. 421/97](#).

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.”

4. Inspector General of Policing

Under Subsection 102(1) of the *Community Safety and Policing Act, 2019*, 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 102(4) of the *Community Safety and Policing Act, 2019*, as amended by Bill 102, include as follows:

- Monitoring and conducting inspections of police service boards to ensure they comply with the *Community Safety and Policing Act, 2019* and the regulations;
- Consulting with and advising police service boards regarding compliance with the *Community Safety and Policing Act, 2019* and the regulations;
- Monitoring and conducting inspections of members of police service boards to ensure that they do not commit misconduct;
- Developing, maintaining and managing records and conducting research and analyses regarding compliance with the *Community Safety and Policing Act, 2019* and the regulations; and
- Dealing with complaints regarding certain board member and policing matters.

5. Duties and policy requirements

The *Community Safety and Policing Act, 2019* includes various updated provisions regarding duties and policy requirements (Section 37 addresses police service board duties; Section 38 includes various policy requirements). Under Section 37, as amended by Bill 102, a police service board shall,

- (a) ensure that adequate and effective policing is provided in the area for which it has policing responsibility as required by section 10;
- (b) employ members of the police service;
- (c) appoint members of the police service as police officers;
- (d) recruit and appoint the chief of police and any deputy chief of police and determine their remuneration and working conditions, taking their submissions into account;

- (e) prepare and adopt a diversity plan to ensure that the members of the police service reflect the diversity of the area for which the board has policing responsibility;
- (f) monitor the chief of police's performance;
- (g) conduct a review of the chief of police's performance at least annually in accordance with the regulations made by the Minister, if any;
- (h) monitor the chief of police's decisions regarding the restrictions on secondary activities set out in section 89 and review the reports from the chief of police on those decisions;
- (i) monitor the chief of police's handling of discipline within the police service;
- (j) ensure that any police facilities, including police lock-ups, used by the board comply with the prescribed standards, if any; and
- (k) perform such other duties as are assigned to it by or under this or any other Act, including any prescribed duties.

6. Directions to the chief

Currently, under subsections 31(3) and 31(4) of the *Police Services Act*, the board "may give orders and directions to the chief of police, but not to other members of the police force, and no individual member of the board shall give orders or directions to any member of the police force," and the board "shall not direct the chief of police with respect to specific operational decisions or with respect to the day-to-day operation of the police force."

Under Section 40 of the *Community Safety and Policing Act, 2019*, the board as a whole (not an individual member) may continue to provide directions to the chief of police. Under Subsection 40(2), as amended by Bill 102, the board "shall not direct members of the police service other than the chief of police, unless that direction is specifically authorized under Part XII (Discipline and Termination)."

Subsection 40(4), as amended by Bill 102, provides that the board shall not direct the chief "with respect to specific investigations, the conduct of specific operations, the discipline of specific police officers, the day-to-day operation of the police service or other prescribed matters." That said, Subsection 40(4.1), which is added by Bill 102, provides that Subsection 40(4) "does not prevent a police service board from issuing directions that may affect operations."

Other provisions provide limitations with respect to directions. For example, Subsection 40(7) provides that, "The police service board shall not direct the chief of police to do anything that would,

- (a) contravene this Act or the regulations, or any other Act or regulation;

- (b) require a member of the police service to do something or refrain from doing something where this would be inconsistent with his or her duties under this Act or the regulations; or
- (c) prohibit a member of the police service from attempting to collect information for the purpose of investigating an offence or assisting with the prosecution of an offence.”

The police service board is required to publish any directions given to the chief on the Internet in accordance with the regulations made by the Minister, if any [Subsection 40(9)].

Other policing matters

1. Matters relating to special constables

Currently, Subsection 53(1) of the *Police Services Act* provides that, “**With the Solicitor General’s approval**, a board may appoint a special constable to act for the period, area and purpose that the board considers expedient” [emphasis added]. Other provisions of the current legislation set out other matters related to special constables.

Subsection 92(1) of the *Community Safety and Policing Act, 2019* provides that, “A police service board ... may appoint a person as a special constable” subject to certain eligibility criteria (e.g., age, employment offer, training, etc.). Subsections 92(6) and 92(7) provide that when appointed, a special constable is issued a certificate of appointment that sets out matters such as the name of their employer, the term of the appointment, the purposes for which they may act as a special constable, the powers of a police officer that they may exercise, and any other terms and conditions that the police service board considers appropriate.

Subsection 97(1) also provides that “A person, other than a for-profit entity, may apply to the Minister for an authorization to employ special constables.” The Act sets out duties for a “special constable employer” [Subsection 98(1)], and their authorization may be suspended or terminated if requirements are not met [Subsection 99(1)]. Among other things, special constable employees are required to investigate and address apparent misconduct by any special constable they employ [Subsection 98(2)].

Various transition provisions with respect to special constables are included in the *Community Safety and Policing Act, 2019* [Subsection 92(12)]. [O. Reg. 396/23: Matters Respecting the Appointment and Functions of Special Constables and the Authorization of Special Constable Employers](#) has also been published, as well as other regulations relating to complaints about special constables and a code of conduct for special constables.

2. Oversight regimes

Bill 68 and Bill 102 include as follows:

- Continuing the Office of the Independent Police Review Director as the **Law Enforcement Complaints Agency**, headed by the Complaints Director. Under Section 132 of the *Community Safety and Policing Act, 2019*, the Complaints Director is responsible for various matters that include dealing with public complaints regarding the conduct of police officers. Under Section 133, the Complaints Director may also examine and review issues of a systemic nature that have been the subject of public complaints or investigations, or that may contribute or are otherwise related to misconduct.
- As noted above, the **Inspector General of Policing**, which under Section 102 of the *Community Safety and Policing Act, 2019* has jurisdiction over matters such as monitoring and conducting inspections of police service boards, chiefs of police, special constable employers and police services to ensure they comply with the Act and its regulations; and dealing with complaints regarding board member misconduct (Section 106) and policing matters [Section 107 – matters such as adequacy and effectiveness of policing; compliance with the Act and its regulations (other than misconduct); policies of a police service board; procedures established by a police chief].
- Continuing the Ontario Police Arbitration Commission under the name of **Ontario Police Arbitration and Adjudication Commission**. The Commission has responsibilities with respect to various arbitration and adjudication matters (Part IX of the *Community Safety and Policing Act, 2019*, starting at Section 147).

Transition provisions within Section 216 of the *Community Safety and Policing Act, 2019*, as amended by Bill 102, provide that the Ontario Civilian Police Commission “is continued until the day on which it is dissolved, as provided for in the regulations” [Subsection 216(5)], with specific functions of this entity set out in Subsection 216(5.1).