

DECLASSIFIED

FOIPOP Review



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Date June 22, 2022

May 30, 2022

E-mail - lindell.smith@halifax.ca

Halifax Board of Police Commissioners
Halifax Regional Municipality
P. O. Box 1749
Halifax NS B3J 3A5

Attention: Lindell Smith, Councillor and Chair

Dear Councillor Smith:

Legal Opinion for the Halifax Board of Police
Our File Number: 2202969

This letter is in response to your letter of April 21, 2022, and our brief discussion of May 4, 2022.

You requested that I provide an opinion on the authority of the Halifax Board of Police Commissioners (BPC) to institute an independent civilian review. Specifically, I was asked to consider the following motion passed by the BPC at its October 18, 2021, meeting ("Motion"):

THAT the Board of Police Commissioners prepare a draft of a mandate and terms of reference for an independent civilian review of the oversight, governance, and policy aspects of the HRP's handling of the protests on August 18, 2021, which mandate and terms of reference will be received and reviewed by the Board at their November meeting.

You provided me with a copy of the Report and Recommendation prepared by Halifax Legal and Legislative Services to the effect that the Motion is beyond the legislated mandate of the BPC.

Summary

It is my opinion that the Motion is within the jurisdiction of the BPC as set out in the *Police Act* S.N.S. 2004, c. 31, as amended ("Act") specifically s. 55 (1)(a) and (b) (3) of the Act. In

arriving at that conclusion, I interpret the Motion to refer to the civilian governance responsibility of the BPC meaning that any such independent civilian review cannot be involved in day-to-day operational matters, nor police conduct, or individual officer conduct on August 18, 2021. It is also my view that the Motion is consistent with ss 8 (2)(h) of Halifax By-law, P-100.

If I am incorrect on the intent of the Motion and that it is intended to be a review of day-to-day operations, police conduct, or individual officer conduct on August 18, 2021, then the Motion exceeds the authority of the BPC.

I am further of the opinion that there are mechanisms available to the BPC through the *Act* to request that the Minister direct an investigation into police conduct or individual police conduct on August 18, 2021

BPC Authority

It is a requirement of the *Act* that every municipality that establishes a municipal police department shall, by by-law, provide for a board of police commissioners. The authority for the BPC is primarily set out in Section 55:

- 55 (1) The function of a board is to provide
- (a) civilian governance on behalf of the council in relation to the enforcement of law, the maintenance of law and order and the prevention of crime in the municipality; and
 - (b) the administrative direction, organization and policy required to maintain an adequate, effective and efficient police department,
- but the board shall not exercise jurisdiction relating to
- (c) complaints, discipline or personnel conduct except in respect of the chief officer of the municipal police department;
 - (d) a specific prosecution or investigation; or
 - (e) the actual day-to-day direction of the police department.

...

(3) Without limiting the generality of subsection (1), a board shall

(a) determine, in consultation with the chief officer, priorities, objectives and goals respecting police services in the community;

(b) ensure the chief officer establishes programs and strategies to implement the priorities, objectives and goals respecting police services;

(c) ensure that community needs and values are reflected in policing priorities, objectives, goals, programs and strategies;

(d) ensure that police services are delivered in a manner consistent with community values, needs and expectations;

(e) act as a conduit between the community and the police service providers;

(f) recommend policies, administrative and organizational direction for the effective management of the police department;

(g) review with the chief officer information provided by the chief officer respecting complaints and internal discipline;

(h) ensure a strategic plan and business plan is in place; and

(i) ensure the department is managed by the chief officer according to best practices and operates effectively and efficiently. 2004, c.31, s. 55.

Halifax has also established by-law P-100 as required by Section 44 of the *Act*, including:

8. (1) The Board shall provide civilian governance in regards to strategic policy planning and policy driven budget planning for police service delivery within the communities serviced by the Halifax Regional Policy and shall carry out an advisory role in respect of police matters within the

communities serviced by the Halifax Regional Police and shall carry out an advisory role in respect of police matters within the communities serviced by the Provincial Police Service.

(2) The Board in accordance with the *Police Act* and HRM Bylaws may carry out any of the following roles and responsibilities:

(a) Co-ordinate public planning process as it relates to community issues;

(b) provide civilian governance on behalf of the Council in relation to enforcement of the law, the maintenance of law and order and the prevention of crime with the municipality;

(c) in consultation with the Chief of Police, review priorities, goals and objectives of the municipal police service;

(d) over see and ensure the provisioning of the Halifax Regional Police in the areas of accommodation and material as deemed necessary;

(e) prepare and submit in consultation with the Chief of Police and the Chief Administrative Officer or delegate, to Council an annual budget for the municipal police service. The municipal council shall only exercise global budget approval and shall only accept the police service budget submitted to it by the board or refer back to the board with the instructions that it be altered upward or downward by a specific dollar amount or percentage;

(f) ensure compliance with Nova Scotia *Police Act* code of conduct;

(g) make rules respecting standards, guidelines and policies for the administration of the police service and for the efficient discharge of duties by the employees;

(h) carry out any studies or investigations respecting its civilian governance responsibilities;

(i) monitor gender, ethnic and minority group issues and making recommendations concerning these matters to the Chief of Police;

(j) ensure that community needs and values are reflected in policing goals and methods;

(k) act as a conduit between the community and the police service providers.

...

Interpretation of Authority

As the BPC can only exercise the authority granted by the *Act* and set out by by-law, it is important to understand the scheme of the *Act* for its role including oversight of police conduct. There is no reported decision from the Nova Scotia Supreme Court or the Nova Scotia Court of Appeal on the issue raised by the Motion, so an interpretation of the *Act* is required.

The long-established method of interpretation of legislation is set out in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, ("*Rizzo*") when the Court adopted the approach that in statutory interpretation "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament."

In a recent application of this interpretation principle, the Nova Scotia Court of Appeal in *The Powers of Attorney Act (Re)* (2021) NSCA 58 summarized the approach as follows:

26. The plain meaning of the words used in s. 5(1) (c) is that a judge may appoint a substitute for a dead attorney(s) if the judge is persuaded it is appropriate. *Rizzo, supra*, instructs courts to "...take a pragmatic approach to statutory interpretation that is both purposive and contextual": *E.M.Y. v. Nova Scotia (Community Services)*, 2020 NSCA 46 at para. 65 (See also *R. v. Anand*, 2020 NSCA 12 at para. 34; *Nova Scotia (Office of the Ombudsman) v. Nova Scotia (Attorney General)*, 2019 NSCA 51 para 88.)

27. Under the *Rizzo* approach, it remains to consider the Act's context, scheme and objective....

The *Act* sets out a deliberate scheme on the oversight for police action and police conduct. This is evidenced through a number of provisions including: Sections 4 to 7 et sequence addressing the authority and responsibility of the Minister, Sections 11 and 12 providing for a Nova Scotia Police Complaints Commissioner, (“Complaints Commissioner”) Sections 13 et sequence providing for the Nova Scotia Police Review Board, (“Review Board”) Section 26A et sequence providing for the Serious Incident Response Team, (“SIRT”), Section 55 on the authority of boards of police commissioners, and Section 70 et sequence dealing with complaints. From a review of these provisions one can see a direction for an independent process for the oversight of complaints and police conduct. There is a clear legislative mandate that the oversight be carried out by an arms length civilian review infrastructure, primarily the Complaints Commissioner and the Review Board.

In 2010 when the *Act* was amended to introduce SIRT, the Honourable Ross Landry spoke to its purpose to increase transparency and public confidence in investigations of the conduct of police officers by eliminating police leading investigations of police where serious incidents are alleged to have occurred. Minister Landry stated:

“...The amendments will allow the creation of an investigative team which will operate independent of law enforcement agencies. This team will investigate serious matters such as death, serious injury, sexual assault, or public interest concerns which have either resulted from or allegedly resulted from police actions.

These amendments will eliminate the current practice of police leading investigations into serious incidents that involve police. These changes to the Police Act will result in more transparency, impartiality, and integrity of each investigation and its outcome.

...The creation of this arm's-length investigative team is about maintaining public confidence in the system...

...

The independent model of investigation that is being proposed is the Serious Incident Response Team. It is a civilian-led model of investigation, which includes using civilian and police investigators.

The proposed model follows the national and international trend of having civilians involved in these types of investigation...

...

There will be three ways that cases may be referred for investigation to this team. Firstly, incidents will be referred by the police themselves, which we believe will account for the majority of investigations. Incidents may be referred by the Minister of Justice, where a matter is deemed to be of public interest to have the matter investigated by an independent body. Lastly, the director of the team may initiate an investigation where he or she becomes aware of an incident that falls within the mandate of the team..."

This need for independence was previously identified when Section 20 of the previous *Police Act* was amended. Section 20 is the predecessor to Section 55 in the *Act*. In the earlier statute, there was no language that expressly precluded a board from exercising jurisdiction in relation to any particular matters, but the functions of a board were required to relate primarily to the administration of police services. Section 20 (now s. 55) of *An Act Respecting the Nova Scotia Police Commission and Police Forces in Nova Scotia*, SNS 1974, c 9 set out the function of a municipal board of police commissioners as follows:

S. 20(1) Subject to the approval of the Commission, the council by by-law may prescribe

- (a) the powers and duties to be exercised by a board; and
- (b) the rules and regulations governing proceedings of a board

and the board shall have sole jurisdiction over the matters so delegated to it.

S.20(2) Notwithstanding the right of a municipality to direct its own police operations, the function of any board shall primarily relate to the administrative direction, organization and policy required to maintain an efficient and adequate police force.

The amendments made under an *Act to Amend Chapter 9 of the Acts of 1974, the Police Act*, SNS 1985, c 3, changed the earlier complaints process and repealed section 22(1) – (2) of the *Police Act*, 1974 which required complaints respecting members of the municipal police force to be first forwarded to a municipal board of police commissioners. Section 20(2) of the *Police Act*, 1974 was also amended to expressly limit a board from exercising jurisdiction in relation to complaints, discipline, or personnel conduct. The amended section 20(2) in the *Police Act*, RSNS 1989, c 348 stated:

S. 20(2) Notwithstanding the right of a municipality to direct its own police operations, the function of any board shall primarily relate to the administrative direction, organization and policy required to maintain an efficient and adequate police force **but shall not exercise jurisdiction relating to complaints, discipline or personnel conduct except in respect of the chief officer of the municipal police force.**

[Emphasis added]

In the debates of the second reading of *Bill 72, an Act to Amend Chapter 9 of the Acts of 1974, the Police Act*, the MLA for Kings South, the Hon. Robert Levy, stated:

“...I want to commend the minister for changing the procedure for dealing with complaints against police officers because we had the situation previously where a police commission would be judging the conduct of its own policemen. I think that is all the more important in a situation where they are now civilly liable for the torts of their police officers ... It is a welcome change that this will be put into the hands, presumably, of a group with more expertise and experience and even safeguard.”

In the discussions, the then Attorney General, the Hon. Ronald Giffin, also noted on the procedure for dealing with complaints:

“...I think it is very important that the procedure be neutral and that those in charge of it be neutral and objective because we have to balance interests here between the rights of the police officer about whom a complaint is made or who is the subject of a disciplinary proceeding, and also the rights of the public, that is the member of the public who has a complaint about the conduct of a police officer or, indeed, of a police force, that that complaint is going to be properly and fairly dealt with...”

This represents a clear decision on the part of the provincial legislature to remove from the purview of a board of police commissioners any authority over complaints, discipline, or personnel conduct. This language first introduced in 1985 was carried into the *Act*.

This division is also consistent with the expressed direction that boards are not to be involved with the day-to-day operation of the department (s. 55 (1) (e); s. 38 (4)).

The *Act* provides that the Complaints Commissioner and the Review Board are to be the primary means of oversight over complaints, discipline, or personnel conduct. The *Act* sets out the occasions for their respective involvement. The *Act* does provide that the Chief has

first level responsibility for complaints against the department or any member thereof, with accountability to the Complaints Commissioner. If the matter cannot be resolved to the satisfaction of both parties, then the matter is referred to the Complaints Commissioner: ss. 71, 72. Similarly, the BPC has first level responsibility for complaints against the chief officer with accountability to the Complaints Commissioner. If the matter cannot be resolved to the satisfaction of both parties, then the matter is referred to the Complaints Commission: s. 73.

The Minister has the jurisdiction under the *Act* to order an investigation into any matter relating to policing and law enforcement in the province. (s.7)

Under the *Act*, the Minister may also direct the Review Board to investigate, inquire and report upon any matter relating to the extent, investigation or control of crime, the enforcement of law and/or the operation and administration of a police department with a report back to the Minister. Under s. 19 (2) the Minister may respond to a request by a board or council and direct the Review Board to inquire and report on any matter under the jurisdiction of the municipality. The cost of such a review is to be borne by the municipality: s. 23 (1).

The existence of this possible referral by the Minister, and the fact that the referral of a municipal matter to a Review Board is through the Minister, reinforces the express limit of the BPC under Section 55. Practically, and absent clear language to the contrary, it is not tenable that the *Act* would create a means by which a board or council could access the Review Board with the Minister's permission and also provide the BPC independent authority its direct its own independent civilian review of police conduct or individual police conduct.

October 2021 Motion

My interpretation of the Motion is that it is not directed at police conduct or individual police conduct. I interpret the Motion to focus the proposed independent civilian review to matters related to its responsibilities for the administrative direction, organization and policy required to maintain an adequate, effective and efficient police department.

The distinction between the Motion and a review of police conduct or individual police conduct is critical. It is my opinion that it is within the scheme of the *Act* for the BPC to create an independent civilian review focused on the BPC's governance and that such a directive does not intrude on the jurisdiction of the Minister, the Complaints Commission, or the Review Board. Subsection 8 (2) (h) of P-100 specifically authorizes BPC to "carry out any studies or investigations respecting its civilian governance responsibilities". This authority seems a practical extension for the BPC. If the BPC is fulfilling its role under the *Act*, it follows that it would be appropriate, if not an obligation, to review on a regular basis

“the administrative direction, organization and policy required to maintain an adequate, effective and efficient police department,” as required by the *Act*.

It is my opinion, then, that the request for an independent civilian review as set out in the Motion to be consistent with that authority to carry out studies or investigation with respect to its civilian governance responsibilities. I do not view the activation of an independent civilian review to be an act of delegation of authority as I see nothing in the Motion that attempts to delegate its authority to the reviewer. Presumably, the terms of reference would require a report with recommendations which the BPC would assess and decide to implement in the exercise of its authority under the *Act*.

This differentiation between a review of BPC from a review of police conduct is consistent with the adjacent mandates of the Ontario Civilian Police Commission Review (“OCPC”) concerning police conduct responding to the G20 protest, referred to in the Report and Recommendation, and the Toronto Police Board (“Toronto Board”) directed independent civilian review by former Associate Chief Justice Morden (“Morden Review”). At page 6 of the Report and Recommendation, it confirms the work that was carried out by the OCPC in relation to the G20 Summit. However, that is distinct from the Morden Review as directed by the Toronto Board.

The Morden Review was launched on September 23 2010, by the Toronto Board to examine the issues raised in regard to the governance role and policies of the Toronto Board with respect to the policing of the G20 Summit in June 2010. An independent civilian, the Honourable John W. Morden, a former Associate Chief Justice of Ontario, was appointed by the Toronto Board to conduct the review and provide a report and recommendations. A copy of the terms of reference for the Morden Review is attached to this letter.

At the outset of the Morden Review report, the following statement is made on jurisdiction:

Public police services are governed by law. In the case of the Toronto Police Services Board (“the Board”) and the Toronto Police Service, the main legislative authority is the *Police Services Act*, R.S.O. 1990 c. P.15. The Board’s basic mandate is expressed in the opening words of s. 31 (1) as follows:

A board is responsible for the provision of adequate and effective police services in the municipality [the City of Toronto]...

These opening words of s. 31 (1) state the basic purpose of the Board and, necessarily, frequent reference will be made to them

in this Report. They provide the answer to many questions on whether a particular action or a response by the Board is warranted and appropriate. Indeed, they are the authority on which the Board relies in establishing this Review.

The jurisdiction of the Toronto Board to establish the Morden Review was elaborated in a preliminary report submitted to, and approved by the Toronto Board, on 16 July 2010 by the Chair. The report was referenced in the draft Minutes of the Regular Meeting held on 22 July 2010, stating:

“...It is critical that the Review only deals with those matters that fall clearly within the Board’s statutory role and responsibility.

...

The Board does not have responsibility for investigating public complaints pertaining to individual conduct. Moreover, the Board cannot be involved in day-to-day operational matters, which are the purview of the Chief of Police.

In developing the scope of work and the Terms of Reference for the Independent Civilian Review, these legal parameters must be kept in mind.

The language of the reports shared during the meetings of the Toronto Board, suggest that it had interpreted itself as having jurisdiction to conduct an independent civilian review where it narrowly applies to the oversight and governance responsibilities of the Board. Under the *Police Services Act*, RSO 1990, c P.15 (“*Ontario Act*”) s. 31 there is no express provision excluding the board from conducting investigations or reviews, but there was express preclusion of interference with day-to-day operations.

The Ontario Civilian Police Commission (the “Commission”) was responsible for separate investigations into public complaints alleging individual police misconduct during the G20 Summit and the misconduct of a member from an external police services board also involved in the policing the event. The Independent Police Review Director also conducted a separate review called, “Policing the Right to Protest: G20 Systemic Review Report” (May 2012) in response to the public complaints received by the office regarding police conduct during the G20 Summit.

Other Jurisdictions

The Report and Recommendation outlines that reference was made to other jurisdictions where there were occasions of independent review of police action. I have reviewed the analysis in the Report and Recommendation as well as the legislation in each.

Alberta

Under the *Police Act*, RSA 2000, c P-17, municipalities that have a municipal police service or approval to establish one are also required to establish a police commission under section 28(1) of the Act. Where a commission is established, the commission is expressly permitted to conduct inquiries into police conduct under section 32(1) as follows:

32(1) A commission may conduct an inquiry into any matter respecting the police service or the actions of any police officer or other person employed for the police service.

(2) A commission may designate from among its members a committee of one or more persons to conduct an inquiry under this section.

...

(5) The Lieutenant Governor in Council may by order appoint a person

...

(b) to conduct the inquiry on behalf of the commission.

...

(12) The [Law Review] Board shall not commence an inquiry under section 17(1)(a) with respect to a matter that is the subject of an inquiry being conducted under this section until the inquiry under this section is completed.

(13) Where the [Law Review] Board is conducting an inquiry under section 17(1)(a), a commission shall not commence an inquiry under this section with respect to a matter that is the subject of the Board's inquiry until the Board's inquiry is completed.

Sections 32(12) and 32(13) of the *Police Act* above suggest consideration by the legislature of a potential overlap in the jurisdiction between municipal police commission's powers of inquiry and the Law Enforcement Review Board (the "LERB") established under section 9(1) of the Act. The jurisdiction of the LERB is set out in section 17(1) of the Act as:

17(1) The [Law Review] Board

(a) may, on its own motion, conduct inquiries respecting complaints,

(a.1) shall conduct reviews of decisions of a commission referred to the Board under section 43(12)(b)(i),

...

(c) shall at the request of the Minister conduct inquiries in respect of any matter respecting policing or police services,...

[Emphasis Added].

Under section 46.2 of the *Police Act*, Alberta has established the Alberta Serious Incident Response Team (ASIRT) which has powers to investigate as delegated by the Minister:

46.2(1) The Minister may by order establish an integrated investigative unit and authorize it to act as another police service for the purposes of conducting an investigation under section 46.1.

There are no specific legislated powers of the ASIRT, and the wording of the legislation suggests that it is to act as another police service for conducting investigations that may overlap with the jurisdictions of the municipal police commissions and the LERB in Alberta.

Ontario

The *Ontario Act* Section 27(1) (as it existed at the time of the Morden Review) requires the establishment of police services board for every municipality with a police force in Ontario, like the required board of police commissioners for municipalities in Nova Scotia. The responsibilities of the board set out in section 31(1) of the *Ontario Act* and do not expressly allow for investigation by the board. The responsibilities specified pertain to the oversight of the administration of the police services in the municipality, with the prefacing words being like the language of s. 55 (1) (b) of the *Act*.

31 (1) A board is responsible for the provision of adequate and effective police services in the municipality and shall,

- (a) appoint the members of the municipal police force;
- (b) generally determine, after consultation with the chief of police, objectives and priorities with respect to police services in the municipality;
- (c) establish policies for the effective management of the police force;
- (d) recruit and appoint the chief of police and any deputy chief of police, and annually determine their remuneration and working conditions, taking their submissions into account;
- (e) direct the chief of police and monitor his or her performance;

- (f) establish policies respecting the disclosure by chiefs of police of personal information about individuals;
- (g) receive regular reports from the chief of police on disclosures and decisions made under section 49 (secondary activities);
- (h) establish guidelines with respect to the indemnification of members of the police force for legal costs under section 50;
- (i) establish guidelines for dealing with complaints under Part V, subject to subsection (1.1);
- (j) review the chief of police's administration of the complaints system under Part V and receive regular reports from the chief of police on his or her administration of the complaints system.

The *Ontario Act* also establishes the Ontario Civilian Police Commission under section 21(1) of the Act that has mandated duties and powers of investigation laid out in sections 22(1) and 25(1) as follows:

22 (1) The Commission's powers and duties include,

...

- (c) conducting investigations with respect to municipal police matters under section 25;
- (d) conducting inquiries into matters relating to crime and law enforcement under section 26;
- (e) conducting inquiries, on its own motion, in respect of a complaint or complaints made about the policies of or services provided by a police force or about the conduct of a police officer and the disposition of such complaint or complaints by a chief of police or board;

...

25 (1) 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, investigate, 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 of a police force, a

special constable, a municipal law enforcement officer or a member of a board;

(b) the administration of a municipal police force;

...

The language of the *Ontario Act* is comparable to the *Act* and also does not have express authority to study, investigate or create an independent civilian review process, although as noted Halifax By-law P-100 does carry that authority. However, such an exercise is a reasonable application of the stated role. We did a case law search and found no challenge to the Toronto Board's decision to establish the Morden Review. As mentioned, the Morden Review includes a statement affirming the connection of its work to the Toronto Board's legislated mandate. There was considerable commentary at the outset of the Morden Review questioning the effectiveness of a narrowly defined review exclusive of considering police conduct. That, however, is a policy assessment and does not impact the legal authority.

British Columbia

In British Columbia, the statutory regime of police services varies from the above jurisdictions. Under the *Police Act*, RSBC 1996, c 367 section 23(1) a municipality required to provide policing may choose to establish a municipal police board to govern municipal police services under the Act. Section 29(1) empowers the municipal police board to conduct investigate matters:

29 (1) A municipal police board may study, investigate and prepare a report on matters concerning policing, law enforcement and crime prevention in its municipality.

The BC *Police Act* also establishes an independent investigations office under section 38.02 with a mandated purpose to investigate incidents required to be reported to the office under the Act and special investigations that may be directed to it as follows:

38.02 (1) An independent investigations office is established in the Ministry of Attorney General, the purpose of which is to conduct

(a) the investigation of an incident under section 38.09 (3) [*immediate reporting of critical incidents*],

(b) the investigation of a matter under section 38.10 (2) [*immediate reporting of critical investigations*],

(c) an investigation that may be directed to the independent investigations office under section 44 [*special investigations*], and

(d)the investigation of a matter under section 177.1 [*duty of police complaint commissioner to notify IIO*] on receiving notice from the police complaint commissioner under that section.

For the reasons stated, I do not consider the absence in the *Act* of similar language to Section 29 to be determinative. In my opinion, the right to study or investigate civilian governance is in keeping with the BPC mandate to be able to cause a review of its governance and policies. It is also expressly authorized by P-100.

Conclusion

For the reasons set out in this letter, it is my opinion that the BPC does have the authority to create an independent civilian review committee as defined in the Motion which review cannot include a review of police conduct or individual officer conduct. Further, it is my opinion that should BPC wish to have an investigation of the police conduct or individual officer conduct of August 18, 2021, it can request the Minister of Justice to exercise their discretion under Section 7 or Section 19 (2) of the *Act*.

Thank you for the opportunity to address this important issue.

Yours truly,

A black rectangular redaction box covering the signature of Dennis J. James, Q.C.

- Original Signed -

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DJJ/ejb

Enclosure

Toronto Police Services Board

Terms of Reference for the Independent Civilian Review

WHEREAS the Toronto Police Services Board ("the Board") is responsible, pursuant to section 31(1) of the *Police Services Act*, R.S.O. 1990, c. P.15 ("the Act"), for the provision of adequate and effective police services in the City of Toronto;

AND WHEREAS the Board must, pursuant to section 31(1) of the Act, generally determine after consultation with the Chief of the Toronto Police Service ("the Chief") objectives and priorities with respect to police services for the City of Toronto, establish policies for the effective management of the Toronto Police Service and direct the Chief and monitor his performance;

AND WHEREAS the Toronto Police Service played a lead role along with other federal, provincial and municipal police agencies and other security agencies in the development and implementation of strategies for policing the G20 meeting of world leaders ("the G20") that was held in Toronto, from June 25 through June 27, 2010;

AND WHEREAS the Board believes that it would be beneficial and of assistance to the Board in carrying out its responsibilities pursuant to section 31(1) of the Act to conduct a Review of the role played by the Toronto Police Service in developing and implementing the strategies for policing the G20 to determine whether those strategies were adequate and effective police services and to conduct a Review of the role of the Board with respect to the planning for and policing of the G20;

THEREFORE the Board is appointing the Reviewer to conduct an Independent Civilian Review (the "Review") into the role played by the Toronto Police Service in the development and implementation of the strategies for policing the G20;

AND to conduct the Review the Reviewer shall be provided with such resources as are required, and be authorized by the Board and shall have the authority to engage lawyers, experts, research and other staff as the Reviewer deems appropriate, at reasonable remuneration approved by the Board;

AND the Chief will cooperate fully with the Reviewer in conducting the Review;

AND the Chair and members of the Board will cooperate fully with the Reviewer in conducting the Review and will instruct all personnel employed by the Board to cooperate fully with the Reviewer in conducting the Review;

AND the Reviewer may request any person, organization, the Chief and any personnel employed by the Board to provide relevant information or records, including video recordings, for the Review where the Reviewer believes that the person or organization has such information or records in his, her or its possession, custody or control;

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AND the Reviewer may hold such public or private meetings, interviews and consultations, and may make such procedural decisions with respect thereto, as the Reviewer deems advisable in the course of the Review;

AND the Reviewer shall conduct the Review and make a report to the Board without expressing any conclusion or recommendation regarding the civil or criminal responsibility of any person or organization and without interfering in any ongoing criminal, civil or other legal proceedings;

AND the Reviewer may produce an interim report at the Reviewer's discretion and shall produce a final report containing the Reviewer's findings, conclusions and recommendations and deliver it to the Chair and members of the Board for distribution to the public;

AND the reports shall be prepared in a form appropriate for release to the public, pursuant to the Freedom of Information and Protection of Privacy Act;

AND these Terms of Reference shall be interpreted in a manner consistent with the limits of the jurisdiction of the Board;

AND in the event that the Reviewer is unable to carry out any individual term of these Terms of Reference, the remainder of the Terms of Reference shall continue to operate, it being the intention of the Board that the provisions of these Terms of Reference operate independently;

AND the subject matter of the Review shall be:

Pre-G20

1. (a) A review of whether or not after Toronto was selected as the location for the G20, the Toronto Police Service had sufficient time to adequately develop a framework and plan the strategy for policing the G20 and to provide adequate information to the Board so that the Board had sufficient time to discharge its responsibilities pursuant to the Act.

(b) A review of the role that the Toronto Police Service played in developing the framework and plan for policing the G20.

(c) A review of the role played by the Toronto Police Service in the command structure for the policing of the G20, including whether the fact that a number of other police agencies and security agencies were involved with the Toronto Police Service impacted on the Toronto Police Service delivery of police services or created complications in the command structure during the G20.

2. (a) A review of the information given to the Board by the Toronto Police Service and other agencies concerning the framework and plan for policing the G20 and the issues

that were anticipated to arise in connection with the policing of the G20 and whether it was adequate to allow the Board to discharge its responsibilities pursuant to the Act.

(b) A review of any issues or problems faced by Board members with respect to the information that they received, or felt that they ought to have received, having regard to the multi-faceted nature of the responsibilities that Board members had within the City of Toronto governance structure and/or with respect to the community.

(c) A review of the briefings with respect to G20 policing issues that were provided to the Board by the Toronto Police Service and other City of Toronto officials and whether the manner in which the Board received the information was adequate to allow the Board to appropriately consider it.

3. With respect to the following matters, a review of the information that the Board was given, if any, and the role, if any, the Board played in:

- (i) considering and approving the framework and the strategy for the policing of the G20 including the command structure;
- (ii) considering and approving any request of the Ontario government by the Toronto Police Service for additional legal powers to protect an area inside the security fence that resulted in the passing of Ontario Regulation 233/10;
- (iii) erroneously communicating to the public or in failing to correct an erroneous communication to the public by the Toronto Police Service that Regulation 233/10 applied to a five-meter zone outside the security fence;
- (iv) considering and approving directions or instruction that would be given to or by police officers with the Toronto Police Service who were going to be performing policing duties at the G20 with respect to:
 - (a) their obligations under the Charter of Rights and Freedoms and under the Criminal Code,
 - (b) demanding identification from people,
 - (c) their powers to search individuals without a search warrant,
 - (d) their powers to arrest individuals without an arrest warrant, and
 - (e) the use of force on people participating in a demonstration.
- (v) considering and approving the use of a strategy, colloquially known as "kettling", for detaining and/or arresting people participating in a demonstration;
- (vi) entering into agreements relating to police officers who were not with the Toronto Police Service but who were assisting with the policing of the G20 with respect to whether or not or how they would be held accountable for their conduct while assisting with the policing of the G20;
- (vii) negotiating contracts, setting or approving budgets, making decisions with respect to human resource issues and procurement issues relating to the policing of the G20 and was the role that the Board played appropriate.

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(viii) considering and approving the principles and policies governing the design of and/or the use that would be made of the Prisoner Detention Centre.

4. (a) Was the information given to the Board by the Toronto Police Service and relevant City of Toronto officials sufficient to allow the Board to properly discharge its responsibilities under the Act in relation to the policing services provided to the City of Toronto during the G20.

(b) Did the Board ask appropriate questions of the Chief and of relevant City of Toronto officials sufficient to allow the Board to properly discharge its responsibilities under the Act in relation to the policing service provided to the City of Toronto during the G20.

5. (a) Did the Board have policies in place prior to the G20 for dealing with crowd control at mass demonstrations and, if so, what were they.

(b) Did the Board have policies in place prior to the G20 requiring police officers with the Toronto Police Service to wear name badges and/or police badge numbers while on duty and, if so, what were they.

6. (a) Did the Toronto Police Service have procedures in place prior to the G20 for dealing with crowd control at mass demonstrations and, if so, what were they and did the Toronto Police Service monitor compliance with them.

(b) Did the Toronto Police Service have procedures in place prior to the G20 requiring police officers with the Toronto Police Service to wear name badges and/or police badge numbers while on duty and, if so, what were they and did the Toronto Police Service monitor compliance with them.

7. (a) What role, if any, did the Toronto Police Service play in requesting additional legal powers to protect an area inside the security fence that resulted in the passing of Ontario Regulation 233/10.

(b) What role, if any, did the Toronto Police Service play in erroneously communicating to the public or in failing to correct an erroneous communication to the public that the additional legal powers contained in Regulation 233/10 applied to a five-meter zone outside the security fence.

8. What policies and principles were used to design the Prisoner Detention Centre on Eastern Avenue with respect to medical care for prisoners, access to lawyers, access to Duty Counsel, housing of prisoners with disabilities, housing of young people, access of young people to their parents, strip searches of prisoners, supply of food and water for prisoners, access to toilet facilities, personal property of prisoners, and releasing prisoners without charge. Were there any difficulties in the implementation of the policies and principles. Was the Prisoner Detention Centre adequate with respect to these policies and principles.

During the G20

9. (a) What were the reasons that the Toronto Police Service gave orders or instructions to disperse demonstrators from the designated demonstration area at Queen's Park on June 26, 2010.

(b) What were the reasons that the Toronto Police Service gave orders or instructions to detain and/or arrest people participating in a demonstration on The Esplanade on June 26, 2010.

(c) What were the reasons that the Toronto Police Service approved of and used a strategy, colloquially known as "kettling", at Queen Street and Spadina Avenue during the evening on Sunday, June 27, 2010 for detaining and/or arresting people participating in a demonstration.

(d) What orders or instructions were given by the Toronto Police Service, and what were the reasons for them being given, in response to the situation that arose when people were destroying Toronto Police Service police cruisers and damaging other property in and around the financial district, and on and around Yonge Street and Queen Street.

(e) What orders or instructions were given by the Toronto Police Service, and what were the reasons for them being given, with respect to the use of tear gas or some similar substance to disperse people outside the Prisoner Detention Centre on the morning of June 27.

(f) What orders or instructions were given by the Toronto Police Service, and what were the reasons for them being given, to police officers with the Toronto Police Service or were given by officers with the Toronto Police Service to police officers who were not with the Toronto Police Service but who were assisting with the policing of the G20 with respect to:

- (i) their obligations under the Charter of Rights and Freedoms and the Criminal Code,
- (ii) demanding identification from people,
- (iii) conducting searches of individuals and their property without a search warrant,
- (iv) arresting people without an arrest warrant, and
- (v) the use of force towards people participating in a demonstration.

10. Did police officers with the Toronto Police Service remove or cover their name badges or police badge numbers during the policing of the G20 contrary to Toronto Police Service and Board policy.

11. Did the nature of the demonstrations and the actions of some people who were demonstrating differ from the previous experience of the Toronto Police Service and

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what impact, if any, did it have on the Toronto Police Service management of the policing of the G20.

Recommendations

12. In addition to reviewing and reporting on policing by the Toronto Police Service during the G20, the Reviewer should make such recommendations as the Reviewer deems fit to assist the Board in discharging its responsibilities pursuant to the Act, including, but not limited to, recommendations:

- i) to assist the Board in formulating policies relating to all aspects of the policing of mass demonstrations, including policies relating to the command and control structure relating thereto;
- ii) to assist the Board in assessing its practices with respect to the manner in which it receives information during Board briefings by the Toronto Police Service and others;
- iii) with respect to the role of the Board in communicating to the public when extraordinary policing measures are being taken as a result of special circumstances; and,
- iv) with respect to whether the Act ought to be amended to clarify the role and responsibilities of the police service boards in Ontario and to clarify the role and responsibilities of police agencies in Ontario with respect to providing information to their respective police service boards, particularly in circumstances where the police agency is interacting with or has interacted with other police and/or security agencies, including the Integrated Security Unit.

Approved at Toronto, Ontario this 23rd day of September, 2010.

"Alok Mukherjee"
Dr. Alok Mukherjee,
Chair, Toronto Police Services Board