



# POLICE BOARD GOVERNANCE IMPACT OF THE CSPA

Lynda Bordeleau, Partner  
Perley-Robertson, Hill & McDougall LLP/s.r.l.



## The Topic

- Police governance is complex.
- Understanding the police governance model and your role under the new CSPA will assist Board members to:
  - (1) Effectively carry out your statutory duties
  - (2) Minimize risk and liability
  - (3) Avoid being the subject of a complaint and investigation
  - (4) Develop effective policies to guide the police service
  - (5) Ensure adequate and effective policing is provided to the community



## Know your Authority/Role

- Police Service Board is a statutory entity.
- Authority is derived from the provisions of the *Community Safety and Policing Act* (“CSPA”)
- The CSPA will guide your actions
- Don’t act outside your jurisdiction
- Justice Morden: “It is imperative that Police Service Boards understand their role and are held accountable to the public. Their function is a crucial one; Boards exist to ensure that policing services meet community standards”.



## Role of the Board – cont'd

- Board in consultation with the Chief identifies objectives and priorities for the service
- Board creates the policy framework in which those objectives and priorities will be achieved
- Through policy-making and resource allocation powers, the board will shape the way policing is done
- Governance role ensures decisions made and actions taken by police are reflective of community values



## Role of the Board – cont'd

- Board must ensure that residents receive adequate and effective police services following policing standards issued by Province
- Board is the trustee of the public interest regarding provision of policing services
- Board has a duty to ensure that policing services provided meet community needs



## Board Responsibilities

- Responsible for adequate and effective policing – s. 10(1) / s. 11(1)
- Employer of civilian and sworn members – s. 37
- Recruit and appoint the Chief and Deputy
- Prepare and adopt a diversity plan
- Monitor and review the Chief's performance
- Monitor chief's handling of secondary activities and discipline
- Ensure police facilities meet standards



## Board Responsibilities – cont'd

- Labour relations issues – working conditions/collective bargaining
- Accommodation issues – s. 88
- Policy Development – s. 38
- Budgeting
- Business planning
- Managing any conduct complaints against the Chief or Deputy – s. 198(7)



## Understanding Police Authority/Operations

- The structure of policing is complex
- The police board is a unique entity but it does not control the police
- The concept of police discretion and independence is important to understand. Police have both statutory and common law authority
- Policies are put in place for guidance by both the Board and the Chief of Police
- Chief of Police is a statutory office holder – not a normal employment relationship but one governed by the CSPA.



## Board Governance and Oversight

- Board exercises governance functions by establishing policies
- Chief of Police reports to and is directly accountable to the board for adherence to and compliance with Board policies
- Board cannot direct the exercise of police discretion in any single police operation
- It can provide policy direction regarding all police operations of a specific nature



## Board Governance cont'd

- For instance, a police services board cannot tell the Chief:
- Who or who not to investigate
- Who or who not to arrest
- Where to set up a traffic stop
- It can direct the Chief to ensure everyone has the right training to do their job and what information needs to be reported to the board and when



## Board Governance cont'd

- Board can direct certain enhancements to provincially mandated policing standards – i.e. use of body-worn cameras
- Board can ask questions about police activities impacting the community or plans for large scale operations related to preserving public order
- Critical path to governing is the board's ability to interpret community's needs and establishing priorities that will fulfill them



## Factors Impacting Governance

- Need common understanding between board and police management regarding role of board
- Effective training on how to govern
- Meaningful governance standards and evaluation
- Sufficient access to relevant information and expert assistance



## Operational v. Policy

- Understanding police authority assists in assessing the line between operational and governance issues
- Board members shall not interfere with operational decisions or the day to day operations of the police service
- This does not mean that Board not ask questions about incidents that impact the community. It means that it may not direct actions or Board may not receive full information that may be privileged or reveal investigative techniques



## Do not interfere in operations

- This is one of the most significant areas of concern and may trigger complaints or oversight investigations
- Board members must act in a manner consistent with principles of independence and discretion
- What may constitute interference? Objective standard
- Interference could occur indirectly through public commentary or directly through contact with police within the community
- It is appropriate to explore the impact of police operations on the community through the Board as a whole with governance objectives in mind



## Status as Board member prevails

- One of the most litigated areas involves the wearing of “two hats” – i.e. as (1) a municipal council member, mayor, private citizen and (2) a member of the Board
- Oversight entities have been clear that a board member cannot define themselves for certain actions to be a board member and for others a councillor or private citizen
- You are never a “concerned citizen” when acting or speaking on issues that affect policing in community
- Your role on city council does not “trump” your role on the Board – OCPC, Peterborough Investigation
- Board members must carefully reconcile their roles and responsibilities without compromising their obligations under the Act



## Status as Board member – cont'd

- OCPC in Peterborough decision addressed the status of Board members:

“Members of the Board are public stewards – public liberty and safety must be paramount, not one’s own self-interest”.

“A member is not required to accept a post to the board but once accepted, the member is subject to all parts of the Act and Code of Conduct”.

“A person who is unable to reconcile the two roles should not accept a posting to the Board”.

“Competing obligations on council and on the board must be reconciled – the Board is not subservient to city council”.



## Be Cautious in Public Communications

- Code s. 3: member of board shall not conduct themselves in a manner that undermines or is likely to undermine the public's trust in the board or the police service
- Code s. 12: member of board shall not purport to speak on behalf of board unless authorized by board to do so
- Code s. 13: board member shall make it clear that they are expressing personal opinion when commenting on board or service actions or omissions

**CAUTION:** The Commission has held that when a board member publicly expresses an opinion about policing, “it will be close to impossible to sever his/her identify from their role as a Board member”.



## Public Communications – cont'd

- OCPC Peterborough: Mayor Bennett would express one position at the Board meeting and then a completely contrary position in the public and with municipal councillors. He continually positioned himself as an outsider to the Board, even though he was not only an insider but an insider with a vote. This is the opposite of instilling public confidence in the ability and integrity of the Board.
- “A board member has channels to make his or her constructive criticisms heard. He or she can bring constructive critique to the Board meetings and should a board be completely unable to function or respond to these critiques a complaint can be made to the Commission to investigate”.



## Avoid Conflict of Interest

- Code s. 20: A member shall promptly disclose any conflict of interest to the Chair or if it involves the Chair to the Inspector General /shall disclose it at the next Board meeting
- Code: s. 21 - Board members shall not use their position to benefit themselves/ a person with whom they have a personal relationship/ interfere with the administration of justice
- S. 22: A member shall not participate in discussion of or voting with respect to matters at a board meeting if a conflict of interest is declared
- *Municipal Conflict of Interest Act* applies – includes concept of apparent or perceived conflicts of interest /objective test



## Police Oversight Bodies

- IOP – Inspectorate of Policing
  - Supports Inspector General
- LECA – Law Enforcement Complaints Agency
  - Responsible for public complaints
- OPAAC – Ontario Police Arbitration Commission
  - Administer police discipline adjudications, budgeted and labour related arbitrations
- OCPC – To be dissolved by regulation



## Inspector General

- IG's duties are executed through Inspectorate of Policing
- CSPA compliance oversight
- Drive improvements for public safety performance
- Inspections/investigations/ research
- Provides advice and support
- Board member misconduct directions – s. 124
- Issues directions to ensure compliance – s. 125
- Impose measures – s. 126



## Inspector General – cont'd

- s. 106 – any person who believes a member of a board has committed misconduct may make a complaint to IG
- Code of Conduct s. 17: duty to disclose misconduct of another member of board if reasonable belief
- Screening process applies
- S. 122(1) – Board member under investigation shall decline to exercise their powers and duties
- S. 124 – IG may reprimand, suspend or remove board member
- procedural fairness process applies



## Adequate and Effective Policing

- S. 10 CSPA – Policing responsibility
- S. 11 – Adequate and effective policing
  - Crime prevention
  - law enforcement
  - maintaining public peace
  - emergency response
  - assistance to victims of crime/any other prescribed policing functions



## Adequacy Regulations

- O. Reg. 392/23 Adequacy and Effective Policing (General)
- O. Reg 401/23 Conflict of Interest
- O. Reg 393/23 Active Attacker Incidents
- O. Reg. 394/23 Major Case Management
- O. Reg. 395/23 Investigations



## Training – O. Reg 87/24

- Basic Recruit Training
- Mental Health Crisis Response
- Coaching
- Special Constable training
- Use of Force and Weapons
- Public Order/Incident Command and Crisis Negotiation/Active Attacker Incidents/Tactical
- Investigations
- Board Training



## Policy Development – Board

- Board obligation to set policy in both operational and administrative functions – s. 37
- Board operational policies are broad and set out community needs and expectations – s. 38
- Mandatory policies in areas such as:
  - administration
  - adequacy, disclosure of personal information, handling of discipline, legal indemnification
  - other prescribed matters



## Policy Development – Board cont'd

- s. 38(2) – board may establish policies respecting any other matters related to police service or provision of policing
- s. 38(5) – board shall not make policies with respect to specific investigations, the conduct of specific operations, the management or discipline of specific police officers or other prescribed matters
- S. 38(7) – policies must be published



## Closed Meetings and Confidentiality s. 44

- s. 44 governs ability to close meetings
- Duty of confidentiality is set out in s. 44(4) with respect to any matter considered in a closed meeting
- Exceptions to the duty relate to investigative streams and as required by law
- Training and education may be dealt with in closed session
- Code s. 14: A member of police board shall not access, collect, use, alter, retain, destroy or disclose to any person information obtained in course of duties
- Code s. 15: member shall not disclose to the public information made available in course of member duties except as authorized by board or required by law/or available to public already



## Section 81 Investigations/Reports

- Section 81 replaces the old section 11 investigation/reports
- s. 81(3) – the Chief may request an external s. 81 investigation if determined necessary, if special expertise is required or to ensure public confidence in the investigation.
- Report is still required
- Board has similar authority if the incident involves a Deputy or Chief – s. 81(5)



## Accommodation of Disability

- Section 88 replaces s. 47 of the PSA
- Not a lot has changed
- Hearing is still required
- Evidence of two legally qualified medical practitioners is required
- Primary focus is still on accommodation



## Accommodation of Disability (cont'd)

- Termination is available or retirement (unreduced pension) if:
- (1) member is mentally or physically disabled and as a result incapable of performing essential duties
- (2) member's needs cannot be accommodated under the Code without undue hardships.
- Written reasons are required



## Policing/Service Complaints – IG

- s. 107 CSPA – policing complaints include:
- Complaints about adequacy and effectiveness of policing
- Failure of board, chief others to comply with the Act
- Policies of the board
- Procedures of the Chief



## Policing/Service Complaints – cont'd

- IG is able to screen policing complaints for (a) frivolous and vexatious complaints and (b) whether complaint is in public interest
- Policy complaints may be forwarded to Board
- S. 107(7) Board has a duty to review complaint and report back to IG regarding any steps taken in response



## Misconduct Investigations – Chief/Deputy

- Board continues to have authority over misconduct of Deputy or Chief of Police
- s. 197 CSPA – duty to notify LECA if member of the public is involved
- S. 198(7) – sets out options for investigation:
  - (1) Board may conduct an investigation
  - (2) Board may request another service investigate
  - (3) Board may retain party to investigate who is not a member of a police service



## Misconduct Investigations – cont'd

- Once an investigative process has concluded with misconduct substantiated, the Board must determine the appropriate penalty and process
- s. 200 – penalty options
- s. 201 – process to impose penalty
- S. 202(11) – termination or demotion process



## s. 220 Confidential Positions

- S. 220 of the CSPA describes four positions in a police service which shall not become or remain a member of a Police Association if their position would likely give rise to a conflict of interest in engaging in or assisting with collective bargaining
- S. 222(1)3 of the CSPA provides that a person may apply to the OPAAC to appoint an arbitrator to decide a dispute on status
- Positions include CFO, CAO, Chief Human Resources Executive, General Counsel



## TIPS FOR BOARD MEMBERS

- Know your duties and obligations as a Board member
- Ensure you have a copy of the statutory Code of Conduct and read it
- Maintain confidentiality
- Avoid conflict of interest
- Represent the interests of the community, the whole police board and the service
- Be willing to set aside personal agendas
- Come prepared to your Board meetings and ask questions/seek guidance when in doubt
- Demonstrate discretion and common sense in all communications



**THANK YOU!**