

The Regional Municipality of York

Committee of the Whole
Finance and Administration
April 11, 2019

Report of the Regional Solicitor

Update on Bill 68, the *Comprehensive Ontario Police Services Act, 2019*

1. Recommendation

The Regional Clerk circulate this report to The Regional Municipality of York Police Services Board.

2. Summary

This report provides an overview of Bill 68, the *Comprehensive Ontario Police Services Act, 2019* (the “Act”) and outlines key provisions that will have an impact on the Region and the York Regional Police Services Board.

Key Points:

- Council will be able to determine the size of the Police Service Board but one-third of the members will continue to be appointed by the Province
- Council will be required to prepare, approve, and publish a diversity plan to govern the appointment of members to the Board
- The Region has identified the Human Services Planning Board to carry out the requirements to prepare, adopt, publish and monitor a community safety and well-being plan by December 31, 2020
- The Region will assume new responsibilities as a special constable employer
- Some of the new requirements contained in this legislation may create pressures on the resources of the York Regional Police Services Board and York Regional Police

3. Background

Bill 175, the *Safer Ontario Act, 2018* was not proclaimed and has been replaced by Bill 68, the *Comprehensive Ontario Police Services Act, 2019*

As reported to Council on [May 17, 2018](#), Bill 175, the *Safer Ontario Act*, was introduced in late 2017 and received Royal Assent on March 8, 2018; however, a majority of its provisions were never proclaimed into force. Bill 175 would have represented the most comprehensive amendments to policing legislation since 1990.

Immediately following the provincial election in June 2018, the new government suspended the implementation of Bill 175, and announced plans to review the legislation. Consultations on the legislation were conducted with select stakeholders during a brief period in fall 2018.

Bill 68, the *Comprehensive Ontario Police Services Act, 2019* received Royal Assent on March 26, 2019

The government introduced Bill 68, the *Comprehensive Ontario Police Services Act, 2019* on February 19, 2019 for First Reading and the Legislature referred it to the Standing Committee on Justice Policy on February 28, 2019. Only one day of hearings was held on March 7th and written submissions were due the same day. The legislation received Royal Assent on March 26, 2019.

Bill 68 repeals and replaces the legislation enacted by Bill 175 including the *Police Services Act, 2018* and the *Ontario Special Investigations Unit Act, 2018*. The bill also repeals the *Policing Oversight Act, 2018* and the *Ontario Policing Discipline Tribunal Act, 2018*. It enacts the *Community Safety and Policing Act, 2019* and the *Special Investigations Unit Act, 2019*, and carries forward the creation of the Inspector General of Policing as a new oversight body.

The goal of the Bill 68 is to enhance oversight, and improve governance, training, and transparency of policing in Ontario

The new police oversight provisions respond to Justice Tulloch's recommendations in the Report of the Independent Police Oversight Review (2017).

Many of the changes to police governance and oversight, as well as obligations for boards and municipalities introduced in Bill 175 were carried forward into Bill 68. This report highlights many of the key impacts of the new legislation for the Region and the York Regional Police Services Board.

The Association of Municipalities of Ontario (AMO) provided a submission to the Standing Committee on Justice Policy advocating for a reduction in obligations on municipalities and the consequential financial burdens imposed.

The Emergency Services Steering Committee (ESSC) along with other employer groups also provided submissions to the Standing Committee. ESSC noted that despite extensive advocacy and years of consultation on the need to modernize policing, Bill 68 does little to provide opportunity for increased efficiency in the delivery of police services, and it provides no relief to the financial burden on taxpayers to sustain municipal police services.

The majority of the provisions in the *Comprehensive Ontario Police Services Act, 2019* will not come into force until Proclamation

The majority of the substantive amendments to the *Police Services Act* set out in Bill 68 will come into force on dates to be proclaimed by the Lieutenant Governor. As of the date of this report, proclamation dates had not been determined.

4. Analysis

Several changes introduced in the *Community Safety and Policing Act, 2019* and related statutes will have a direct impact on the Region, the York Regional Police Services Board and York Regional Police

The most significant impact of the new legislation for the Region, as a municipality, will come from changes with respect to the composition of police services boards and the appointment of members including the requirement for a diversity plan, and the requirements for Community Safety and Well-Being Planning which have been carried forward from Bill 175.

The most significant changes for the York Regional Police Services Board (the “Board”) and York Regional Police will come from the changes in police governance and oversight. Impacts on the Board and police service will be reported to the Board at a future meeting.

Council will be able to determine the size of the Board but the Province will continue to appoint over one-third of the members

Under the *Police Services Act, 1990*, the size of municipal police service boards is determined by population. The Board is currently composed of seven members: three appointees from the Minister of Community Safety and Correctional Services; the Regional Chair and two members of Council; and one citizen appointed by Council. Changes to the composition of the Board currently require approval of the Lieutenant Governor in Council.

Under the *Community Safety and Policing Act, 2019* police service boards will be composed of five members unless the municipal council passes a resolution to change the number. Council will be able to set the size of the Board at five, seven or nine members. Regardless of the size of the Board, the ratio of Provincial appointees would remain the same with the Province appointing over one-third of the members.

The new legislation also introduces a number of terminology changes. “Police services” is replaced with the term “policing” and “police services board” is replaced with “police service board.” This will require a change in the name of the Board.

Council will be required to prepare and approve a diversity plan to govern the appointment of members to the Board

The *Community Safety and Policing Act, 2019* requires that each municipal Council prepare and, by resolution, approve a diversity plan to ensure that members of the board appointed by Council are representative of the population of the municipality. This requirement will not only impact the appointments to the Board by Council but may also influence Council’s decision on the size of the Board.

While the effective date of this provision is not known at this time, the diversity plan must be approved no later than twelve months after this provision is proclaimed into force. The Act does not provide guidance on the contents of the diversity plan but forthcoming regulations will set out requirements for reporting and publishing the plan. Council will also be required to review and publish the plan at least once every four years.

A municipality will also have the obligation to take reasonable steps to promote the availability of appointments to demographics that have been historically underrepresented on police services boards if it is reasonably foreseeable that there will be a need for a new appointment.

The Act will require that in appointing or reappointing a member to the Board, any appointing person or body shall consider:

- The need to ensure that the police service board is representative of the area it serves, having regard for the diversity of the population;
- The need for the board to have members with prescribed competencies; and
- Any applicable diversity plan

It is not entirely clear that the Minister, in appointing one-third of the members, will be required to adhere to the municipality’s diversity plan. The Minister will be required to promote vacancies on boards to demographic groups that have been historically underrepresented on boards and to report on such efforts on an annual basis.

Council must adopt a Community Safety and Well-being Plan by December 31, 2020

On [March 29, 2018](#), staff reported to Council on the requirement to establish a Community Safety and Well-being Plan. The report notes that Council will be required to prepare and

adopt by resolution a Community Safety and Well-being plan within two years of the day on which this section comes into force. This section came into force on January 1, 2019 and therefore the first plan must be adopted by December 31, 2020.

Council will also be required to establish an advisory committee comprised of representatives as set out in the Act. Staff have identified the Human Service Planning Board of York Region as the body that is most suited to take on this additional mandate as there are a number of sectors already represented. On [June 28, 2018](#), Council approved the Human Services Planning Board of York Region's revised Terms of Reference and expanded mandate to act as the Advisory Committee to Council for the preparation of a Community Safety and Well-being Plan. On [February 28, 2019](#), Council approved the appointments to the Human Services Planning Board. The approved appointments are in compliance with the requirements of the *Community Safety and Policing Act, 2019*, including the added requirement for local police service participation. Council will also be required to review and publish the plan on a time period to be prescribed.

One notable change in Bill 68 is the addition of the Chief of Police to the list of required participants on the advisory committee. The Region has already appointed the Chief to the Human Services Planning Board.

The Region will assume new responsibilities as a special constable employer

York Region Transit currently employs twenty special constables. Oversight of special constables is subject to a Joint Services Agreement with the Board. Special constables are currently appointed by the Board subject to approval by the Minister of Community Safety and Correctional Services.

Under the *Community Safety and Policing Act, 2019*, the Region will become a "special constable employer" subject to the approval of the Ministry. The Board will continue to appoint special constables who are employed by York Regional Police and for other special constable employers, including the Region. Such appointments will no longer be subject to Ministry approval. As such, the Board will assume some of the responsibilities of the Ministry.

While there will be minimal impact on the process for appointing special constables, the Region will assume certain duties established and prescribed in the Act as a special constable employer, including the obligation to investigate misconduct by special constables.

The Minister may suspend or terminate the authorization to employ special constables, including a failure to take appropriate action against a special constable employee who may have contravened the Act or the regulations. The Region may also face penalties as a special constable employer if a special constable is held out as a police officer.

Under Bill 68 special constables will not fall within the mandate of the Special Investigations Unit

Prior to Bill 175, special constables did not fall under the mandate of the Special Investigations Unit. Bill 175 amended the jurisdiction of the SIU to bring special constables, including special constables employed by the Region, under Special Investigations Unit oversight.

Bill 68 reverses this change for most special constables in the Province. Special constables employed by York Region Transit will not be subject to Special Investigation Unit's oversight under the new legislation. This change is widely supported by special constable employers and police services.

The proposed legislation introduces enhanced requirements for strategic planning by police services boards

Under existing legislation the Board is required to generally determine, after consultation with the Chief of Police, objectives and priorities with respect to police services in the municipality. Currently, a multi-year business plan is prepared setting out the goals and objectives of the police services.

The *Community Safety and Policing Act, 2019* includes specific requirements for strategic and business planning requirements of police service boards that are more prescriptive. The Board will be required to develop a strategic plan for policing that outlines a prescribed series of quantitative and qualitative performance objectives and indicators for policing outcomes. This strategic plan is to be prepared in consultation with the Chief of Police and Council, as well as groups representing diverse communities, school boards, Band Councils and other prescribed persons, organizations or groups within the Board's area of policing responsibility.

The Board will need to determine, in consultation with the Chief of Police, how best to carry out this function. While the process of strategic and business planning may not differ from the existing format, the Board will likely be required to have an increased level of participation and representation in this process which could have an impact on its resources.

The *Community Safety and Policing Act, 2019* maintains new mandatory training requirements introduced in Bill 175

Currently, police service boards are required to ensure that its members undergo any training that the Minister may require. The *Community Safety and Policing Act, 2019* mandates more prescriptive training requirements including training on human rights, systemic racism, diversity and Indigenous training for new police officers, new special constables, and police service board members.

Board members will be required to successfully complete basic training on roles and responsibilities before exercising powers and performing duties. Failure to do so will disqualify members from serving on the Board

Bill 68 adopts many of the recommendations of Justice Tulloch’s Report of the Independent Police Oversight Review (2017) to enhance police oversight and improve fairness and transparency

In 2016, the government issued an Order-in-Council directing an independent review of Ontario’s three civilian police oversight bodies: the Special Investigations Unit (SIU), the Office of the Independent Police Review Director (OIPRD), and the Ontario Civilian Police Commission (OCPC). The purpose of the review was to provide recommendations to improve transparency, accountability, and effectiveness of those oversight bodies. Justice Michael Tulloch conducted the review and released his report and recommendations in March 2017. Many of the recommendations pertaining to police oversight were adopted in Bill 175 and have been carried forward in Bill 68.

The proposed legislation would transform the Office of the Independent Police Review Director into the Law Enforcement Complaints Agency (LECA). Its responsibilities would include:

- Receiving and screening public complaints involving police officers and forwarding complaints about members of a board to the Inspector General
- Assigning complaints for investigation relating to police officers to a police service (of the officer or alternate) or an agency investigator
- Requiring anyone required to investigate (e.g., Chief of Police) to explain delays in the completion of an investigation after 120 days and every 30 days thereafter.

Bill 68 also includes changes to the mandate and scope of the Special Investigations Unit. To further enhance oversight and civilian governance, Bill 68 strengthens the role of the Inspector General of Policing, introduced by Bill 175, to monitor, inspect and ensure compliance with the Act.

5. Financial

The Board’s resources may be impacted by requirements for increased involvement and accountability for strategic planning, community safety planning, diversity planning and mandatory training requirements. Any impact on the Board’s budget or that of York Regional Police beyond the approved 2019 budget will be reported to the Board in a subsequent report.

The Region will incur costs associated with the preparation of a diversity plan, a Community Safety and Well-being Plan, and support of the advisory committee. The nature of any

additional costs cannot be determined at this time. There is no provincial funding to support the development or implementation of the Community Safety and Well-being Plans. The 2019 approved Community and Health Services budget includes an annual cost of \$273,295 for two staff resources to lead, coordinate development of, monitor and report on the Community Safety and Well-being Plan. This will involve consultations with the Advisory Committee, York Regional Police, community organizations, the public, government agencies and local municipalities to identify risks and mitigation strategies, and meet provincial reporting requirements. These positions are funded through the Tax Levy.

AMO continues to advocate for funding to support municipalities and police services boards in meeting obligations under new legislation

AMO continues to advocate for funding to support municipalities in meeting obligations under the new legislation, including making submissions to the Standing Committee on Justice Policy seeking changes to Bill 68 to permit civilianization of certain functions to help reduce the costs of policing and ensure that police officers are focused on critical public safety functions. AMO also called on the government to limit the scope of community safety and well-being planning obligations to allow for appropriate response to local needs, and they asked for clarification of requirements for policing of waterways to avoid unnecessary duplication in areas policed by the Ontario Provincial Police.

Staff will continue to support AMO's advocacy for funding commensurate with the additional obligations included in the legislation

Bill 68 will also impact the operations of York Regional Police

While the financial implications of Bill 68 cannot be determined at this time, the changes on how policing is provided under the *Community Safety and Policing Act, 2019*, may, in future years, have a financial impact on the operations of the police service which may, in turn, be reflected in the operating budget and reported accordingly.

6. Local Impact

Creating safe, complete and healthy communities represents a common goal for local municipalities and Community Safety and Well-being Plans. These Plans will help to ensure that risks to community safety in areas such as mental health, addiction, homelessness and housing concerns are addressed without the use of emergency resources. Local municipalities within the Region are not required to establish a Plan but they will be a key part of the Region's Plan and advisory committee.

7. Conclusion

Bill 68, the *Comprehensive Ontario Police Services Act, 2019* repeals and replaces the policing legislation enacted by the previous government under Bill 175. Many of the provisions in Bill 68 that have a direct effect on the Region have been carried forward from Bill 175.

Staff will continue to monitor the progress of the pending provisions and future regulations under the statutes contained in the *Comprehensive Ontario Police Services Act, 2019* and the potential impacts on the Region and the Board.

Staff will also report back to Council with recommendations regarding the composition of the Board and Council's diversity plan once the timing of those provisions is known.

For more information on this report, please contact Stephen Maio, Senior Counsel at 1-877-464-9675 ext. 71420. Accessible formats or communication supports are available upon request.

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