



**Remarks to the Standing Committee on Justice Policy
regarding Bill 68, Schedule 1, *Community Safety and Policing Act, 2019***

Recommendations for Certain Provisions

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Good afternoon.

Let us begin by applauding the Government's efforts to bring about modernized public safety legislation that balances the needs of the people and the needs of the police.

Safety is a fundamental right. Everyday, the citizens of Ontario rely on the front-line men and women that serve in our police services and do an amazing job. We believe that communities need to feel confident in their police, and know that they are getting great value for their taxes. This is where police boards fit in. Police boards are the mechanism for ensuring that our police have the direction, support, funding, respect and accountability that they need to keep Ontario communities, and themselves, safe and thriving.

Our comments today will focus on Schedule 1 of Bill 68 – the *Community Safety and Policing Act, 2019*. In essence, this piece of the bill will replace the current *Police Services Act, 1990*, which has been in force for 30 years.

Much has changed over the last 30 years. Crime has become more complex, communities are more diverse, costs are escalating, and technological advances have changed everything we do. Arguably, the need for effective police governance has never been greater.



Police services boards stand as the important bridge between the police and the community the police serve. As the Honourable retired Associate Chief Justice John Morden wrote in his Independent Civilian Review into Matters Related to the G20 Summit:

In Ontario, our system for municipal police services is to have a board comprised of persons unconnected with the police consult with the chief of police to identify objectives and priorities for the police service. The board also creates the policy framework in which those objectives and priorities will be achieved. The responsibility of police boards is considerable. Through their policy-making and resource allocation powers, police boards shape the way in which policing is done. Therefore, effective fulfillment of the governance role that police boards play ensure that decisions made and actions taken by police are reflective of the community's values.

Importantly, Bill 68 reinforces and, in some ways, modernizes the important role of police boards. This is a good thing. As community values evolve, as we learn more about the intersection of policy issues that impact on policing, and as we seek to find better ways to keep Ontarians safe, police boards must continue to have the training, tools and powers to fulfill their vital governance function.

While there are many aspects to Bill 68 that will enable boards to meet the increasing demands communities place on their police, there are certain aspects that would benefit from some minor changes. It is our view that these changes will better align with the Government's overall intent regarding Bill 68, and minimize any misinterpretations or other impediments to good governance.



We have provided the Committee with a chart summarizing our recommendations regarding Schedule 1 of Bill 68. Please allow us to highlight a few particular recommendations.

In **Section 37** of the Bill, the current duty of a police services board to consult with the Chief of Police and determine priorities and objectives for the police service has been removed. While this requirement to consult on priorities and objectives appears in relation to how the board develops its strategic plan, it is our view that this important duty, as previously articulated, is essential to robust board governance. Strategic Plans will be developed at a moment in time. However, a board should have an ongoing duty to consult with its chief and identify priorities and objectives that reflect the ever-changing needs and interests of the municipality the board serves. Therefore, we would recommend including in Section 37 the same language that currently exists in the *Police Services Act, 1990*, section 31(1)(b): “generally determine, after consultation with the chief of police, objectives and priorities with respect to police services in the municipality.”

Also, in **Section 37**, there is an inconsistency that is carried forward from the current *Police Services Act*. Right now, boards are responsible for appointing deputy chiefs of police and certain command officers. However, the current Act permits boards to only conduct performance evaluations only of the chief of police. This creates a scenario where boards enter into an employment contract with a deputy chief or their civilian equivalent and determine their working conditions, but are not permitted to play any role in evaluating their performance during the life of the contract. We would recommend inserting paragraphs in Section 37 to create the same performance review duty on boards in relation to these command members as currently exists in relation to chiefs of police.



Section 38 and 40, and **69**, include limits on a board. **Sections 38** and **69** limit the universe of policies a board can create, and **Section 40** limits the directions a board can give to the chief of police. Some limits in these areas are vital. For example, as Bill 68 currently states, a board should be prohibited from issuing a policy or direction to the chief that would contravene a law of the province or of Canada. Similarly, no policy or direction should lead to a police officer doing something that would be inconsistent with their duties under the legislation they operate.

However, as currently worded, there are limitations in these sections that we believe go too far – and, the unintended consequences of this would be to cut boards off from entire subject matter. As currently worded, these sections use the terminology of “specific investigations” and “the conduct of specific operations.” Again, the unintended consequences of this wording could prevent boards from engaging in core aspects of their governance and oversight roles. Two examples illustrate how, if these provisions are unchanged, could preclude the very type of policy development boards should be engaged in:

- ‘Carding’ practices could be immune from policy review if it fits within the definition of “specific investigations” or “the conduct of specific operations.”
- Similarly, for missing persons investigations generally, a board may wish to have a general policy that applies to this type of investigation. The current wording of these sections may prohibit this.



Although a board should have no intention of creating a policy or direction that applies to a specific, ongoing matter – that is, a missing persons investigation into Suspect ‘X’ – the current wording of the provisions may well prohibit these broader and important policies and directions from being developed and issued. Therefore, we recommend changing the wording in both Section 38(5) and Section 40(4) to read “a specific investigation, the conduct of a specific operation...”

Also in relation to **Section 40**, we have two additional recommendations:

- Section 40(8) gives the Chief of Police a complete ‘veto’ over a board’s request for information. There is a significant and important difference between a board requesting information so it can assess an issue and determine the best course of action, versus the board issuing an improper direction. As the G20 Report taught us, there is really no area in respect of which a board should not be able to access information from a Chief of Police – the public confidence in independent governance and oversight requires an information exchange on all topics. Of course, this does not mean a board can issue a direction to the Chief that relates to a particular investigation or incident – this would be entirely improper. As this provisions currently reads, the Chief would have the authority to simply shut down the information flow to his or her governing board. If a board cannot even ask for information on certain subjects, these subjects become entirely immune from civilian review. Therefore, we would recommend removing this provision, or, if there is a strong desire to maintain it, then to include some mechanism to efficiently adjudicate any disputes that could arise between a board and Chief. One suggestion would be to refer these disputes to the Ontario Police Arbitration and Adjudication Commission, which is in Part IX.



- Also, Section 40(9) does not contain any exception to publishing board directives to the Chief, where those directives were issued in a close – or confidential – meeting. This provision should include this explicit exception.

The last set of recommendations have to do with the functioning of the board itself. Bill 68 includes various components that should lead to a more diverse membership on boards that reflect the community a board serves. We would recommend one way to strengthen this further: **Section 33** should require that an “appointing person or body” consult with the individual board to identify what competencies the board requires of any new appointees. This way, if a board requires a member with mental health experience, or financial and auditing experience, for example, there would be a consultative mechanism for boards to make those needs known the appointing decision-maker. Boards are best placed to identify gaps in their competencies, and this would better facilitate the filling of those gaps.

Again, we have made several other recommendations and have included those in the chart provided you. We hope these recommendations are specific and helpful. We believe that, if implemented as we have suggested, these recommendations will strengthen Bill 68 and continue to demonstrate Ontario’s leadership in robust and value-added police board governance.