

Clause 19 in Report No. 9 of Committee of the Whole was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting held on May 17, 2018.

19

Update on Bill 175, the *Safer Ontario Act, 2018*

Committee of the Whole recommends adoption of the following recommendations contained in the report dated April 27, 2018 from the Regional Solicitor:

1. The Regional Solicitor prepare an amendment to the Indemnification Bylaw for consideration by Council.
2. The Regional Clerk circulate this report to The Regional Municipality of York Police Services Board.

Report dated April 27, 2018 from the Regional Solicitor now follows:

1. Recommendations

It is recommended that:

1. The Regional Solicitor prepare an amendment to the Indemnification Bylaw for consideration by Council.
2. The Regional Clerk circulate this report to The Regional Municipality of York Police Services Board.

2. Purpose

This report provides Council with an update on Bill 175, the *Safer Ontario Act, 2018* and an overview of the impact key provisions will have on the Region.

3. Background and Previous Council Direction

Bill 175, the *Safer Ontario Act, 2018*, represents the most comprehensive amendments to policing legislation since 1990

The *Safer Ontario Act, 2018* is part of the government's commitment to support stronger, safe communities through its Strategy for a Safer Ontario. It also responds to the recommendations made in the Independent Police Oversight Review conducted by Justice Tulloch and released in April 2017.

The introduction of the *Safer Ontario Act, 2018* follows extensive consultation with many stakeholders across the province over the past five years. While consultation with police boards, chiefs and municipalities focused on modernizing policing and addressing the increasing costs, the *Safer Ontario Act, 2018* introduces changes on a broad range of issues focusing on:

- Shifting to a collaborative approach to community safety and well-being planning
- Enhancing police accountability to the public
- Strengthening the police oversight system
- Outlining police responsibilities and community safety service delivery
- Supporting the sustainability of First Nations policing

Despite extensive advocacy and years of consultation, Bill 175 does little to modernize the delivery of police services, and it provides no relief to the financial burden on taxpayers to sustain municipal police services.

Bill 175 was introduced on November 2, 2017 and received Royal Assent on March 8, 2018

As previously reported to Council on [March 29, 2018](#), Bill 175 was introduced in the provincial legislature on November 2, 2017. It was referred to the Standing Committee on Justice Policy at second reading on December 5, 2017.

The Region made written submissions to the Standing Committee in support of the submissions made by the Association of Municipalities of Ontario ("AMO") in February 2018. Following the committee hearings and receipt of submissions, a number of technical amendments were made to the legislation, but the majority of the changes sought by the Region and AMO were not included in these amendments.

The majority of the provisions in the *Safer Ontario Act, 2018* will not come into force until Proclamation

While the *Safer Ontario Act, 2018* received Royal Assent on March 8, 2018, the majority of the substantive amendments to the *Police Services Act*, will come into force on dates to be proclaimed by the Lieutenant Governor. Proclamations dates are expected to be announced shortly.

4. Analysis and Implications

The *Police Services Act* will be replaced by six statutes which will come into force on dates to be proclaimed

The *Safer Ontario Act, 2018* repeals the existing *Police Services Act*, and replaces it with six related statutes:

- *Police Services Act, 2018*
- *Policing Oversight Act, 2018*;
- *Ontario Policing Discipline Tribunal Act, 2018*;
- *Ontario Special Investigations Unit Act, 2018*;
- *Missing Persons Act, 2018*; and
- *Forensic Laboratories Act, 2018*.

The statutes will come into force in stages, likely over the next year. In addition, several of the provisions require regulations which are expected to be released in advance of the in force date(s).

Changes introduced in the *Police Services Act, 2018* and related statutes will have a direct impact on the Region, the Police Services Board and York Regional Police

While the legislation primarily impacts the operations of the police service and the board, amendments introduced in the *Safer Ontario Act, 2018* will also have direct implications for Council and its police services board.

The most significant changes for the Region, as a municipality, will come from the increased responsibility for special constables, accountability obligations for board size, diversity planning, and the community safety and well-being planning.

The most significant changes for the Police Services Board will come from the increased responsibility of civilian 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 decide the size of the Police Services Board but the Province will continue to appoint over one-third of the members

Under existing legislation, the size of municipal police services boards is determined by population. The York Regional Police Services Board (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 *Police Services Act, 2018*, 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.

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

The *Police Services Act, 2018* 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.

There is no clear obligation on the Province to consider a municipal diversity plan when making appointments to police services boards

While Council must adopt a diversity plan, nothing in the legislation compels the Province to consider the plan in making its appointments to the Board, or to ensure the provincial appointments further the goals of the diversity plan. The Act provides that Lieutenant Governor in Council may make regulations governing recommendations by the Minister regarding appointments to police service boards, and establishing standards for such appointments in relation to representation by underrepresented groups.

The Minister does have an obligation to publish an annual report on the steps taken to ensure that public appointees to municipal boards reflect the diversity of the population in the area for which the municipal boards have policing responsibility. The Minister must take reasonable steps to promote the availability of public appointments to police service boards to populations that have been historically underrepresented on police services boards.

Municipal councils are required to prepare and adopt a Community Safety and Well-being Plan

On March 29, 2018, Community Health Services reported to Council on [Community Safety and Well-being Plans](#). 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.

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 may be most suited to take on this additional mandate as there are a number of sectors already represented.

Work is currently underway to revise the terms of reference of the Human Service Planning Board of York Region to meet the minimum requirements set out in the *Police Services Act, 2018*. The Commissioner of Community and Health Services will report back to Council in June 2018 with recommendations.

The provisions in the *Police Services Act, 2018* requiring a Community Safety and Well-being Plan will come into effect on January 1, 2019. Council will therefore be required to prepare and adopt its first Community Safety and Well-being Plan by December 31, 2020.

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 York Regional Police Services Board. Special constables are currently appointed by the Board subject to approval by the Minister of Community Safety and Correctional Services.

Under the *Police Services Act, 2018*, 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.

As a special constable employer, the Region will assume certain duties established and prescribed in the Act. The Region will be required to establish new procedures regarding the disclosure of professional misconduct that is alleged to have been engaged in by a special constable.

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.

Special constables will fall within the mandate of the Special Investigations Unit and the Ontario Policing Complaints Director

The *Special Investigations Unit Act, 2018* comes into force on June 30, 2018. The mandate of the Special Investigations Unit (the “SIU”) will be expanded beyond its current scope to include oversight over special constables and auxiliary police officers.

In its written submissions to the legislative committee on Bill 175, the Region requested that non-police employers of special constables, including YRT, be given additional time to implement policies and procedures necessary to respond to the expanded mandate of the SIU. The government appears to have responded favourably to this request, and the expanded mandate of the SIU will not apply to special constables employed outside police services until October 1, 2018.

The SIU is mandated to investigate any incident that may have arisen from the conduct of an “official” resulting in the death of a person, serious injury of a person, and/or the discharge of a firearm. Special constables will fall within the definition of an “official” for the purposes of this Act. The SIU mandate applies

when an official is acting while on duty, or off duty if they were involved in the investigation, pursuit or detention of a person or otherwise exercising their powers as an official. Operational changes will be required to address this new oversight by the SIU, including, introduction of policies and procedures, and training and support for the special constables and their supervisors.

The *Policing Oversight Act, 2018* will also introduce changes to police oversight, including replacing the Independent Police Review Director with the Ontario Policing Complaints Director, and expanding its jurisdiction to include special constables. Members of the public will be able to make a complaint about a YRT special constable for investigation and adjudication under the *Policing Oversight Act, 2018*.

As a result of these changes, YRT special constables will be subject to SIU investigations and public complaints in the same manner as police officers, and therefore subject to criminal and/or disciplinary charges arising out of the course of their duties. Adjudication of discipline arising out of complaints about special constables will be under the jurisdiction of the Ontario Policing Discipline Tribunal.

Changes in oversight of special constables will result in increased exposure to liability for the Region and staff

Currently, the Region handles complaints regarding the conduct of special constables internally. Serious complaints relating to special constable conduct are reviewed by the Manger of Enforcement and Security. If the allegations meet the requirements of the complaints criteria under Schedule 'E' of the Joint Services Agreement, they are forwarded to the York Regional Police Professional Standards Bureau for investigation.

Once special constables fall within the jurisdiction of the SIU and Ontario Policing Complaints Director, they will be subject to involvement in additional legal proceedings with potentially serious penalties. As a result, they will require the same legal representation as that afforded to police officers. The Region's Indemnification Bylaw will need to be updated to include special constables and reference the legislation. Staff will prepare the necessary amendments to the Region's Indemnification bylaw. Staff are also working with YRT, with the assistance of York Regional Police, to develop necessary policies and procedures for the oversight of special constables.

Budgets for municipal police service boards and police services may be subject to binding arbitration if agreement on the budget is not reached with the municipal council

The budgets for the Board and York Regional Police are submitted to Council for approval. Under the *Police Services Act*, the municipal council shall establish an overall budget for the board and police service but in doing so, it does not have the authority to approve or disapprove of specific items only to approve or disapprove of the overall budget. If the Board is not satisfied with the budget, it may request a hearing and a determination from Ontario Civilian Police Commission.

Under the *Police Services Act, 2018*, if the municipal council does not approve the budget as presented, the police service board will have the right to arbitration to determine the budget. If the board and council do not agree on an arbitrator, one will be appointed by the Police Arbitration Commission. The arbitrator's findings will be binding.

Bill 175 includes changes intended to enhance civilian governance of police services

Municipal police service boards are civilian governing bodies. They set the strategic direction of the police service, and they monitor and evaluate the performance of the service against those strategic directions and legislated standards and responsibilities. One of the themes of the government's Strategy for a Safer Ontario is to support and enhance civilian governance by ensuring that boards have sufficient skills and resources to fulfill their responsibilities. Many of the amendments introduced in the *Police Services Act, 2018* are intended to strengthen boards but others introduce new or enhanced areas of responsibility that could impact the role of the Board and the resources required to support that role.

Bill 175 introduces enhanced requirements for strategic planning

Under the *Police Services Act*, 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 *Police Services Act, 2018*, includes requirements for strategic and business planning requirements of the Board 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 municipal council, but will also include 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 Board will be required to prepare and adopt a diversity plan for the police service

The *Police Services Act, 2018* introduces a requirement that boards prepare and adopt a diversity plan to ensure that the members of the police services reflect the diversity of the community it serves. While York Regional Police is advanced in its policies and initiatives promoting diversity, it will be required to adopt some measures to meet the requirements of the legislation. The Board will be required to annually review this plan, monitor performance and ensure compliance with any regulations.

Membership on the Community Safety and Well-being Plan advisory committee must include a person who represents the Board

The Board will need to determine how it will be represented on the Community Safety and Well-being Plan advisory committee. While this is not likely to directly impact the Board's responsibilities or resources, it does represent a new area of accountability for the Board.

The *Police Services Act, 2018* introduces mandatory training requirements for all Board members

Currently, police services boards are required to ensure that its members undergo any training that the Minister may require or provide. Under the *Police Services Act, 2018*, all Board members will be required to complete prescribed training, within a prescribed time, with respect to covering the role of the board, as well as: human rights, systemic racism, respect and recognition of the rights and cultures of First Nation, Inuit and Metis peoples and the diverse, multiracial and multicultural character of Ontario society. If a Board member does not complete the prescribed training, the member will not be permitted to exercise

the powers or perform the duties of a board member until such time as all of the training has been completed.

5. Financial Considerations

The Region and the Board will likely incur additional costs associated with the obligations arising from Bill 175

The Board's resources may be impacted by the increased involvement and accountability of Board members for a number of areas including strategic planning, community safety planning, diversity planning and the mandatory training requirements.

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 expansion of SIU investigations to include special constables may also result in a financial impact on the Region. The nature of additional costs cannot be determined at this time.

Council endorsed AMO's advocacy for funding to support municipalities and police services boards in meeting obligations under new legislation

The Region and AMO made submissions on the costs associated with new areas of responsibility in its written submissions on Bill 175. Staff will continue to support AMO's advocacy for funding commensurate with the additional obligations included in the legislation.

Bill 175 will also impact the operations of York Regional Police

While the financial implications of Bill 175 cannot be determined at this time, the changes on how policing is provided under the *Police Services Act, 2018*, 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.

6. Local Municipal 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.

The requirements in the *Police Services Act, 2018* also apply equally to all local municipalities. Options for how these requirements may be met within the Region will be addressed in the forthcoming report of the Commissioner of Community and Health Services.

7. Conclusion

Bill 175, the *Safer Ontario Act, 2018* received Royal Assent on March 8, 2018, and it represents a significant alteration to police governance in Ontario.

Many of the provisions that will have a direct effect upon the Region will come into force on a series of dates yet to be proclaimed.

Staff will continue to monitor the progress of the pending provisions and future regulations under the statutes contained in the *Safer Ontario Act, 2018* and the potential impacts on the Region.

For more information on this report, please contact Stephen Maio, Senior Counsel, at 1-877-464-9675 ext. 71420.

The Senior Management Group has reviewed this report.

April 27, 2018

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