

FTR Now

Bill 175: Restructuring Policing in Ontario

Date: December 12, 2017

The Ontario government has introduced a package of legislative measures intended to significantly restructure the way policing is governed in the province. The proposed legislation, [Bill 175, the Safer Ontario Act, 2017](#), will repeal and replace the existing *Police Services Act* (PSA) and introduce several new statutes designed to improve accountability, oversight and community safety. Learn more in this *FTR Now*.

New Legislative Scheme

Bill 175 will repeal the PSA and replace it with the following:

- a. *Police Services Act, 2017*
- b. *Policing Oversight Act, 2017*
- c. *Ontario Policing Discipline Tribunal Act, 2017*
- d. *Ontario Special Investigations Unit Act, 2017*
- e. *Missing Persons Act, 2017*, and
- f. *Forensic Laboratories Act, 2017*.

Many of these new statutes represent expansions and “carve outs” from parts of the PSA and its regulations. In effect, Bill 175 will replace the PSA with a comprehensive and integrated legislative scheme comprised of multiple inter-related statutes.

Restructured Civilian Oversight

The government plans to restructure the current civilian oversight bodies. This is not a new legislative pursuit: prior to 1981, no independent civilian oversight existed for police in Ontario. Since that time, repeated efforts have been made to create civilian oversight mechanisms to foster and improve public confidence in policing. Many of the structural changes proposed under Bill 175 are aimed at this same goal.

In particular, the government plans to create a variety of new or revised oversight mechanisms, including:

- a. **Inspector General of Policing:** a new role appointed by the Lieutenant Governor, whose primary duties will include monitoring and inspecting police service boards, chiefs of police,

special constable employers and prescribed policing providers. The Inspector General will have the power to appoint Deputy Inspectors. In cases where the Inspector General concludes that the Act is not being complied with, and depending on the nature of the non-compliance, he or she may issue a direction to remedy the non-compliance or make recommendations to the Minister respecting discipline.

- b. **Ontario Policing Discipline Tribunal:** the Tribunal will replace the OCPC, but its mandate will remain to hear matters regarding alleged professional misconduct or other misconduct of police officers and other policing officials.
- c. **Ontario Policing Complaints Agency:** the current Independent Police Review Director will be replaced by the Ontario Policing Complaints Agency, which will be headed by a new Complaints Director and operated pursuant to the newly proposed *Policing Oversight Act, 2017*. Where the Complaints Director finds that there are reasonable grounds to conclude that professional misconduct has occurred, he or she must refer the matter to the Tribunal for a hearing.

These oversight mechanisms are not designed as independent silos with exclusive jurisdiction for particular issues. Rather, the proposed legislation frames them as an integrated and unified system to receive, investigate, adjudicate and determine appropriate responses to complaints. Whether they will prove more transparent, efficient or effective than the mechanisms they will replace is unclear.

Labour Relations Issues

Bill 175 includes a wide variety of changes to the ways in which policing may be carried out. Some of these changes may be small and nuanced, while others could prove significant. The following provides an overview of the proposed changes that we feel police service boards, as well as Chiefs of Police, should be aware of.

a. Authorized Policing Providers

Bill 175 provides that a police service board may enter into a written agreement with a prescribed policing provider that is a for-profit entity if the purpose is to provide an enumerated policing function, including:

- i. Crime scene analysis
- ii. Forensic identification
- iii. Collision investigation and reconstruction
- iv. Breath analysis
- v. Canine tracking
- vi. Surveillance
- vii. Polygraph and behaviour science, and
- viii. Interception of private communications.

The legislature retains discretion to introduce regulations that circumscribe this ability to contract out certain policing functions. However, the proposed provisions could provide boards with significant flexibility with respect to how they will provide these various policing functions. We recommend you work with your Hicks Morley lawyer to determine the impact these provisions, if passed, may have on your bargaining process.

Moreover, Bill 175 provides that agreements with authorized policing providers can be relevant when setting a police service board's budget. In particular, a municipal council can defend its decision to set a budget below that sought by a police service board by demonstrating that the board could reasonably have used authorized policing providers at a lower cost than that set out in the board's budget estimate.

b. **Community Safety and Well-Being Plan**

Bill 175 also introduces a variety of new consultation and planning obligations on municipal councils and police service boards. In particular, every municipal council will be required to prepare and adopt a **Community Safety and Well-Being Plan** developed by an advisory committee. That committee must be comprised of various enumerated members, including a police service board representative, a LHIN representative, educational services representative, community or social services representative, and a representative from the municipal council.

The plan must identify risk factors in the municipality (including systemic discrimination), prioritize those risk factors, identify strategies to reduce those risks, and set out measurable outcomes to assess the plan's effectiveness. The plan must be monitored, evaluated, reported, and published in accordance with the regulations to be prescribed. The plan and all reports prepared under it must also be provided upon request to the Minister, and the Minister has the power to appoint a Community Safety and Well-Being Planner if the municipality fails to comply with its obligations regarding the plan and its maintenance.

In addition, police service boards will be obligated to create a **Strategic Plan** for the provision of adequate and effective policing. While many boards prepare strategic plans as a matter of course, Bill 175 includes specific requirements that such plans must meet. These include quantitative and qualitative performance objectives and indicators relating to crime prevention initiatives, community satisfaction, violent crime clearance rates, interactions with racialized groups and persons who appear to have a mental health condition, and a host of other enumerated issues. The Strategic Plan must be developed through consultations between the board and the Chief of Police, municipal council, band council(s), school boards, community organizations, and groups representing diverse communities in the board's area of policing.

c. **Disciplinary Powers of the Chief of Police**

While Bill 175 does not substantially overhaul the powers or duties of the Chief of Police, it does

provide the Chief with greater flexibility in issuing discipline. In particular, Bill 175 enables the Chief to discipline a police officer effective immediately, including suspending an officer without pay for up to 30 days. While the officer retains the ability to request a hearing before the Discipline Tribunal, the hearing does not operate as a stay of the discipline itself. The Chief would no longer conduct or delegate the conduct of disciplinary hearings.

Bill 175 also allows the Chief to suspend a police officer with pay pending the final disposition of a proceeding, but further direct that the suspended officer perform duties other than those of a police officer. This significantly broadens the Chief's ability to manage officers who are alleged to have engaged in misconduct. Suspension without pay can only be imposed in **very limited** circumstances.

Moreover, Bill 175 introduces new terminology regarding misconduct. Specifically, Bill 175 includes the traditional category of "professional misconduct", but adds and defines "workplace misconduct" as "conduct of a police officer or special constable that is contrary to the officer's or constable's terms and conditions of employment or contrary to commonly accepted workplace standards." The inclusion of special constables in the police officer discipline regime represents a marked departure from current practices.

Finally, where a police officer is the subject of a public complaint before the Discipline Tribunal, Bill 175 removes the officer's ability to resign and thus avoid the continuation of the hearing. A fine of up to \$35,000 can be levied as a penalty.

d. Accommodation of Disabled Members

The proposed legislation provides a marked improvement over the current section 47 of the PSA. A board could assign a police officer to a civilian position as part of an accommodation, and specifically provides that while assigned to a civilian position he or she ceases to be a police officer. The statutory provisions that address such accommodation issues may not be the subject of bargaining. Of course, compliance with the requirements of the *Human Rights Code* remains critical.

Conclusion

The foregoing review is certainly not exhaustive of the array of changes that would result should Bill 175 be enacted. From alterations to Probationary Constable provisions to the introduction of mandatory coroner inquests for deaths arising from the use of force by police, Bill 175's impact on the police sector will be expansive and substantial.

On December 5, 2017, Bill 175 was referred to the Standing Committee on Justice Policy. We will continue to monitor the progress of the Bill and will report as new developments occur. We encourage you to contact [Glenn Christie](#), [Michael Hines](#), Seann McAleese, [Jonathan Maier](#), [Craig](#)

[Lawrence](#), or your [regular Hicks Morley lawyer](#) should you have any questions or require further information.

The article in this client update provides general information and should not be relied on as legal advice or opinion. This publication is copyrighted by Hicks Morley Hamilton Stewart Storie LLP and may not be photocopied or reproduced in any form, in whole or in part, without the express permission of Hicks Morley Hamilton Stewart Storie LLP. ©