At Long Last: A New Legislative Framework For Policing In Ontario Coming Into Effect April 1, 2024



Bottom Line

On 1 April 2024, more than five years after receiving Royal Assent, the Ontario Government's *Comprehensive Ontario Police Services Act, 2019 ("COPS")* will come into force. This includes the repeal of the *Police Services Act* (the *"PSA")* and the enactment of the *Community Safety and Policing Act, 2019* (the "*CSPA*") in its place. Also, on 1 April 2024, the*Strengthening Safety and Modernizing Justice Act, 2023* (the "*SSMJA*") will come into force. This legislation makes several amendments to the *CSPA*.

The *CSPA* will have a significant impact on the sector. Most notably, the *CSPA* imposes new diversity and inclusion obligations on police service boards, restructures the policing oversight regime in the Province, and modernizes the process for imposing discipline on police officers. Employers in the policing sector should closely review the new legislation, as it introduces a number of important changes of which they will need to be aware.

Background

In early 2019, the Government of Ontario introduced *COPS* with the intent of strengthening trust between the police and the public. The Government claimed this would be accomplished by improving governance, training and transparency, and by introducing various mechanisms for enhanced oversight.

The Provincial Government also indicated that *COPS* would respond to Justice Tulloch's recommendations in the 2017 Report of the Independent Police Oversight Review. The review was commissioned in response to public demonstrations of dissatisfaction with policing and oversight. The report focused on three (3) civilian oversight bodies: (1) the Special Investigations Unit (the "SIU"), which investigates police-civilian interactions that result in serious injury or death to a civilian; (2) the Office of the Independent Police Review Director (the "OIPRD"), which oversees public complaints about the police in Ontario; and (3) the Ontario Civilian Police Commission (the "OCPC"), which adjudicates appeals of police disciplinary hearings, among a number of other functions.

The new policing framework will transform these civilian oversight bodies in an attempt to bring clarity to their roles and functions.

Key Changes

Declaration of Principles

While keeping much of the *PSA's* Declaration of Principles, the *CSPA* updates it to include the need for policing to be responsive to the unique histories and cultures of First Nation, Inuit and Métis communities and the need to ensure that all parts of Ontario, specifically including First Nation reserves, receive equitable levels of policing.

Throughout the *CSPA*, there is reference to "police service" as opposed to the language of the *PSA* which used "police force." This is consistent with the gradual disuse of the term police force in Ontario over the past several years.

Exclusions from the Definition of "Adequate and Effective Policing"

The *CSPA* places responsibility providing adequate and effective policing on municipal police service boards, First Nations boards (where applicable), or the Ontario Provincial Police ("OPP") Commissioner. However, the *CSPA* explicitly excludes two functions from the definition of adequate and effective policing:

(a) the enforcement of municipal or First Nation by-laws, other than prescribed by-laws; and
(b) providing court security in accordance with Part XV [of the *CSPA*].

With respect to providing court security, although it is not included in the definition of "adequate and effective policing," it is nonetheless a responsibility of municipal police service boards through Part XV of the *CSPA*. By excluding court security functions from the definition of adequate and effective policing, police service boards may no longer need to use police officers to perform court security functions.

Requirement to Create Municipal Diversity Plan

Pursuant to Section 28 of the *CSPA*, every municipality that maintains a municipal board (which is either a police service board or a First Nation board) is required to create a diversity plan in order to ensure that members of the municipal board appointed by the municipality are "representative of the diversity of the population in the municipality." The diversity plan must be published on the Internet, and for existing police service boards, it must be completed and approved by April 1, 2025. The plan needs to be revised at least every four (4) years.

When new appointments to a police service board are made, the CSPA now requires municipalities to take reasonable steps to promote the availability of the appointment to members of demographic groups that have been historically underrepresented on police service boards.

Changes to Police Service Board Requirements and Obligations

Under the *CSPA*, police service boards can now be as large as nine (9) members if a Council resolution is passed. Potential board appointees are also now subject to a police record check.

Once appointed, board members are also now required to successfully complete various

forms of training, including with respect to the role of a police service board and responsibilities of members, human rights and systemic racism, and training that promotes recognition and respect for both the diverse, multiracial and multicultural character of Ontario society and the rights and cultures of First Nation, Inuit and Métis Peoples.

Mirroring the diversity plan required of municipalities, police service boards are also required to create their own diversity plans to ensure that the members of the police service reflect the diversity of the area for which the board has policing responsibility. Additionally, police service boards must prepare and adopt a detailed strategic plan for the provision of policing, which must address various matters set out in Section 39(1).

Under the *PSA*, police service boards were responsible for directing the Chief of Police. While police service boards continue to have this responsibility, the *CSPA* provides some additional clarity regarding its scope. Moreover, any directions given to the Chief of Police by the Board must now be published on the Internet.

The *CSPA* also requires police service boards to file an annual report with their municipality or band counsel regarding the implementation of the board's strategic plan, the affairs of the police service, the provision of policing as it relates to any community safety and well-being plans, and any other prescribed matters. The annual report must also be published on the Internet.

With respect to funding, if a police service board is of the view that its municipality has failed to provide it with adequate funding, under the *CSPA* it can now apply for conciliation or arbitration.

OPP Detachment Boards

The *CSPA* now provides for the creation of OPP detachment boards. These new oversight boards will, among other things:

- advise OPP detachment commanders with respect to policing provided by the detachment;
- monitor the performance of OPP detachment commanders; and
- review reports from the detachment commander.

Inspector General of Policing

Under the *CSPA*, a new position of Inspector General of Policing will be created. The Inspector General's duties are to monitor and conduct inspections related to compliance with the *CSPA* and to deal with certain complaints regarding policing and board members. Any person may file a complaint with the Inspector General regarding the conduct of a police service or police service board in respect of their compliance with the *CSPA*.

Upon completion of an inspection, the Inspector General has the power to issue a direction to remedy or prevent the non-compliance or likely non-compliance with the *CSPA*, and may impose disciplinary measures.

Law Enforcement Complaints Agency

The Office of the Independent Police Review Director ("OIPRD") is continued under the *CSPA* as the Law Enforcement Complaints Agency ("LECA"), headed by the Complaints Director. The LECA will, like the OIPRD, administer public complaints and

investigations in accordance with the *CSPA*.

Significantly, under the *CSPA*, where a person mistakenly files a complaint to certain persons or entities that could have been filed with the LECA (including a police service board or a chief of police), the person or entity is required to forward the complaint to the Complaints Director.

There are also new provisions under the *CSPA* regarding what kinds of matters will be handled by the LECA and what matters will be referred to a chief of police. In most cases, the LECA will cause complaints about the conduct of a police officer to be investigated by the officer's chief of police. Most other cases will be investigated by the Complaints Director. The Complaints Director can also cause an investigation to be conducted into the conduct of a police officer in the absence of a public complaint, if certain conditions are met.

Ontario Police Arbitration and Adjudication Commission

The *CSPA* continues the Ontario Police Arbitration Commission as the Ontario Police Arbitration and Adjudication Commission.

Dissolution of the Ontario Civilian Police Commission

The *CSPA* eliminates the Ontario Civilian Police Commission. The functions previously performed by the OCPC will instead be largely performed by the Inspector General of Policing. In terms of ongoing existing matters, the *CSPA* contains transition provisions that allow the OCPC to continue to operate for the purposes of completing any ongoing hearings or appeals under Section 25 of the PSA. However, following April 1, no new issues will be raised with the OCPC and it will eventually dissolve in accordance with the regulations.

Right to Report Misconduct

There is now an entire section of the *CSPA* devoted to the right to report misconduct. The right to report misconduct prevails over anything provided under any statute or otherwise at law that would prohibit disclosure. This is a powerful mechanism designed to protect and encourage individuals to report police misconduct.

This section also requires that written procedures for the disclosure of misconduct by members of a police service be established by the chief of police and police service boards, and prohibits reprisal against members of a police service who disclose misconduct.

Discipline

Following an investigation, chiefs of police and police service boards can now directly impose certain disciplinary measures, such as temporary suspensions, forfeiture of pay and reprimands. Unlike under the *PSA*, these forms of discipline can now be applied without a hearing.

As under the *PSA*, termination of employment and demotion can only be ordered by an adjudicator following a hearing.

Suspensions without pay are a new concept in the *CSPA*, but can only be imposed in limited circumstances.

The Solicitor General has also drafted regulations to the *CSPA*, which have not been finalized as of the date of writing. In Section 9 of these proposed regulations, it

is suggested that the chief of police must prepare a report to their police service board summarizing the disciplinary measures that were imposed over the prior six (6) months.

Restrictions on Association Membership

The *CSPA* now excludes the following members of a police service from becoming or remaining members of a police association if their position would likely give rise to a conflict of interest in respect of labour relations matters:

1. The chief financial officer, however that person is described.
2. The chief administrative officer, however that person is described.
3. The chief human resources executive, however that person is described.
4. The general counsel, however that person is described.
5. Any person employed in a confidential capacity in relation to labour relations.

Community Safety and Well-Being Plans

Under the *CSPA*, municipalities will be required to prepare and adopt a community safety and well-being plan. These plans must identify risk factors for the community and identify strategies to reduce prioritized risk factors, in addition to meeting other requirements.

Takeaway

As of April 1, 2024, the regulation of policing services is being substantially revamped with the repeal of the PSA and the enactment of the *CSPA* in its place. This update summarizes only some of the changes of which employers in the policing sector must be aware. Policing employers, including police services and police service boards, should carefully consider the legal obligations to which they will be subject when the *CSPA* comes into force in order to ensure compliance with that *Act*.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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