




PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Halifax Regional Council
September 7, 2004

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY:


Frank A. Beazley, O.O.M., Chief of Police

DATE: September 2, 2004

SUBJECT: Legislative Draft - Nova Scotia Police Act

INFORMATION REPORT

ORIGIN

The purpose of this report is to provide Council with an overview of some of the changes proposed in the legislative draft of the new Police Act and to discuss the impact these could have on HRM.

BACKGROUND

In December 2002 the Nova Scotia Department of Justice released a draft of the new Police Act for discussion purposes; the purpose of which was to elicit feedback from stakeholders on the proposed changes. On March 28, 2003, Mayor Kelly responded to the proposed changes on behalf of Regional Council, the Board of Police Commissioners and the Chief of Police.

On August 5, 2004, the Department of Justice released a legislative draft of the new Police Act for feedback. Unfortunately, the time frame to make submissions is very limited with a deadline of September 3, 2004.

This deadline did not allow us the time to complete the consultative process that resulted in the joint response of Regional Council, the Board and the Chief of Police that occurred with the previous submission on behalf of HRM.

To ensure that the Province is aware that there are concerns with this draft, I have forwarded a response on behalf of Halifax Regional Police (Appendix A).

Should Council agree with the information contained in this Information Report, we are attaching a draft response (Appendix B) which could be forwarded by the Mayor on behalf of Regional Council to Policing and Victim Services.

The Board of Police Commissioners will also be consulted for their response.

The legislative draft does include revisions that address some of the concerns raised by HRM regarding the earlier draft; therefore, this report focuses on new or outstanding matters.

DISCUSSION

Hiring Chief of Police

In the current Act pursuant to Subsection 14(1) Council has authority to appoint the Chief of Police:

- 14(1) The council of each municipality shall appoint a person to be the chief officer of a municipal police force.

In the proposed Act the Council will retain the right to appoint the Chief but this authority will be limited by the authority of the Minister to prescribe the process to select a Chief. The new section reads as follows:

- 37(1) The council shall appoint a person to be the chief officer of a municipal police department.
- (2) For the purpose of selecting and hiring a chief officer, the council shall follow and apply the selection process, criteria and qualifications established by the regulations.

The ability of the Minister to establish, by regulation, the process, criteria, and qualifications for hiring a Chief will allow for control of virtually every aspect of the hiring process. This would severely limit the autonomy of a municipality to select a Chief of Police.

Appointment of Board

Currently the Act provides broad authority for Council to appoint a Board of Police Commissioners, pursuant to Section 19, subject to a limitation on the number of appointments and a mandatory provincial appointment. It reads as follows:

- 19(1) Every municipality which appoints a municipal police force pursuant to Section 14 shall, by by-law, provide for a board of police commissioners.
- (2) A board consists of not fewer than two nor more than six persons appointed by the council and one person appointed by the Solicitor General who holds office for a term of three years and may be reappointed.

The proposed Act provides for the appointment of either a five or seven person Board and describes in detail how such appointments should be made. The proposed provision for a seven member Board reads as follows:

- 43(4) A seven-member board appointed pursuant to subsection (1) shall consist of
 - (a) three members of council appointed by resolution of the council;
 - (b) three members appointed by resolution of the council, who are neither members of council nor employees of the municipality; and
 - (c) one member appointed by the Minister.

This provision would have little practical affect on HRM as the proposed seven member Board mirrors the current practice in HRM

Board of Police Commissioners

The proposed legislation lays out in detail the roles and responsibilities of the Board. The legislation proposes a role consistent with HRM's earlier position that the role of the Board is to ensure the priorities, objectives and goals of the police service reflect the values and priorities of the community. Although the language is a major improvement over earlier drafts, some concerns remain. Section 54 reads in part:

- 54(1) The function of a board is to provide:
 - (a) civilian governance on behalf of the council in relation to the enforcement of law, the maintenance of law and order and the prevention of crime in the municipality; and

- (b) the administrative direction, organization and policy required to maintain an adequate, effective and efficient police department, but the board shall not exercise jurisdiction relating to complaints, discipline or personnel conduct except in respect of the chief officer of the municipal police department.

54(3) Without limiting the generality of subsection (1), a board shall:

- (a) determine, in consultation with the chief officer, priorities, objectives and goals respecting police services in the community;

Concern has been raised that the proposed provisions do not adequately clarify the role of the Board vis-a-vis the Chief or Council. Although it may not be the intent, the draft legislation is ambiguous regarding the principle that the Chief is solely responsible for actual day to day direction of the police force with respect to the enforcement of law.

Consider the provision dealing with the Police Budget. The legislative draft proposes that:

- 52 The board is accountable to council for the financial stewardship of the police department and *shall prepare financial statements*, projections and annual budgets as council from time to time requires. (*Emphasis Mine*)

Previously it has been proposed that the board would be "accountable" to council and "shall cause to be prepared" financial statements. That language raised concerns regarding who had final authority over the budget if the Board and Council disagree on the annual estimates. In addition the proposed provision could be interpreted to allow the Board to opt out of the Business and Budget Planning processes set down by Council. It also is not clear what role the Chief would play as rather than "cause to be prepared" the board now "shall prepare" the budget. This could create an untenable situation.

More appropriate language can be found in the current Act which states:

- 19(12) Every board shall, *in accordance with a procedure prescribed by council*, submit to the council for its consideration and *approval* its estimates of all monies required for the year to pay the remuneration of the members of the police force and to provide and pay for the accommodation, arms, equipment and other things for the use and maintenance of the force. (*Emphasis Mine*)

Policing

The draft legislation includes a number of provisions enhancing the Minister's ability to oversee the administration of justice in the Province and ensure adequate and effective policing in the Province.

Unfortunately, some provisions may extend beyond that oversight responsibility and restrict the ability of the Municipality to manage the Police Department. For example:

It is proposed that the Minister may:

- 5(3) For the purposes of subsections (1) and (2) the Minister may;
 - (a) issue a directive, standard operating or administrative procedure to a police department and the police department shall comply with the directive, standard operating or administrative procedure;
 - (b) require a police department, board or advisory board to develop a directive, standard operating or administrative procedure.

Although it could be argued that such powers are inherent in the authority of the Minister now, this leaves little doubt. The concern is the mandating of services or programs without consideration for other operational matters or resources.

A similar concern can be found in the proposed Subsection 35(4):

- (4) A municipality may not abolish or reduce the size of a municipal police department without the approval of the Minister.

If enacted such a provision could reduce the flexibility of the municipality to manage the police service. Minor adjustments in the size of a police service do not impact effectiveness or efficiency of policing. This provision could reduce the municipality's ability to manage operational and financial resources in the future.

The proposed duties of the municipal police read in part:

- 34(3) For the purposes of subsection (1), the service provided by a police department shall include
 - (a) crime prevention;
 - (b) law enforcement;
 - (c) assistance to victims of crime;
 - (d) emergency and enhanced services; and
 - (e) public order maintenance.

The provision leaves a number of unanswered questions, starting with what is intended by the provisions. It is difficult to comment further on how they may impact on policing without clearly understanding what is meant by such terms. If it is the intent of the Minister to define the scope of municipal responsibilities, it is incumbent upon him to make a clear statement regarding the issues

raised in the White Paper concerning centralized services. There is a concern that this provision expands the role of municipal police; a clear example of which is the inclusion of victim services as a core policing duty. Clearly the role of the police in victims services is one of first responder and referral, and historically it has been a provincial responsibility beyond that point. Where does provincial responsibility end and the municipal responsibility begin?

RCMP Costs

HRM is also concerned that some other proposed changes may pave the way to impose additional costs on the municipality for RCMP policing. Consider the following proposed provisions:

- 31(1) The Provincial Police may, with the approval of the Minister, charge a municipality or a law enforcement agency for any service it provides to it under this Act.

- 35(3) Where the Province provides and maintains policing services in a municipality, the municipality shall pay to the Province the *actual* costs thereof. *(Note: This provision was amended from reasonable costs)*

It is difficult to contemplate what is intended by the above, except that additional costs are envisioned for municipalities. It also raises the questions of actual costs determined by whom and to what standard.

Regulations

The full extent of the proposed legislation is difficult to determine as the Province reserves the authority to establish fees, standards, and duties by regulation. Without a clear indication on future regulations, many questions remain unanswered. The following are examples:

- 96 (af) prescribing costs a municipality pays to the Province for providing and maintaining a police department in the Province.
- (ag) prescribing a process for the certification of municipal and provincial police officers providing policing services in the Province.
- (ai) respecting involvement of municipal and provincial police officers in volunteer and political activity in the Province.
- (aj) respecting agreements between the provincial police and a municipality
- (ak) prescribing duties and functions of boards and advisory boards
- (al) allocating costs for contracted or shared services

The combination of existing and proposed regulatory power will give the Province the ability to control every aspect of policing at the municipal level without being accountable to the cost.

This review is not intended to be an exhausted review of the proposed legislation, but simply to highlight the most significant implications.

BUDGET IMPLICATIONS

There are no budget implications at this time, however if the proposed changes to the Police Act are enacted there could be four possible budget implications for future years.

- 1) Decreased flexibility to manage financial resources.
- 2) Risk exposure that police services or programs could be mandated by the Minister without consideration for municipal resource considerations.
- 3) The Province will be able to charge for certain services for which they do not currently charge.
- 4) The Board of Police Commissioners is accountable to Council for financial stewardship of HRP.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

The Board of Police Commissioners is accountable to Council for HRP financial stewardship and the Council utilizes the Business Planning process and Multi-Year Financial Strategy.

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

ALTERNATIVES

It is anticipated that the Board of Police Commissioners will be reviewing the legislation and will be making submissions to the Department of Justice. In addition the Chief of Police will be making submissions on behalf of HRP.

Council can direct staff to prepare a submission to the Department of Justice outlining the municipality's concerns with the proposed legislation or alternately Council can choose not to submit a response at this time.

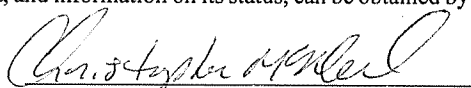
ATTACHMENTS

Appendix A - Halifax Regional Police Response

Appendix B - Proposed Draft Response from Mayor on behalf of Regional Council

Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by:



Christopher J. McNeil, Deputy Chief of Police

490-5272



Halifax Regional Police
1975 Gottingen Street
Halifax, Nova Scotia
Canada B3J 2H1

Frank A. Beazley
Chief of Police

Address all correspondence to:
The Office of the Chief of Police

Phone: (902) 490-6500

Fax: (902) 490-5038

E-mail:

beazlef@region.halifax.ns.ca

Website

www.police.halifax.ns.ca

*Leading and Partnering
in our Community
to Serve and Protect*

Appendix A

September 2, 2004

Ms. Lisa D. Jackson
Project Co-ordinator
Police Act Review
Policing and Victim Services Division
Nova Scotia Department of Justice
PO Box 7
Halifax, NS B3J 2L6

Dear Ms. Jackson:

Thank you for the opportunity to make representations on the Legislative Draft of the proposed Police Act. I am pleased to respond on behalf of Halifax Regional Police (HRP).

As you are aware, HRM made representations regarding the Discussion Draft circulated in 2003 and appreciates that some concerns have been addressed in the latest draft. I will not attempt to repeat the issues raised in the March 28, 2003 response but rather address new issues or those which continue to be of a concern.

HRP recognizes the challenges presented by drafting legislation that must reconcile the responsibility of the Minister for the administration of justice including policing and the responsibility of municipalities to deliver effective policing to its community. Success will only be achieved if we balance the interests of everyone who has a responsibility to ensure community safety, the Minister, Regional Council, the Board, and the Chief of Police.

Mayor and Council

Appointment of Chief

HRP understands the Minister's interest in ensuring Chiefs of Police are qualified but establishing by regulation the "process and criteria" to select a Chief unnecessarily limits the autonomy of municipalities to hire a Chief. Subsection 37(2) states:

.../2

37(2) For the purpose of selecting and hiring a chief officer, the council shall follow and apply the selection process, criteria and qualifications established by the regulations.

No hiring process is fool proof, and we have all had to live with poor hiring decisions in spite of good processes. Those who are responsible for the decision, should determine the most appropriate process to meet the needs of the community. Subsection 37(2) simply exchanges the judgement of the Minister for that of the municipality; the result is simply different not necessarily a more effective process.

I suggest Subsection 37(2) is unnecessary in light of Subsection 38 (1) which reads:

38(1) A member of a municipal police department shall meet the qualifications and requirements, including those related to training, established by the regulations.

The above provision provides adequate remedial authority to ensure that Chiefs of Police are qualified.

Budget Approval

HRM has previously raised concern regarding the role of the Board vis-a-vis Council in the budgeting process. In our opinion the earlier discussion draft left open the question of what happens if the Board and Council disagree on the annual estimates. Unfortunately, the legislative draft creates even further ambiguity, which could be argued in extreme circumstances to leave no role for the Chief.

Previously it had been proposed that the board would be "accountable" to council and "shall cause to be prepared" the police budget. That language raised concerns regarding who had final authority over the budget. The legislative draft now proposes in Section 52:

52 The board is accountable to council for the financial stewardship of the police department and *shall prepare financial statements*, projections and annual budgets as council from time to time requires. *(Emphasis Mine)*

HRP understands the desire to clarify the role of Boards in the budgeting process, but reiterates that it must be clear that it is Council who has authority over the total final budget. The police budget cannot be considered in isolation, and only Council is in a position to balance the policing needs with other community priorities. Further language that the Board “shall prepare” rather than “caused to be prepared” now raises concerns regarding the role of the Chief in the process.

Accepting that Council has final budget control by the Board being accountable to Council, the current provision could be misinterpreted to authorize the Board to establish a budget process in isolation of Council and the Chief of Police. This would create an untenable situation, resulting in budget gridlock. HRP suggests language similar to that set out below:

The board is accountable to council for the financial stewardship of the police department and shall cause the Chief to prepare an annual budget for approval by council in accordance with a procedure prescribed by council.

Board of Police Commissioners

Role of the Board

HRP is pleased that the latest language used to define Board responsibilities is more consistent with the oversight role of the Board, but remains concerned that proposed provisions do not completely clarify the role of the Board vis-a-vis the Council and the Chief.

It is a well established principle that the Chief is solely responsible for the day to day direction of the Police Service with respect to the enforcement of the law. In Subsection 37(5) the legislative draft would appear to support this principle.

Subsection 37(5) reads:

- (5) *Except when inconsistent with this Act, the actual day to day direction of the police department with respect to the enforcement of law and the maintenance of discipline within the department shall rest with the chief officer (Emphasis Mine)*

Now consider the language in Section 51:

- 51 On behalf of the board, the board chair or the chair’s delegate may give advice or direction, in writing, to the chief officer on any matter referred to in Section 54

but not to other members of the police department, and for greater certainty, no other member of the board shall give advice or direction to a member of the police department.

Are the provisions in conflict? The authority of the Board in Section 51 is limited by the matters referred to in Section 54 which reads:

- 54(1) The function of a board is to provide
- (a) *civilian governance* on behalf of the council in relation to the enforcement of law, the maintenance of law and order and the prevention of crime in the municipality; and
 - (b) the administrative direction, organization and policy required to maintain an adequate, effective and efficient police department;

but the board shall not exercise jurisdiction relating to complaints, discipline or personnel conduct except in respect of the chief officer of the municipal police department. (Emphasis Mine)

Although it contains a limitation, it does not limit or clarify the concept of “civilian governance”. There is also no reference to the Chief’s independence in the enforcement of the law. What does “civilian governance” mean? It is not defined in the Act, and is one of those nebulous concepts everyone thinks they know what it means, but no two definitions are the same.

How does the limitation of the Chiefs independence contained in Subsection 37(5) “except when inconsistent with this Act” impact on Sections 51 and 54? Is Subsection 37(5) inconsistent with them? The ambiguity undermines police independence. HRP maintains the Act must clearly articulate that the Chief is independent with respect to the day to day operation of the police service and the enforcement of the law.

Additional concerns are found in Subsection 54(3) with provides further clarification of the duties of a Board. In particular, consider:

- 54(3) Without limiting the generality of subsection (1), the Board shall:
- (a) determine, in consultation with the chief of police, priorities, objectives and goals respecting police services in the community;

It is HRP's view that the role of the Board is to oversee policing in the community from an administrative perspective, and ensure the operation of the police department is consistent with public expectations. For example, it is the role of the Chief to develop objectives, and the role of the Board to ensure they reflect community values and priorities?

We must consider what determination of priorities, objectives and goals means. As part of the annual budget process, Council reviews the priorities of all business units and balances them against the overall need and capacity of the municipality. Is it wise that police be considered in isolation? The Chief meets annually with the community to receive feedback regarding community concerns and priorities. Would the Board repeat this exercise, at what cost? Would it not be more prudent that the Board receive and review the material from these exercises and ensure the priorities, objectives and goals of the police department reflect the values and priorities of the community.

HRP would suggest the language in Subsection 54(3)(b) and (c) is more appropriate and may make Subsection 54(3)(a) unnecessary. They read:

- (b) ensure the chief officer establishes programs and strategies to implement the priorities, objectives and goals respecting police services;
- (c) ensure that community needs and values are reflected in policing priorities, objectives, goals, programs and strategies;

Administration of Policing

Minister's Role

HRP remains concerned that some provisions regarding the Minister's role to ensure effective and efficient policing inadvertently restrict the ability of the municipality and the Chief to manage policing.

Consider Subsection 5(3):

- 5(3) For the purposes of subsections (1) and (2) the Minister may
 - (a) issue a directive, standard operating or administrative procedure to a police department and the police department shall comply with the directive, standard operating or administrative procedure;

- (b) require a police department, board or advisory board to develop a directive, standard operating or administrative procedure.

This provision would certainly appear to expand the minister's authority over day to day police operations. The concern is the mandating of services or programs without consideration for other operational matters or resources.

A similar concern can be found in the proposed Subsection 35(4):

A municipality may not abolish or reduce the size of a municipal police department without the approval of the Minister.

If enacted such a provision would reduce the flexibility of the municipality to manage the police service. Minor adjustments in the size of a police service do not impact the effectiveness or efficiency of policing. This provision would reduce the municipality's ability to manage operational and financial resources in the future. In addition the section seems redundant in light of the remedial power of the Minister contained in Subsection 5(1) which reads:

- 5(1) The Minister shall ensure that an adequate and effective level of policing is maintained throughout the Province.

This section could clearly address any concerns raised by Subsection 35(4).

There has been a long standing history of sharing resources in the policing community. The exchanging of undercover officers among communities on a reciprocal basis has been ongoing for many years. Subsection 39(2) could hamper the ability to carry on such operations in the future. Subsection 39 reads:

- 39 (1) Two or more municipalities may enter into an agreement providing for the sharing of specified police services.
- (2) Where the municipalities entering into an agreement pursuant to subsection (1) are not adjacent, the agreement must have the approval of the Minister.
- (3) A municipality may enter into an agreement with the Province for the provision of specified police services to the municipality.

Why is there a restriction regarding the sharing of services by other than adjacent municipalities? Considering the mobility of criminal activity and society generally, it would seem appropriate to encourage sharing of services. The integration of police services has become a national and international priority; it seems inconsistent with this modern reality to discourage integration in Nova Scotia.

Police Duties

The proposed duties of the municipal police read in part:

- 34(3) For the purposes of subsection (1), the service provided by a police department shall include
- (a) crime prevention;
 - (b) law enforcement;
 - (c) assistance to victims of crime;
 - (d) emergency and enhanced services; and
 - (e) public order maintenance.

The provision raises concern, in particular, the scope of such duties is unclear. The broad nature of the concepts of crime prevention and law enforcement, which envision numerous functions, are in keeping with the current complexity of policing. On the other hand, concepts such as assistance to victims of crime, emergency and enhanced services, and public order maintenance denote specific activities. The specific nature of such responsibilities makes them less flexible which could result in the demand for a specific service not intended by this legislation. What are the legal implications for the failure to supply such a service to a standard inferred from the legislation?

The articulation of the power and authority of Nova Scotia Police Officers in Section 41 is a positive step forward but we would like to suggest a minor change to improve the provision. Some labour relations concerns have been expressed that the duties contained in Subsection 41(2) are all inclusive. It reads:

- 41(2) Subject to this Act and the regulations or another enactment or an order of the Minister, the authority, responsibility and duty of a member of a municipal police department includes;
- (a) maintaining law and order;
 - (b) the prevention of crime;
 - (c) enforcing the penal provisions of the laws of the Province and any penal laws in force in the Province;
 - (d) assisting victims of crime;
 - (e) apprehending criminals, offenders and other offenders who may lawfully be taken into custody;
 - (f) laying charges and participating in prosecutions;
 - (g) executing warrants that are to be executed by peace officers;
 - (h) subject to an agreement respecting the policing of the municipality, enforcing municipal by-laws within the municipality;

(i) obeying the lawful orders of the chief officer;

and the police officer shall discharge these responsibilities throughout the Province.

In our view these concerns could be relieved with the addition in Subsection 41(2) after the word includes, the words "but is not limited to." It should be noted that the concerns raised regarding Subsection 34(3) are applicable to this section, in particular, the responsibility to assist victims of crime.

Role of Chief

The expansive nature of the regulations provisions raises concern regarding the day to day management of the police service. The scope of some provisions would seem to extend beyond an oversight to a management role.

Consider Subsection 96(1)(b):

(b) governing the criteria and qualifications for the appointment of persons to police departments

It is understandable that the Minister may wish to ensure police officers are qualified and a number of provisions support the ability to do so, but the ability to dictate the criteria to determine qualifications is unnecessary and intrudes on the Chief's right to manage day to day operations.

Further concern is raised by Section 38 which reads:

38(1) A member of a municipal police department shall meet the qualifications and requirements, including those related to training, established by the regulations.

(1) A member of a municipal police department who does not meet the qualifications and requirements set out in subsection (1) shall not be deployed to perform operational police duties.

Will competent experienced officers who may not meet a new training standard be disqualified from performing operational duties? Does this provision prevent accommodating officers to operational positions in keeping with the duty to accommodate under Human Rights Legislation?

Term of Office of Chief Of Police

The term of office for a Chief of Police has been long guided by Subsection 14(2) of the current Act. It is well understood and has effectively operated for many years. The legal principles contained therein have been the subject of judicial review. The proposed provision risks over simplifying the importance of the protection contained in Subsection 14(2). The new provision reads:

- 37(3) For one year after the chief officer's appointment, the chief officer may be dismissed for any reason without notice and thereafter may be dismissed for cause.

This provision makes newly appointed Chiefs of Police susceptible to political influence. It has been suggested that the provision means the same as the provision in the current Act; that view is not shared by Chiefs. If it is not intended to erode the protection enjoyed by Chiefs, we suggest the language contained in the current Act is more appropriate.

Auxiliary Policing

HRP supports the concept of auxiliary policing, which would provide even greater opportunity for citizens to serve their community. Although auxiliary policing may vary from community to community, the provision must be flexible enough to support individual community needs. The limitation contained in Subsection 90(2)(c) is too restricting. It reads:

- 90(2) An auxiliary police officer ..., and
(c) shall not perform on a regular basis the work that would otherwise be performed by a police officer.

If the purpose is to protect permanent policing positions, there are other ways to do that without putting unions and volunteers in conflict over duties. More appropriate wording may be "shall not be used to replace or reduce permanent police positions".

Complaints

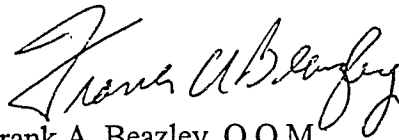
HRP supports the establishment of a Complaints Commissioner, but caution should be had to ensure the role of the Review Board remains judicial in nature. It would be inconsistent with such a role for the Review Board to assign investigators as implied by Section 74. The investigation role or administration of complaints is more suited to the role of the Complaints Commissioner.

Conclusion

This review is not intended to be an exhausted review of the proposed legislation but simply to reflect the main concerns of Halifax Regional Police.

If you require further clarification on any point raised please do not hesitate to contact us.

Yours truly,



Frank A. Beazley. O.O.M.
Chief of Police

CJM:rr

c: Mayor P. Kelly
Halifax Regional Board of Police Commissioners
Mr. G. McLellan
Chief Superintendent T. Bennett

Thank you for the opportunity to make representation on the Legislative Draft of the proposed Police Act. I am pleased to respond on behalf of Regional Council.

As you are aware, HRM made representations regarding the Discussion Draft circulated in 2003 and appreciates that some concerns have been addressed in the latest draft. I will not attempt to repeat the issues raised in the March 28, 2003 response, but rather address new issues or those which continue to be of a concern.

HRM recognizes the challenges presented by drafting legislation that must reconcile the responsibility of the Minister for the administration of justice including policing, and the responsibility of municipalities to deliver effective policing to its community. Success will only be achieved if we balance the interests of everyone who has a responsibility to ensure community safety, the Minister, Regional Council, the Board, and the Chief of Police.

Mayor and Council

Appointment of Chief

HRM understands the Minister's interest in ensuring Chiefs of Police are qualified, but establishing by regulation the "process and criteria" to select a Chief unnecessarily limits the autonomy of Municipalities to hire a Chief. Subsection 37(2) states;

37(2) For the purpose of selecting and hiring a chief officer, the council shall follow and apply the selection process, criteria and qualifications established by the regulations.

No hiring process is fool proof, and we have all had to live with poor hiring decisions in spite of good processes. Those who are responsible for the decision, should determine the most appropriate process to meet the needs of the community. Subsection 37(2) simply exchanges the judgement of the Minister for that of the municipality, the result is simply different not necessarily a more effective process.

I suggest Subsection 37(2) is unnecessary, in light of Subsection 38 (1) which reads;

38(1) A member of a municipal police department shall meet the qualifications and requirements, including those related to training, established by the regulations.

The above provision provides adequate remedial authority to ensure that Chiefs of Police are qualified.

Budget Approval

HRM has previously raised concern regarding the role of the Board vis-a-vis Council in the budgeting process. In our opinion the earlier discussion draft left open the question of what happens if the Board and Council disagree on the annual estimates. Unfortunately, the legislative draft creates even further ambiguity, which could be argued in extreme circumstances to leave no role for the Chief.

Previously it had been proposed that the board would be “accountable” to council and “shall cause to be prepared” the police budget. That language raised concerns regarding who had final authority over the budget. The legislative draft now proposes in Section 52;

- 52 The board is accountable to council for the financial stewardship of the police department and *shall prepare financial statements*, projections and annual budgets as council from time to time requires. (*Emphasis Mine*)

HRM understands the desire to clarify the role of Boards in the budgeting process, but reiterates that it must be clear that it is Council who has authority over the total final budget. The police budget cannot be considered in isolation, and only Council is in a position to balance the policing needs with other community priorities. Further language that the Board “shall prepare” rather than “caused to be prepared” now raises concerns regarding the role of the Chief in the process.

Accepting that Council has final budget control by the Board being accountable to council, the current provision could be misinterpreted to authorize the Board to establish a budget process in isolation of Council and the Chief of Police. This would create an untenable situation, resulting in budget gridlock. HRM suggests language similar to that set out below;

The board is accountable to council for the financial stewardship of the police department and shall cause the Chief to prepare an annual budget for approval by council in accordance with a procedure prescribed by council.

Board of Police Commissioners

Role of the Board

HRM is pleased that the latest language used to define Board responsibilities is more consistent with the oversight role of the Board, but remains concerned that proposed provisions do not completely clarify the role of the Board vis-a-vis the Council and the Chief.

It is a well established principle that the Chief is solely responsible for the day to day direction of the Police Service with respect to the enforcement of the law. In Subsection 37(5) the legislative draft would appear to support this principle.

Subsection 37(5) reads:

- (5) *Except when inconsistent with this Act*, the actual day to day direction of the police department with respect to the enforcement of law and the maintenance of discipline within the department shall rest with the chief officer (*Emphasis Mine*)

Now consider the language in Section 51:

- 51 On behalf of the board, the board chair or the chair's delegate may give advice or direction, in writing, to the chief officer on any matter referred to in Section 54, but not to other members of the police department, and for greater certainty, no other member of the board shall give advice or direction to a member of the police department.

Are the provisions in conflict? The authority of the Board in Section 51 is limited by the matters referred to in Section 54 which reads:

- 54(1) The function of a board is to provide
- (a) *civilian governance* on behalf of the council in relation to the enforcement of law, the maintenance of law and order and the prevention of crime in the municipality; and
 - (b) the administrative direction, organization and policy required to maintain an adequate, effective and efficient police department;

but the board shall not exercise jurisdiction relating to complaints, discipline or personnel conduct except in respect of the chief officer of the municipal police department. (Emphasis Mine)

Although it contains a limitation, it does not limit or clarify the concept of "civilian governance". There is also no reference to the Chief's independence in the enforcement of the law. What does "civilian governance" mean? It is not defined in the Act, and is one of those nebulous concepts everyone thinks they know what it means, but no two definitions are the same.

How does the limitation of the Chiefs independence contained in Subsection 37(5) "except when inconsistent with this Act" impact on Sections 51 and 54? Is Subsection 37(5) inconsistent with

them? The ambiguity undermines police independence. HRM maintains the Act must clearly articulate that the Chief is independent with respect to the day to day operation of the police service and the enforcement of the law.

Additional concerns are found in Subsection 54(3) with provides further clarification of the duties of a Board. In particular, consider:

54(3) Without limiting the generality of subsection (1), the Board shall:

- (a) determine, in consultation with the chief of police, priorities, objectives and goals respecting police services in the community;

It is HRM's view that the role of the Board is to oversee policing in the community from an administrative perspective, and ensure the operation of the police department is consistent with public expectations. For example, it is the role of the Chief to develop objectives, and the role of the Board to ensure they reflect community values and priorities?

We must consider what determination of priorities, objectives and goals means. As part of the annual budget process Council reviews the priorities of all business units and balances them against the overall need and capacity of the municipality. Is it wise that police be considered in isolation? The Chief meets annually with the community to receive feedback regarding community concerns and priorities. Would the Board repeat this exercise, at what cost? Would it not be more prudent that the Board receive and review the material from these exercises and ensure the priorities, objectives and goals of the police department reflect the values and priorities of the community.

HRM would suggest the language in Subsection 54(3)(b) and (c) is more appropriate and may make Subsection 54(3)(a) unnecessary. They read:

- (b) ensure the chief officer establishes programs and strategies to implement the priorities, objectives and goals respecting police services;
- (c) ensure that community needs and values are reflected in policing priorities, objectives, goals, programs and strategies;

Administration of Policing

Minister's Role

HRM remains concerned that some provisions regarding the Minister's Role to ensure effective and efficient policing inadvertently restrict the ability of the municipality and the Chief to

manage policing.

Consider Subsection 5(3):

- 5(3) For the purposes of subsections (1) and (2) the Minister may
- (a) issue a directive, standard operating or administrative procedure to a police department and the police department shall comply with the directive, standard operating or administrative procedure;
 - (b) require a police department, board or advisory board to develop a directive, standard operating or administrative procedure.

This provision would certainly appear to expand the minister's authority over day to day police operations. The concern is the mandating of services or programs without consideration for other operational matters or resources.

A similar concern can be found in the proposed Subsection 35(4):

A municipality may not abolish or reduce the size of a municipal police department without the approval of the Minister.

If enacted such a provision would reduce the flexibility of the municipality to manage the police service. Minor adjustments in the size of a police service do not impact the effectiveness or efficiency of policing. This provision would reduce the municipality's ability to manage operational and financial resources in the future. In addition the section seems redundant in light of the remedial power of the Minister contained in Subsection 5(1), which reads;

- 5(1) The Minister shall ensure that an adequate and effective level of policing is maintained throughout the Province.

This section could clearly address any of the concerns raised by Subsection 35(4).

There has been a long standing history of sharing resources in the policing community. The exchanging of undercover officers among communities on a reciprocal basis has been ongoing for many years. Subsection 39(2) could hamper the ability to carry on such operations in the future. Section 39 reads:

- 39 (1) Two or more municipalities may enter into an agreement providing for the sharing of specified police services.
- (2) Where the municipalities entering into an agreement pursuant to subsection (1) are not adjacent, the agreement must have the approval of the Minister.

- (3) A municipality may enter into an agreement with the Province for the provision of specified police services to the municipality.

Why is there a restriction regarding the sharing of services by other than adjacent municipalities? Considering the mobility of criminal activity and society generally, it would seem appropriate to encourage sharing of services. The integration of police services has become a national and international priority, it seems inconsistent with this modern reality to discourage integration in Nova Scotia.

Police Duties

The proposed duties of the municipal police read in part;

- 34(3) For the purposes of subsection (1), the service provided by a police department shall include
- (a) crime prevention;
 - (b) law enforcement;
 - (c) assistance to victims of crime;
 - (d) emergency and enhanced services; and
 - (e) public order maintenance.

The provision raises concern, in particular, the scope of such duties is unclear. The broad nature of the concepts of crime prevention and law enforcement, which envision numerous functions, are in keeping with the current complexity of policing. On the other hand, concepts such as assistance to victims of crime, emergency and enhanced services, and public order maintenance denote specific activities. The specific nature of such responsibilities make them less flexible. The result could be the demand for a specific service not intended by this legislation. What are the legal implications for the failure to supply such a service to a standard inferred from the legislation?

The articulation of the power and authority of Nova Scotia Police Officers in Section 41 is a positive step forward but we would like to suggest a minor change to improve the provision. Some labour relations concerns have been expressed that the duties contained in Subsection 41(2) are all inclusive. It reads:

- 41(2) Subject to this Act and the regulations or another enactment or an order of the Minister, the authority, responsibility and duty of a member of a municipal police department includes;
- (a) maintaining law and order;

- (b) the prevention of crime;
- (c) enforcing the penal provisions of the laws of the Province and any penal laws in force in the Province;
- (d) assisting victims of crime;
- (e) apprehending criminals, offenders and other offenders who may lawfully be taken into custody;
- (f) laying charges and participating in prosecutions;
- (g) executing warrants that are to be executed by peace officers;
- (h) subject to an agreement respecting the policing of the municipality, enforcing municipal by-laws within the municipality;
- (i) obeying the lawful orders of the chief officer;

and the police officer shall discharge these responsibilities throughout the Province.

In our view these concerns could be relieved with the addition in Subsection 41(2) after the word includes, the words "but is not limited to." It should be noted that the concerns raised regarding Subsection 34(3) are applicable to this section, in particular, the responsibility to assist victims of crime.

RCMP Costs

HRM is also concerned that some other proposed changes may pave the way to impose additional costs on the municipality for RCMP policing. Consider the following proposed provisions:

- 31(1) The Provincial Police may, with the approval of the Minister, charge a municipality or a law enforcement agency for any service it provides to it under this Act.
- 35(3) Where the Province provides and maintains policing services in a municipality, the municipality shall pay to the Province the *actual* costs thereof. (*Note: This provision was amended from reasonable costs*)

It is difficult to contemplate what was intended by the above, except that additional costs are envisioned for municipalities. It also raises the questions of actual costs determined by whom and to what standard. HRM would strenuously resist any further downloading of the cost of the Provincial Police to municipalities, especially considering the extent to which HRM subsidizes provincial policing.

Role of Chief

The expansive nature of the regulations provisions raises concern regarding to the day to day management of the police service. The scope of some provisions would seem to extend beyond

an oversight to a management role.

Consider Subsection 96(1)(b):

- (b) governing the criteria and qualifications for the appointment of persons to police departments

It is understandable that the Minister may wish to ensure police officers are qualified and a number of provisions support the ability to do so, but the ability to dictate the criteria to determine qualifications is unnecessary and intrudes on the Chief's right to manage day to day operations.

Further concern is raised by Section 38 which reads:

- 38(1) A member of a municipal police department shall meet the qualifications and requirements, including those related to training, established by the regulations.
- (1) A member of a municipal police department who does not meet the qualifications and requirements set out in subsection (1) shall not be deployed to perform operational police duties.

Will competent experienced officers who may not meet a new training standard be disqualified from performing operational duties? Does this provision prevent accommodating officers to operational positions in keeping with the duty to accommodate under Human Rights Legislation?

Term of Office of Chief Of Police

The term of office for a Chief of Police has been long guided by Subsection 14(2) of the current Act. It is well understood and has effectively operated for many years. The legal principles contained therein have been the subject of judicial review. The proposed provision risks over simplifying the importance of the protection contained in Subsection 14(2). The new provision reads:

- 37(3) For one year after the chief officer's appointment, the chief officer may be dismissed for any reason without notice and thereafter may be dismissed for cause.

This provision makes newly appointed Chiefs of Police susceptible to political influence. It has been suggested that the provision means the same as the provision in the current Act; that view is not shared by Chiefs. If it is not intended to erode the protection enjoyed by Chiefs, we suggest the language contained in the current Act is more appropriate.

Auxiliary Policing

HRM supports the concept of auxiliary policing, which would provide even greater opportunity for citizens to serve their community. Although auxiliary policing may vary from community to community, the provision must be flexible enough to support individual community needs. The limitation contained in Subsection 90(2)(c) is too restricting. It reads:

- 90(2) An auxiliary police officer ..., and
(c) shall not perform on a regular basis the work that would otherwise be performed by a police officer.

If the purpose is to protect permanent policing positions, there are other ways to do that without putting unions and volunteers in conflict over duties. More appropriate wording may be “shall not be used to replace or reduce permanent police positions.”

Complaints

HRM supports the establishment of a Complaints Commissioner, but caution should be had to ensure the role of the Review Board remains judicial in nature. It would be inconsistent with such a role for the Review Board to assign investigators as implied by Section 74. The investigation role or administration of complaints is more suited to the role of the Complaints Commissioner.

Conclusion

This review is not intended to be an exhausted review of the proposed legislation, but simply to reflect the main concerns of HRM.

If you require further clarification on any point raised please do not hesitate to contact us.