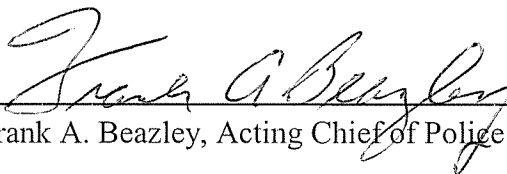


**Halifax Regional Council**  
**March 25, 2003**

**TO:** Mayor Kelly and Members of Halifax Regional Council

**SUBMITTED BY:**

  
Frank A. Beazley, Acting Chief of Police

**DATE:** March 19, 2003

**SUBJECT:** Impact of Proposed New Police Act  
INFORMATION REPORT

**ORIGIN**

Item 11.2 Halifax Regional Council of February 4, 2003.

**BACKGROUND/DISCUSSION**

At the February 4, 2003 meeting of Regional Council, staff was instructed to prepare, in consultation with the Mayor, CAO, and Board of Police Commissioners, a consensus response to the proposed changes to the Police Act.

The attached draft response attempts to incorporate all the concerns raised by the Chief of Police, the Board of Police Commissioners, and Council. It has been reviewed by the Mayor, the CAO, and the Board of Police Commissioners and the feedback received has been included.

If no further input is received from Council, the response will be forwarded to the Department of Justice by the Mayor by the April 1, 2003 deadline.

### **BUDGET IMPLICATIONS**

There are no budget implications.

### **FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN**

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**

There are no alternatives.

### **ATTACHMENTS**

Draft of the Police Act response.

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: A/Deputy Chief Christopher J. McNeil, Halifax Regional Police

March 19, 2003

**Police Act Review Committee  
Police and Victim Services Division  
Nova Scotia Department of Justice  
P.O. Box 7, Halifax, NS B3J 2L6  
Attn: Lisa D. Jackson, Project Coordinator**

Dear Ms. Jackson:

Re: Police Act Review

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Thank you for the opportunity to make representations on the Discussion Draft proposing changes to the Police Act. I am pleased to respond on behalf of Regional Council, the Board of Police Commissioners and the Chief of Police.

HRM recognizes the Minister of Justice is the constituted authority responsible for the administration of justice including policing, but the responsibility for delivery of policing services has been mandated to the municipality. The Police Act must acknowledge that responsibility includes the right to manage a police service consistent with the needs and capacity of the community.

Policing is one of the most important services delivered to the citizens of a community, and HRM takes the role of the Mayor and Regional Council (Council), the Board of Police Commissioners (Board), and the Chief of Police very seriously. It is important the *Police Act* accept the distinct but legitimate role each plays in Policing.

### **Mayor and Council**

#### **Appointment of Chief**

Council has a role to play in policing, and we must be careful that in our efforts to define a role for the Board we do not undermine the legitimate role of Council.

There is a clear expectation in the community that Council, as its elected representatives, would establish the broad overall direction of policing. The selection of a Chief makes a clear statement regarding the direction of policing.

The Chief of Police is one of the most important positions in a community, and the proposal to eliminate the authority of Council to appoint a Chief and transfer it to the Board raises serious concerns. The Chief of Police is responsible for a large portion of the municipal budget, and holds a significant position of trust in the community. The ultimate accountability for such an important appointment must rest with Council, those most directly accountable to the citizens.

If we accept that one of the primary roles of Boards is to provide oversight to the Chief of Police, is it appropriate that the body that provides oversight, be the same body that appoints the Chief? In the case of a bad appointment, would the independence of the Board to hold poor performance accountable be undermined? We have all hired people who did not live up to expectations, and had to face the dilemma of that decision coming under scrutiny if the person was terminated. Do we want Boards facing this dilemma?

Even more disconcerting is the proposed change in Subsection 18(2) of the Discussion draft;

*For the purposes of selecting and hiring a Chief of Police, the board shall follow and apply the selection process, criteria and qualifications established by the regulations.*

We understand that the Minister may have a valid interest in ensuring Chiefs of Police are qualified, but establishing by regulation the "process and criteria" to select a Chief goes well beyond the Minister's responsibility to ensure adequate and effective policing. The power to set criteria would virtually give the Minister control over every aspect of the hiring process. Clearly, this must be a management function and not a concern for the Minister. This provision would severely limit the autonomy of the Municipality to hire a Chief of Police, and intrudes on the right of the municipality to manage policing. The particular abilities and skills required of the position of Chief may vary from time to time and from community to community depending on the need. Those at the local level are in the best position to design a process that addresses the needs of their community. It seems inconceivable that staff at the province would be in a better position to play this role. In addition, it seems inconsistent with the notion of community policing that the "process or criteria" to hire a Chief would not be established at the community level.

### **Budget Approval**

One of the most troubling aspects of the Discussion draft is that it does not clarify the role of the Board vis-a-vis Council in the budgeting process. In fact the proposed legislation leaves open the question of what happens if the Board and Council disagree on the annual estimates.

The discussion draft proposes that:

25 (11) The board is accountable to council for the financial stewardship of the police department and shall cause to be prepared financial statements, projections, annual budgets as council from time to time requires.

More appropriate language is contained in Subsection 19(12) of the current Act which makes it clear that Council has final budget authority. We would propose similar language be maintained. It reads;

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 moneys 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. (Italics mine)

Although one can understand the desire to clarify the role of Boards in the budgeting process, it is Council who is accountable to the community for the fiscal management of the municipality, policing is only part of that responsibility. The police budget can not be considered in isolation, and only Council is in a position to balance the policing needs with other community priorities.

## **Board of Police Commissioners**

### **Appointment of the Board**

HRM has always strived to ensure citizen participation on the Board, and supports the effort to enshrine in the Act greater citizen involvement on Boards consistent with the principles of community based policing. It is important that the member of Boards reflect the diverse communities they serve but, the proposed legislation does not contain a statement of principle to that effect. Without such a statement of principle there is concern that the Board would not reflect the communities cultural differences.

Some concern has been expressed that an automatic appointment of an elected official to the Board, as proposed in Section 24, would erode Board independence. It reads in part;

- 24 (4) A 7 member Board appointed pursuant to subsection (1) shall consist of
- (a) the head of the municipal council or, if the head chooses not to be a member of the board, another member of council appointed by resolution of council;

The Board has raised the concern that an automatic appointment, especially of the head of Council, could stifle citizen involvement. If an elected official could campaign on the basis of a direct appointment to the Board, it may create the impression of an ability to influence policing beyond what the law contemplates.

It must be noted that there are different points of view on this issue, and the automatic appointment of the Mayor to the Board is supported by some of Mayor and Council. It could be said that rather than erode the Board's independence, the appoint of the Mayor recognizes the importance of the policing to the community.

### **Role of the Board**

It must be recognized that Boards provide an oversight role, and should not be hands on in the active management of the police service. Their role is one of ensuring that the Police Department comply with the broad mandate established by Council. They are critical in assuring that policing reflect community values and priorities.

HRM supports efforts to clarify the role of the Board, but has concerns that proposed provisions do not adequately clarify the role of the Board vis-a-vis the Council and the Chief.

Consider particularly subsection 25(10) and the proposed role of the Chair of the Board:

- 25(10) On behalf of the board, the board chair or the chair's delegate may give an order or direction in writing to the chief officer, but not to other members of the police department, and for greater certainty, no other member of the board shall give orders or direction to a member of the police department.

The proposition that the Chair of the Board may give the Chief of Police an order without some clear limitations is very disturbing. Boards should be able to provide direction or guidance to the Chief, but the ability to give orders changes the nature of the relationship. More appropriate wording is contained in Section 29(10) of the discussion draft, regarding the role of advisory boards in such circumstances, which reads in part "on behalf of the advisory board, the board chair or the chair's delegate may, ... give advice or direction in writing to the officer in charge". It is not readily apparent why the legislation in this regard would be different for a municipal police department versus a contracted service.

The 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 must be clearly articulated in the Act. Although the proposed legislation purports to make this statement, the proposed legislation does not clearly limit the authority of the Board in this respect. The ambiguity created could easily lead to tension when well intentioned individuals misunderstand their authority. A clear example is contained in Section 26 which lays out the functions of the Board, it reads in part;

26(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.

Although it contains a limitation, it does not limit or clarify the concept of "civilian governance". The Chief's independence in the enforcement of the law is a glaring omission. 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. Section 26 must make a clear statement that "notwithstanding the functions prescribed to the Board the actual day to day direction of the police force with respect to the enforcement of law and the maintenance of discipline within the force shall rest solely with the Chief or person acting for him".

Additional concerns are found in subsection 26(3) which provides further clarification of the duties of a Board. In particular consider;

26(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;
- (b) establish, in consultation with the chief officer, programs and strategies to implement the priorities, objectives and goals respecting police services;
- (f) provide policies, administrative and organizational direction for the effective management of the police department; (underline mine)

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 administrative policies, and the role of the Board to ensure they reflect community values and priorities. Language like determine, establish, or provide denotes hands on participation in the management of the police department, which is a fundamental change in the nature of Boards. More appropriate language is contained in other parts of subsection 26(3) which require the Board to ensure certain things are done. The oversight role anticipated by language like "ensure" is more consistent with the role of a Board.

Serious consideration must be given to the question of whether Boards, in light of the way they are presently configured, could manage the new responsibilities envisioned above without some investment in support

and infrastructure. If such an investment was made, would it not be a duplication of services provided by Council or the municipal administration?

If we simply consider the determination of the priorities, objectives and goals respecting policing in the community, the Board would simply be repeating the efforts of Council and the Chief. 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 the police be considered in isolation? The Chief as part of the same process 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.

It is one thing to appoint people and train them for an oversight role, but to suggest that such training could develop the necessary expertise in municipal administration and policing required for some activities is simply not realistic. The current Boards do not have the infrastructure or capabilities to meet the full range of responsibilities proposed except in a purely oversight role. The investment in time and resources is simply beyond that which should be expected from volunteer Board members. The effect may be that qualified citizens would be discouraged from participating.

## **Administration of Policing**

### **Minister's Role**

The draft legislation includes a number of provisions enhancing the Minister's ability to oversee the administration of justice in the Province to ensure adequate and effective policing. Unfortunately some provisions do not address the issue of adequate and effective policing, they simply restrict the ability of the municipality to manage policing.

The expansive nature of the language contained in subsection 4(3) is one such concern:

- 4(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.

The concern is the mandating of services or programs without consideration for other operational matters or resources. In particular, the imposition of a program to address the concern of the Minister may not be relevant locally, and may not address the concern in a manner that abates the problem at the municipal level.

The discussion draft proposes that in Section 5(e) to expand the authority of the Minister to conduct audits of municipal police departments. It reads:

determine the adequacy, efficiency and effectiveness of police services provided in a municipality through a system of audits, reviews and inspections and any means the Minister determines to be appropriate.

The broad nature of words like by "any means" the Minister deems appropriate could expose the municipality to unnecessary and expensive exercises to respond to the Minister's direction. Without a clear public policy reason such authority should be limited. In our view, if the Minister wishes to conduct such broad ranging reviews he should bear the full cost of responding to his direction.

A similar concern can be found in the proposed Section 16(4):

- (1) 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. The role of the Minister in such circumstance should be limited to those cases that would impact on the delivery of policing in a material way.

Additional concern is expressed regarding what appears to be an intrusion by the Minister in the management of the day to day operation of the police service. Consider the regulatory authority contained in Subsection 55(1)(b) of the discussion draft:

Governing the criteria and qualifications for the appointment of persons to police departments

The addition of the word "criteria" is an amendment from the previous authority. This is an intrusion upon the autonomy of the police department to establish relevant criteria for the hiring of police officers. This would virtually allow the Minister to tell us what tests to apply and with whom we must purchase these services. We can accept once again that the Minister may establish broad qualifications but the processes and criteria to select employees should rest with the employer who bears the liability for their actions.

### **Police Duties**

The proposed duties of the municipal police read in part:

- 15(3) For the purposes of subsection (1), the service provided by a police department shall include
  - (1) crime prevention;
  - (2) law enforcement;
  - (3) assistance to victims of crime;
  - (4) emergency and enhanced services; and
  - (5) 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 on 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 the provincial responsibility end and the municipal responsibility begin now?

In our view a more appropriate list of services could be framed as follows:

- Crime Prevention
- Public Education
- Community Problem Solving
- Response to Calls for Service
- Crime Solving
- Referral



The articulation of the power and authority of Nova Scotian Police Officers in Section 22 is a positive step forward, but we would like to suggest a minor change to improve the provision. Some concern has been expressed that the duties contained in subsection 22(2) are all inclusive. It reads:

- 22(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 all of the laws 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 relived with the addition in 22(2) after the word includes the words “but is not limited to”. It should be noted that the concerns raised regarding 15(3) are applicable to this section in particular the responsibility to assist victims of crime.

In light of the increasing tendency to complex interprovincial investigations any new legislation must give consideration recognizing the status of police officers appointed in other jurisdictions. This issue is currently being debated nationally, and Nova Scotia should be in a position to respond to the results of this debate.

In earlier submissions HRM has raised the issue of ability to revoke or suspend for administrative reasons, without effecting employment status, an individual's appointment as a police officer. This remains a serious issue which was not addressed in the Discussion Draft provision subsection 17(4).

### **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:

- 13(11) 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.
- 16 (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.

### **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:

- 55(ae) prescribing costs a municipality pays to the Province for providing and maintaining a police department in the Province.
- (af) prescribing a process for the certification of municipal and provincial police officers providing policing services in the Province.
- (ag) respecting involvement of municipal and provincial police officers in volunteer and political activity in the Province.
- (ah) respecting agreements between the provincial police and a municipality
- (ai) prescribing duties and functions of boards and advisory boards
- (aj) 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. In fact, the ability to change the landscape of policing overnight by regulation almost eclipses the provisions of the Act. It is unclear why such expansive regulatory powers are necessary. Would it not be more appropriate to deal with the substantive issues in the Act itself?

The concern of HRM is the proposed Police Act is repeating a pattern occurring in other municipal sectors, where the Province delegates responsibility to the municipality then over regulates the activity to the point of futility.

### **Miscellaneous Issues**

A number of specific issues not addressed in the issues raised above are also worth noting and will be discussed below.

### **Section 14(2) - Term of office of chief officer**

It is not clear why the protection contained in 14(2) of the current Act has been amended in the Discussion Draft to read as follows;

- 18(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.

Although it has been suggested that this provision means the same as the provision in the current Act, that view is not shared by Chiefs. In the Chiefs' view it is an erosion of the protection currently enjoyed 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. This provision is well understood and has effectively operated for many years.

### **Section 20(2) - Agreement to Share Specified Services**

There has been a long standing history of sharing resources in the policing community. The exchanging of undercover officers among communities on reciprocal basis has been ongoing for many years. Section 20(2) could hamper the ability to carry on such operations in the future. Section 20 reads:

- 20 (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 an arbitrary restriction regarding the sharing of services by other than adjacent municipalities? It would not appear to address an operational policing concern. The Province appears to be setting itself up as the broker of such services regardless of the cost or effectiveness.

#### **Section 54 - 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 54(2)(c) is too restricting; it reads:

- 54(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".

#### **Section 52 (1) - By-law Enforcement Officers**

This section provides for the appointment of municipal By-law enforcement officers for those municipalities who do not have municipal police departments. Although historically this distinction may have been relevant, it does not reflect the current where By-law officers are not under the direction of the Chief of Police but rather under the direction of the CAO or some other senior municipal official. We would suggest removing the distinction, and allowing any municipality to appoint by-law enforcement officers.

#### **Section 23(3)-(Current Act) Delegation by Chief Officer**

We note that the authority for the Chief Officer to delegate his responsibility to investigate complaints has been deleted from the Discussion draft. We assume this is an oversight or that this matter will be addressed in the regulations. Without this delegation, the complaint process would grind to a halt.

#### **Section 27(2)(c) - Extra Duty**

Subsection 27(2)(c) of the Discussion draft prohibits police officers from engaging in the business of serving civil process documents or in the private investigator or private guard business. This section no longer addresses the full scope of private security services. In our view it should be amended to prohibit police officers from engaging in any private security activity. The most recent example is the marketing installation of private alarm systems. Police officers who engage privately in offering such services could easily find themselves in conflict with their public duty.

## **Conclusion**

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

Having said that, it would be remiss not to reflect what is not in the discussion draft. HRM has been on the record in a number of different forums advocating that the right to strike for municipal police officers should be removed; it is discouraging to see that the discussion draft remains silent on the issue.

We have not commented on the complaint process much of which is contained in the Police Act Regulations. We will reserve comment until such time as those regulations are distributed for consultation. Having said that, we would urge restraint in amending the current provisions which have worked effectively for a number of years. We would suggest that any amendments be limited to addressing the minor procedural difficulties that have arisen in recent years.

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

Respectfully, I remain,

**Peter J. Kelly**  
**Mayor**

/wb

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cc: Jamie Muir, Minister of Justice  
Doug Keefe, Deputy Minister  
A/Chief Frank Beazley, Halifax Regional Police  
Greg North, Chairman, Board of Police Commissioners