

ONTARIO CIVILIAN COMMISSION ON POLICE SERVICES

REPORT OF AN INVESTIGATION INTO THE CORNWALL POLICE SERVICES BOARD

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Mandate:

On April 3, 1995 the Honourable David Christopherson, the then Solicitor General and Minister of Correctional Services (the "Minister") wrote the Ontario Civilian Commission on Police Services requesting that we initiate an investigation under section 25 of the Police Services Act (the "Act") into the conduct of the Cornwall Police Services Board. A copy of this request is appended as Schedule "A" to this Report.

Subsection 25(1) of the Act provides that:

"The Commission may, at the Solicitor General's request ..., investigate, inquire into and report on,

- (a) the conduct or the performance of duties of a ... member of a board"

Section 2 of the Act defines the term "board" to mean a "municipal police services board", and would include the Cornwall Police Services Board.

In particular, the former Minister wrote:

"Continuing public discussion indicates that there are serious problems with the Cornwall Police Services Board. As you are aware, there is a previous report, resulting from an inspection conducted by Police Services Advisors, and the Board has been

implementing the various recommendations made. Nonetheless, it appears that difficulties continue and that the relationships between board members may be so strained that the delivery of police services to the community may be compromised. Under these circumstances, I suggest a complete review of board activities, and an evaluation of the ability of the current Board to perform its governance function."

On April 5, 1995 we wrote requesting additional background material. This was provided and the matter was tabled at the Commission's regularly scheduled meeting of April 10, 1995.

After reviewing the former Minister's request and the further material provided we concluded that an investigation was warranted. We agreed to undertake this task within ninety days.

Pursuant to subsection 25(3) of the Act this is the Report of our investigation.

The Investigative Focus:

We decided at our meeting of April 10th that the focus of our investigation would be whether or not there was misconduct, failure to perform governance duties in a satisfactory manner or conflict of interest on the part of any member of the Board. This was communicated to the Honourable David Christopherson on April 11, 1995. A copy of this correspondence is attached as Schedule "B" to this Report.

The first step in the process was to interview the appropriate individuals and gather any useful documentation or records. The second was to establish the legal standards or criteria against which any factual conclusions were to be measured. The third was to make an assessment as to whether or not the calling of a full public inquiry was warranted. Finally, we felt it important to identify any concerns flowing from our investigation which suggested the need for comment or recommendation.

Two investigators were assigned to undertake the first step in the process. They were Mr. Michael Federico and Mr. Kent Laidlaw. Mr. Federico is a Staff Sergeant with the Metropolitan Toronto Police currently on secondment to the Commission. He has 23 years experience in policing, including 4 years as an investigator for Internal Affairs and 2 years as a policy adviser and planner. Mr. Laidlaw is a highly experienced former police officer. He served thirty-one years with the Halton Regional Police Force retiring with the rank of Superintendent. He has been associated with the Commission for the past three years in various roles, including Senior Advisor, Policing.

As well, we obtained the services of Mr. Ian Scott, for the purposes of providing legal assistance. Mr. Scott is currently Chief Counsel to the Special Investigations Unit of the Crown Law Office-Criminal of the Ministry of Attorney General. He has had extensive experience in matters relating to both investigations and prosecutions.

The Investigation:

Commission investigators conducted a series of interviews of 15 individuals, both in Cornwall and Toronto over 11 different days.

Individuals interviewed included:

- the two Ministry of Solicitor General and Correctional Services Advisors responsible for the November 1993 Human Resources Management Inspection of the Cornwall Police Service
- the current Ministry Police Support Advisor of the Cornwall Police Service and Board
- all present members of the Board
- the Acting Chief of Police and Deputy Chief of Police
- the President of the Cornwall Police Association
- the current and former Secretary to the Board
- the Crown Attorney for Cornwall
- legal counsel to the Cornwall Police Services Board

The former Chief of Police of Cornwall and former President of the Cornwall Police Association either declined or did not respond to a request for an interview.

On May 31, 1995 Commission investigators requested permission from Mayor Ron Martelle to speak to and examine material prepared by a lawyer retained by the City in 1993 on a matter concerning the former Chief of Police. Such permission was denied.

However, we have concluded that based on information otherwise available, we were able to complete our investigation.

In addition to the above, Commission investigators gathered copies of:

- minutes of 59 Board meetings between 1992 and 1995,
- by-laws regulating the proceedings of the Board,
- the November 1993 Human Resources Management Inspection Report prepared by the Police Support Programs Branch of the Ministry of the Solicitor General and Correctional Services,
- various letters and correspondence relating to the Board from different sources,
- over 75 media reports, editorials or newspaper articles concerning the Board and Service published over the past three years, and
- written submissions presented by some of those individuals interviewed

These were reviewed and analyzed.

The Role of Police Services Boards:

In order to assess the conduct and functioning of a particular board, it is important to have an understanding of the role of police services boards generally.

Every municipality in Ontario that maintains a police force is required by law to have a police services board. The members function in essence as a "board of directors" to their police service while the chief of police acts as "chief executive officer". Their role is central to our concept of civilian governance of police services in Ontario. In a very real way they act as public stewards in ensuring that police forces are representative of and accountable to the communities they serve.

There are approximately 100 police services boards in Ontario. Membership varies from

three to seven members. Subsection 27(5) of the Act provides:

"27(5) The board of a municipality, other than a regional or metropolitan municipality, whose population according to the last enumeration taken under section 15 of the Assessment Act exceeds 25,000 shall consist of,

- (a) the head of the municipal council, or another council member appointed by resolution of the council;
- (b) one person appointed by resolution of the council; and
- (c) three persons appointed by Lieutenant Governor in Council."

Accordingly, given the current population of Cornwall, the membership of the police services board is five.

Membership flows from two sources. First, it can arise from the holding of a specific elected municipal office (i.e. head of municipality) or by the vote of municipal council. Second, it can arise from appointment by the Lieutenant Governor in Council. This is normally for a two year term with the possibility of renewal.

The current membership of the Board is as follows:

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|---------------------|---|
| Mr. Leo Courville | - first appointed June 24, 1992 - current expiry June 23, 1996 - elected Chair January 14, 1993 |
| Mr. Angelo Towndale | - first appointed September 27, 1991 - current expiry September 26, 1995 |
| Ms. Delores Jensen | - first appointed February 20, 1992 - current expiry February 19, 1996 |
| Mayor Ron Martelle | - municipal representative since January of 1995 - previously served from January of 1992 until resignation in January of 1994 |

Mr. Brian Sylvester - municipal representative from March of 1994

The duties and responsibilities of a board are formally set out in the Act. They are significant. Subsection 31(1) states:

"31(1) A Board is responsible for the provision of police services and for law enforcement and crime prevention in the municipality and shall,

- (a) appoint the members of the municipal police force;
- (b) generally determine, after consultation with the chief of police, objectives and priorities with respect to police services in a municipality;
- (c) establish policies for the effective management of the police force;
- (d) recruit and appoint the chief of police and any deputy chief of police, and annually determine their remuneration and working conditions, taking their submissions into account;
- (e) direct the chief of police and monitor his or her performance;
- (f) establish an employment equity plan in accordance with section 48 and the regulations, review its implementation by the chief of police and receive regular reports from him or her on that subject;
- (g) receive regular reports from the chief of police on disclosures and decisions made under section 49 (secondary activities);
- (h) establish guidelines with respect to the indemnification of members of the police force for legal costs under section 50;
- (i) establish guidelines for the administration by the

chief of police of the public complaints system under Part VI;

- (j) review the administration by the chief of police of the public complaint system and receive regular reports from him or her on that subject."

Other duties relating to collective bargaining, employee discipline, and the preparation of budgets are set out elsewhere.

Generally, the board sets policy, hires the Chief of Police and oversees his or her performance. These are functions of the board and the board alone. The Chief oversees the day-to-day operation of the police force.

The Role and Conduct of Police Services Board Members:

The role of police services board members is not detailed specifically in the Act. However, it is clear to us that this must entail fulfilling the duties and responsibilities of the board as noted above.

Unlike police officers, the conduct of board members is not governed by a detailed set of rules. This is not a particularly satisfactory situation.

The Act provides that following a hearing the Commission may remove or suspend a member for misconduct, non-performance or incapacity. Specifically, subsection 25(5) of the Act provides:

"25(5) If the Commission concludes, after a hearing, that a member of a board is guilty of misconduct or is not performing or is incapable of performing the duties of his or her position in a satisfactory manner, it may remove or suspend the member."

What constitutes "misconduct" is not defined by the Act.

However, the Act identifies certain activities that are not permitted. These relate primarily to the relationship between the board, chief and members of the service.

Subsections 31(3) and (4) state:

"31(3) The board may give orders and directions to the chief of police, but not to other members of the police force, and no

individual member of the board shall give orders or directions to any member of the police force.

(4) The board shall not direct the chief of police with respect to specific operational decisions or with respect to the day-to-day operations of the police force.

It is our view that failure to abide by these provisions could constitute "misconduct" within the meaning of the Act.

Members of police services boards are also subject to the provisions of the Municipal Conflict of Interest Act, R.S.O. 1990, c. M.50. Section 1 of that legislation defines a police services board as a "local board". Members of local boards are subject to certain duties. In particular section 5 states:

"5(1) Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the council or local board at which the matter is the subject of consideration, the member,

- (a) shall, prior to any consideration of the matter at the meeting, disclose the interest and the general nature thereof;
- (b) shall not take part in the discussion of, or vote on any question in respect of the matter; and
- (c) shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question.

(2) Where the meeting referred to in subsection (1) is not open to the public, in addition to complying with the requirements of that subsection, the member shall forthwith leave the meeting or the part of the meeting during which the matter is under consideration.

(3) Where the interest of a member has not been disclosed as required by subsection (1) by reason of the member's absence from the meeting referred to therein, the member shall disclose the interest and otherwise comply with subsection (1) at the first meeting of the council or local board, as the case may be,

attended by the meeting referred to in subsection (1)."

Of equal importance is section 3 which deems "the pecuniary interest, direct or indirect, of a parent or the spouse of any child of the member ... to be also the pecuniary interest of the member".

This has two implications from our perspective. First, any member of a police services board who fails to disclose a conflict and takes part in decision making contrary to the provisions of the Municipal Conflict of Interest Act may be guilty of "misconduct". Second, a member with a persistent conflict which precludes him or her from participating in normal board business may be "incapable of performing the duties of his or her position in a satisfactory manner". Further, we believe that the Commission's jurisdiction to deal with such issues is clearly established by the decision of the Ontario Divisional Court in Re Greer and the Ontario Police Commission (1980), 27 O.R. (2d) 417.

General Analysis:

At our meeting of June 12, 1995 we received a detailed report from our investigative staff. This was discussed and reviewed. From this we have reached certain general conclusions.

First, it is evident that the Cornwall Police Services Board has been actively pursuing its governance responsibilities.

For instance, the Board conducts regularly scheduled meetings. Reports are received from the Chief, normal business items are tabled and addressed. In the minutes of the 59 meetings that we have reviewed there were well in excess of 500 motions and resolutions passed. Annual estimates have been prepared and submitted. An employment equity plan was established in April of 1992 and annual reports filed. Social contract agreements were negotiated with both the Police Association and Senior Officers.

In 1993 the Ministry conducted a detailed inspection of the operations of both the Board and Service. This report was completed in November of 1993. It made a total of 48 recommendations for improvement. The majority of these recommendations have either been addressed or are in the process of being implemented to the satisfaction of the Ministry.

The one exception relates to the presence of Mayor Ron Martelle on the Board. This recommendation appears to have arisen from a series of incidents and complaints. The Mayor initially resigned his position in January of 1994, but resumed his seat early in 1995 following his re-election as Mayor of Cornwall, the previous November.

More recently, the Board has completed a number of significant and complex initiatives. It

sponsored the creation of a community advisory committee which undertook a detailed survey of local attitudes toward policing services with the object of improving its community policing efforts. This is ongoing. In April it concluded the process of hiring nine additional recruits. A number were from designated groups. As well, over the past few weeks it successfully completed a sophisticated exercise directed at hiring a new Chief of Police with the skills necessary to best serve the community.

The operations of the Board have been far from perfect. There were concerns expressed to us about such issues as delays in responding to correspondence, problems with last minute scheduling or cancellation of meetings, difficulties with deciding the best location for meetings, and concerns about the manner in which the agendas are set. These issues should be capable of resolution. If that proves not to be the case, they could readily be the subject of further operational inspection.

It is evident that the Board has experienced periods of heated debate on a range of issues, largely going to matters of control. These have been fuelled by a series of public statements, interviews and press releases from individual members which frankly appear to have served no constructive purpose. Certainly, they have done nothing to advance public confidence in the activities of the Board or highlight its accomplishments.

However, we see no evidence to suggest that the delivery of police services to the community is compromised.

Allegations of Misconduct and Failure to Perform Duties:

There have also been allegations of misconduct, failure to perform duties or to do so in a satisfactory manner and conflict of interest directed at some members. Of the current membership, these allegations have focused almost exclusively at Mayor Martelle and to a lesser degree the Chair, Mr. Courville. We have considered the specific concerns and found them to be generally overstated, not directly related to board membership or out of date.

A number of the concerns relate to statements or positions taken by Mayor Ron Martelle on a variety of issues. Rather than itemize them all, we would simply identify the following examples:

- expressing opposition to certain aspects of Employment Equity
- expressing disagreement with the manner in which Board members are currently selected
- declaring in June of 1993 that he did not

recognize the jurisdiction of the Board, would refuse to sit on further meetings, would suspend funding to the Board and would be advising City Council to vote in favour of further cuts to the Board. Despite these statements funding continued and the Mayor retained his seat.

- during the controversy surrounding the above noted dispute, there were a series of letters exchanged between both Mayor Martelle and the Chair Leo Courville. The substance of this exchange was disclosed to members of the media. This provoked allegations of breach of confidentiality.
- indicating that he would be exploring the possibility of having policing services to the community provided under contract by the Ontario Provincial Police.
- issuing statements on policing matters not sanctioned by the Board

The validity of his points of view are irrelevant. We do, however, have concerns about his needlessly confrontational approach and the tension it has generated. It certainly has been less than helpful. That being said, none of the incidents identified to us would constitute "misconduct", suggest an ongoing non-performance of duties or disclose "incapacity" within the meaning of the Police Services Act.

Clearly, Board members may disagree from time to time on issues. Some of these disagreements may be vigorous and go to fundamental issues of policy. The proper place for these matters to be discussed is in the public sessions of the Board's regularly scheduled meetings. Further, as we have noted in past decisions, in the absence of clearly articulated Board rules with respect to communicating with the media outside of that forum it is difficult to sanction members for so doing.

Other concerns were expressed about certain activities of Mayor Martelle. One related to the Mayor personally "staking out" a reported "drug den" in May of 1994. It was suggested that this might interfere with police operational activities. We have found no evidence of this. Another concerned a request made by the Mayor on May 6, 1994 for information from the Canadian Police Information Centre (CPIC) on two individuals. A third related to an offer made by the Mayor in December of 1994 to make his vehicle, which apparently is leased by the city, available for use by the Criminal Intelligence Unit when required. This was

suggested to be, in some manner which is not clear to us, improper.

All of the above occurred while Mayor Martelle was not a member of the Board and thus beyond our authority. That being said, we certainly do have serious concern about requests for CPIC information from individuals without authorized access. We are advised however, that this was discussed and explained to the Mayor a few days after the event, he tendered an apology, and there have been no re-occurrences.

Other events, which occurred while the Mayor was a Board member, were also brought to our attention. On January 20, 1995 Mayor Martelle sent the Acting Chief a memorandum indicating that he intended to accompany police officers on patrol on an occasional basis in his capacity as both Mayor and Board member. Apparently this corresponded with an arrangement that the Mayor had with the former Chief.

The question of who rides in police cruisers and when, is an operation decision exclusively within the mandate of the Chief of Police. It is not a matter for members of the Board or municipal officials to dictate. This is clearly set out in subsection 31(4) of the Act.

We are advised that a few days later, the Acting Chief indicated to the Mayor, that there was an existing procedure for such requests that he was obliged to follow. The Mayor apologized for any misunderstanding arising from his memorandum and agreed to abide by the appropriate procedure. No subsequent request to accompany police officers has been received.

The one incident brought to our attention, that was of most concern, related to events surrounding the early retirement of the former Chief of Police in 1993. Apparently, this arose from concerns about the then Chief's leadership brought to the Board's attention by the local Police Association.

In the spring of that year Mayor Martelle told the City's Human Resources Manager, who was also at that time the Board Secretary, to see what could be done 'about removing the Chief'. The Human Resources Manager was unclear about the capacity in which he was being instructed. As a result, a lawyer was retained.

This set in motion a chain of events which has been described to us as an unauthorized investigation. Over the course of the next few weeks, a lawyer interviewed a number of members of the police service. Eventually, discussions about the possibility of an early retirement package commenced with the Chief and a draft agreement was prepared.

While initiated by the Mayor, the plan of action and its subsequent implementation took place without his direct participation.

In early June this matter came to the attention of other Board members and a letter was sent to Mayor Martelle demanding an explanation. No further interviews occurred and on June

29th the lawyer wrote the Board indicating that City Council was prepared to formally entertain a retirement package for the Chief, subject to the Board's approval. The Board replied that it was not willing to do so at that time. It indicated that it wished to take no action pending the outcome of a Ministry inspection.

Subsequently in September, based on the preliminary findings of the inspection, the Board decided to negotiate an early retirement package with the Chief. Essentially the terms of the earlier draft agreement were adopted. On November 7, 1993 it was signed by the Chief, Mr. Courville on behalf of the Board and Mayor Martelle for the City.

A Chief of Police is employed by the Board and not the municipality. Matters relating to a Chief's conduct, terms and conditions of employment and any possible retirement are matters for the Board and the Board alone.

The actions described above clearly should never have occurred.

Our concerns, however, are tempered in some measure by a number of considerations. These include the fact that the questionable activities were undertaken without the direct involvement of the Mayor. Further, the Board accepted the proposed agreement and all of these events occurred nearly two years ago.

Accordingly, we are of the view that to undertake a full public hearing regarding this issue at this late date would serve little or no practical purpose.

Conflict of Interest:

Two concerns with respect to conflict of interest were brought to our attention. The first related to Mayor Ron Martelle and the second to Chair Leo Courville.

Mayor Martelle's son has been a member of the Cornwall Police Service since 1991. This predates his father's election as Mayor.

Given the Board's role as employer this puts Mayor Martelle in a situation of potential conflict of interest. This is particularly so, given that section 3 of the Municipal Conflict of Interest Act deems "the pecuniary interest, direct or indirect of a parent or the spouse of any child of the member ... to be also the pecuniary interest of the member".

That being the case, the Mayor is under an obligation to both disclose his interest and withdraw from participation in matters relating to the financial compensation of his son. This would appear to include such normal labour relations concerns as the negotiation of collective agreements, changes to working conditions and certain promotional and disciplinary decisions. We have not identified any actions on the part of the Mayor to date

which would merit sanctions.

With the end of Social Contract and the likely resumption of collective bargaining, there is no doubt that labour relations will assume a greater part of the Board's time and efforts. The Mayor will be precluded by law from participation in much of this. We view this exclusion to be both at the Board and subcommittee level. No doubt, this will diminish his potential effectiveness as a municipal representative to the Board at an important time.

The second area of concern relates to Chair Leo Courville. Mr. Courville is a practising lawyer in the City of Cornwall. A portion of his practice involves undertaking criminal cases. This situation does not appear to fall under the provisions of the Municipal Conflict of Interest Act. However, it is our view that it has the potential to give rise to irreconcilable competing professional interests should Mr. Courville represent individuals arrested by members of the Cornwall Police Service.

We have reviewed this matter with the local Crown Attorney. He indicates that, to his knowledge there have not been any cases before the local courts where such a conflict has actually arisen. Further, Mr. Courville also is mindful of this situation. In March of 1994 he agreed to finish any files that he might have involving charges laid by the Cornwall Police Service and not to take on any new cases until his term with the Board was over. That would appear to substantially diminish the potential for any future difficulty.

That being the case we are not in a position to say that this creates a situation where Mr. Courville is rendered "incapable of performing the duties of his ...position in a satisfactory manner".

Conclusion and Recommendations:

In summary, we are satisfied that the Cornwall Police Services Board is performing its governance function and that the delivery of police service to the community is not compromised. Further, while there have been some questionable events in the past, we have been unable to find clear evidence of misconduct, non-performance of duties, or incapacity which would warrant the time, effort and expense of a lengthy public hearing.

There are few services more important to citizens of any town or city than policing. Board members must never lose sight of their responsibilities to their community, whether they serve as order-in-council appointees or elected municipal officials.

The balance between provincial appointees and municipal representatives is a delicate one. This is particularly so, given the obligation of municipalities to fund policing services. For this relationship to work effectively, there is a need for a fair measure of co-operation and flexibility.

This does not suggest that any Board member must ignore his or her conscience or fail to express opinions on matters important to them. Indeed, this is one of the reasons that they serve on the Board in the first place. Their duties, however, should be undertaken in a positive and constructive manner at Board meetings, within the framework established by the Act.

We would also be remiss, if we did not identify three areas of broader concern that our investigation disclosed. These relate to the question of rules and guidelines for board members, conflict of interest, and the role of Board Secretary.

In 1992 we held a hearing into the conduct of a member of the Peel Regional Police Services Board. In 1994 we initiated an investigation into certain alleged remarks of a member of the Metropolitan Toronto Police Services Board.

In these cases we made recommendations calling for the adoption of both rules and guidelines for the conduct of Board members and the effective management of media relations.

We indicated that it was our firm belief that policies should be in place for each and every Board in Ontario and that the contents should be communicated to each Board member. We expressed the view, that with such rules in place, members could be held accountable to their Chair and fellow board members for failing to comply with such procedures. We believe that most of these matters can be resolved at the Board level.

Further we noted that police officers are subject to a detailed Code of Conduct and that nothing similar exists for Board members. This puts the Commission in the unfortunate position of not having clear standards against which to measure a Board member's conduct. It also puts Board members in the unfortunate position of not knowing precisely, what conduct is expected of them.

Our investigation into the Cornwall Police Services Board has once again reinforced our views on this matter. We strongly urge that these recommendations be given high priority by the Ministry, Ontario Association of Police Services Boards and all Boards across the Province.

Second, we have concerns with respect to the issue of potential conflicts of interest. Until recently, criminal defence lawyers were not appointed to police services boards. Those lawyers, who were so appointed were subject to strict guidelines which essentially called upon them to discontinue their local criminal practice while serving as a member. A copy of these guidelines, issued by the then Honourable Roy McMurtry, dated September 22, 1978 is appended to this report as Schedule "C". We feel these guidelines are appropriate.

Accordingly we would recommend that any future appointments be made in accordance with these guidelines.

Further, we believe all new Board members should be advised of the provisions of the Municipal Conflict of Interest Act and conflict issues generally and instructed on their legal obligations. Any unresolved conflict issues should be reported to the Commission.

Finally, our investigation raised questions in our mind about the role of Board Secretaries. It seems evident to us that a Board Secretary who is a municipal employee will find himself or herself from time to time in situations with conflicting duties. That seems to have been the case here. This serves neither the Board, nor the municipality.

We would recommend that municipal employees should not be eligible to serve as Secretaries to Police Services Boards.

Dated this 10th day of July, 1995

ONTARIO CIVILIAN COMMISSION
ON POLICE SERVICES

per: MURRAY W. CHITRA, CHAIR