

2. Policing in Ontario

The *Police Services Act*² (PSA) governs policing and civilian oversight in Ontario. The PSA is divided into nine parts.³ Although this review focuses on Part V of the PSA, which deals with complaints, one should be aware of the legislative context in which Part V is found. The most significant parts of the PSA are summarized in this section and the current complaints process is reviewed later in this report.

Responsibility for Police Services

Part I of the PSA deals with responsibility for police services. Ultimately, the Minister of Community Safety and Correctional Services (formerly the Solicitor General) is responsible for the PSA and general oversight of policing in Ontario. Among his duties, the Minister is responsible for monitoring police services and police services boards to ensure that adequate and effective services are provided and that standards are met.⁴

Although the Minister oversees policing generally, specific police operations are not subject to Cabinet-level direction. The complex relationship between police and government is set out by Professor Kent Roach who writes:

² R.S.O. 1990, c. P.15 [hereinafter PSA].

³ Part VI of the PSA was repealed by Bill 105, *An Act to renew the partnership between the Province, Municipalities and the Police and to enhance community safety*, 1st Sess., 36th Leg., Ontario, 1997 (assented to June 26, S.O. 1997, c.8) [hereinafter Bill 105]. However the numbering of other Parts of the Act remains unchanged.

⁴ PSA, s. 3(2).

On the one hand, the idea that the police are a law unto themselves is unacceptable in a democracy that prides itself on restraint in the use of coercive state-sponsored force and on accountability for the use of such powers. On the other hand, the idea that the police are directed by the government of the day raises concerns about improper partisan concerns influencing or appearing to influence the machinery of justice. There is a need to respect and balance both the principles of independence and accountability and to do so in a manner that advances our aspirations to be a democratic nation that is governed by law.⁵

The PSA requires municipalities to provide adequate and effective policing services and specifies minimum requirements for such services.⁶ Municipalities may establish their own police services, work cooperatively with each other for the provision of police services, or contract with the Ontario Provincial Police (OPP) for policing.⁷ There are 60 municipal police services in Ontario. They range in size from seven sworn members of the Stirling-Rawdon Police Service to approximately 5200 sworn members of the Toronto Police Service.⁸ The role of the OPP is to police parts of Ontario without municipal police services, police certain navigable waters, patrol highways, and maintain investigative services to assist municipal forces.⁹ There are 8225 OPP personnel, including 5411 sworn officers, who report to the Commissioner of the OPP.¹⁰ It should be noted that the total cost of policing in Ontario for 2003 was approximately \$2.8 billion.¹¹

⁵ K. Roach, 'Four Models of Police-Government Relationships' (Ipperwash Inquiry Symposium on Government/Police Relations, Osgoode Hall Law School, York University, 29 July 2004) at 2, online: The Ipperwash Inquiry <www.ipperwashinquiry.ca/policy_part/pdf/Roach.pdf> (date accessed: 12 October 2004).

⁶ PSA, ss. 4(1)-(2).

⁷ *Ibid.*, s. 5(1).

⁸ Ontario Civilian Commission on Police Services, *Annual Report 2003* (Toronto: Ontario Civilian Commission on Police Services, 2004) [hereinafter OCCOPS 2003] at 54-55.

⁹ PSA, s. 19(1).

¹⁰ Ontario Provincial Police, *Annual Report 2003*, (Toronto: Ontario Provincial Police, 2003), online: Ontario Provincial Police

Ontario Civilian Commission on Police Services

The second part of the PSA relates to the Ontario Civilian Commission on Police Services (OCCOPS). An arm's length, quasi-judicial agency, OCCOPS is a responsibility of the Minister of Community Safety and Correctional Services.¹² Among its many roles, it may review police chiefs' decisions on public complaints and hear appeals from police disciplinary hearing decisions.¹³ OCCOPS also has the power to conduct investigations either on its own motion or at the request of the Minister of Community Safety and Correctional Services, a municipal council, or a police services board. It may investigate the conduct or performance of police officers (including chiefs and deputy chiefs of police), auxiliary police personnel, special constables, municipal law enforcement officers, and members of police services boards.¹⁴ Cabinet is also empowered to direct the Commission to undertake inquiries on any matter relating to crime and law enforcement.¹⁵

OCCOPS plays a general supervisory role in relation to municipal police services boards and police services within Ontario. It is empowered to direct boards and municipal police services to comply with prescribed standards and, if they

<<http://www.gov.on.ca/opp/organization/english/reprte03.pdf>> (date accessed: 28 November 2004) at 3.

¹¹ Statistics Canada, Canadian Centre for Justice Statistics, *Police Resources in Canada, 2004* (Ottawa: Statistics Canada, 2004) at 25.

¹² OCCOPS 2003, *supra* note 8 at 6.

¹³ PSA, ss. 22(1)(e.1), 22(1)(f).

¹⁴ *Ibid.*, s. 25(1)(a). In 2003, five such proceedings, regarding the conduct of police services board members and one police officer, were commenced. See OCCOPS 2003, *supra* note 8 at 15-16.

¹⁵ PSA, s. 26.

repeatedly fail to do so, OCCOPS may suspend or remove board members or chiefs of police, disband municipal police services and replace them with OPP police services, and/or appoint administrators to take over municipal policing matters for specified periods of time.¹⁶ OCCOPS also adjudicates budget disputes between boards and municipal councils, and disputes over employee classification for the purposes of collective bargaining.¹⁷ Furthermore, OCCOPS reviews decisions on amalgamation of police services and termination of police officer employment related to reduction or abolition of municipal police services.¹⁸

A full-time Chair heads OCCOPS, assisted by a full-time Vice-Chair for police complaints and a full-time Vice-Chair for community outreach.¹⁹ Part-time OCCOPS members are appointed to allow OCCOPS to fulfill its adjudicative and decision-making duties. Cabinet appoints the Chair, Vice-Chairs and all other OCCOPS members.²⁰ An Adjudication and Compliance Bureau deals with OCCOPS' adjudicative roles and a Complaints Bureau handles review and administration of public complaints. In addition, OCCOPS has an Outreach and Community Bureau that deals with community relations and education.²¹ For fiscal year 2002-2003, its budget was slightly less than \$1.5 million.²²

¹⁶ *Ibid.*, ss. 22(1)(a), 23(1).

¹⁷ *Ibid.*, ss. 39(5), 116(1).

¹⁸ *Ibid.*, ss. 6(3), 40.

¹⁹ OCCOPS 2003, *supra* note 8 at 8.

²⁰ PSA, ss. 21(2)-(3).

²¹ OCCOPS 2003, *supra* note 8 at 8.

²² *Ibid.* at 10.

Municipal Police Services Boards

Police services boards fulfill a major civilian oversight role throughout Ontario and are dealt with in Part III of the PSA. Every municipality maintaining a police service is required to maintain a board.²³ In smaller municipalities with populations of 25,000 people or less, these boards consist of the head of a municipal council (or other council member if the head of council opts not to sit on the board), a person appointed by municipal council who is neither a councillor nor a municipal employee, and one provincial appointee.²⁴ In municipalities with populations greater than 25,000 people, an extra councillor and provincial appointee are added to create five-member boards.²⁵ Subject to Cabinet approval, municipalities with populations over 300,000 may create seven-member boards, with two additional councillors and two additional provincial appointees.²⁶

Board responsibilities include the appointment of police officers, the establishment of objectives and priorities for the police service, the establishment of policies for effective management of the police service, and the hiring and evaluation of the police chief and deputy chiefs.²⁷

²³ PSA, s. 27(1).

²⁴ *Ibid.*, s. 27 (4).

²⁵ *Ibid.*, s. 27 (5).

²⁶ *Ibid.*, s. 27(9).

²⁷ *Ibid.*, ss. 31(1)(a)-(d).

In relation to police complaints, the PSA provides that boards are to establish guidelines for dealing with public complaints and may review the chief's administration of the complaints system.²⁸ Where a municipality contracts for OPP policing, the board's responsibilities related to complaints administration are more limited. These boards only review complaints administration as carried out by the local detachment commander and receive regular reports on the administration of the system.²⁹

The mandate of police services boards may be summarized as being one of oversight, general management and the setting of policy. The scope of responsibilities and powers is broad and includes giving orders and directions to the chief of police. However, boards are not to direct chiefs on specific operational decisions or with respect to the day-to-day operations of the police service.³⁰

Police Officers

A range of duties for police officers is set out in Part IV of the PSA. A police officer's duties include: preserving the peace, crime prevention, assisting victims, apprehending offenders, laying charges, executing warrants, completing training, and carrying out other lawful duties assigned by the chief of police.³¹ In addition

²⁸ *Ibid.*, ss. 31(1)(i)-(j).

²⁹ *Ibid.*, s. 10(9)(f).

³⁰ *Ibid.*, s. 31(4).

³¹ *Ibid.*, s. 42(1).

to these prescribed duties, the PSA provides that police officers have the common law duties and powers of constables.³²

Police chiefs have responsibilities beyond those of other police officers. These responsibilities include: overseeing the administration and operation of the police service, ensuring that police officers carry out their duties, administering discipline, ensuring that community-oriented police services are provided, and administering the complaints system.³³

Special Investigations Unit

The Special Investigations Unit (SIU) is an independent, civilian law enforcement agency and operates at arm's length from the Ministry of the Attorney General.³⁴ Established in 1990 and governed by Part VII of the PSA, the SIU's mandate is to investigate police incidents involving serious injury or death.³⁵ Where warranted, the Director of the SIU is empowered under the PSA with causing criminal charges to be laid against a police officer. Although the SIU reports to the Attorney General, investigations and decisions are independent of the Government and all police services. In 2002-2003, the SIU conducted 151 investigations which led to 4 charges. With 65 personnel, the SIU has an annual

³² *Ibid.*, s. 42(3). See generally Law Reform Commission of Canada, *Legal Status of the Police* by P.C. Stenning (Ottawa: Minister of Supply and Services Canada, 1982).

³³ PSA, ss. 41(1)(a)-(d).

³⁴ Ontario, Special Investigations Unit, *Annual Report 2002-2003* (Mississauga: Special Investigations Unit, 2003) at 2 [hereinafter SIU 2002-2003].

³⁵ PSA, s. 113(5).

budget of slightly over five million dollars.³⁶ The SIU has undergone two extensive reviews in the past seven years.³⁷

First Nations Policing in Ontario

Vast geographic areas of Ontario are policed neither by the OPP nor by municipal services, but by First Nations police services. The Treaty Three Police Service alone is responsible for administering approximately 142,000 square kilometers of territory.³⁸

First Nations police services are currently based upon the First Nations Policing Policy introduced in 1991. Tripartite agreements between First Nations, the federal Government and provincial/territorial governments allow for the delivery of policing services by independently administered First Nations police services.³⁹ As of 2003, tripartite agreements govern the Akwesasne Mohawk

³⁶ Ontario, Special Investigations Unit, 'FAQS', online: <<http://www.siu.on.ca/faqs.asp> > (last accessed: 14 October 2004); SIU 2002-2003, *supra* note 34 at 9, 24.

³⁷ See Ontario, *Consultation Report of the Honourable George W. Adams, Q.C. to the Attorney General and Solicitor General Concerning Police Cooperation with the Special Investigations Unit* by G.W. Adams (Toronto: Ministry of the Attorney General, 1998); G.W. Adams, *Review Report on the Special Investigations Unit Reforms prepared for the Attorney General of Ontario by the Honourable George W. Adams, Q.C.* (Toronto: Ministry of the Attorney General, 2003), online: Ministry of the Attorney General < <http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/adams/adamsreport.pdf> > (date modified: March 21, 2003).

³⁸ Public Safety and Emergency Preparedness Canada, Aboriginal Policing Directorate, 'Treaty Three—Canada's Newest First Nation Police Service', online: Public Safety and Emergency Preparedness Canada < http://www.psepc-sppcc.gc.ca/publications/abor_policing/Treaty_Three_e.asp > (last modified: 14 November 2003).

³⁹ Public Safety and Emergency Preparedness Canada, Aboriginal Policing Directorate, 'First Nations Policing Policy', online: Public Safety and Emergency Preparedness Canada < http://www.psepc-sppcc.gc.ca/abor_policing/fir_nat_policing_e.asp > (last modified: 23 September 2004).

Police Service, the Anishinabek Police Service, the Lac Seul Police Service, the Nishnawbe-Aski Police Service, the Six Nations Regional Police Service, the Treaty Three Police Service, the United Chiefs and Councils of Manitoulin Police Service, and the Wikwemikong Police Service.⁴⁰ In the absence of an agreement, policing on reserves is carried out by the OPP.⁴¹

First Nations police services vary greatly in terms of their policing mandates. For example, the Anishinabek Police Service serves 17 First Nations communities through its detachments located from the Thunder Bay area to Kettle Point, north of Sarnia. The Anishinabek Police Service serves a total population of about 9,000.⁴² In contrast, the Six Nations Police Service serves a population of 18,000 on a single reserve located less than 120 kilometres from downtown Toronto.⁴³

Apart from establishing First Nations police services and setting out the terms for their operations and funding, the tripartite agreements require that the police

⁴⁰ Public Safety and Emergency Preparedness Canada, Aboriginal Policing Directorate, 'First Nations Policing Services Across Canada', online: Public Safety and Emergency Preparedness Canada < http://www.psepc-sppcc.gc.ca/abor_policing/fir_nat_polic_serv_e.asp > (last modified: 11 November 2004).

⁴¹ First Nations Chiefs of Police Association, 'Setting the Context: The Policing of First Nations Communities (Module One)', online: First Nations Chiefs of Police Association <<http://www.fncpa.ca/Publications/Moduleone.doc>> (date accessed: 5 October 2004) at 11.

⁴² Anishinabek Police Service, 'Quick Facts', online: <<http://www.apscops.org/facts.html>> (date accessed: 23 October 2004); Anishinabek Police Service, 'Addresses & Phone Numbers', online: < <http://www.apscops.org/phone.html>> (date accessed: 13 December 2004).

⁴³ CBC, 'Roberta Jamieson: A Groundbreaker', online: CBC < http://www.cbc.ca/news/background/aboriginals/jamieson_profile.html > (date accessed: 2 December 2004).

services have in place a system for handling public complaints.⁴⁴ As First Nations constables are not included in the definition of “police officer” under the PSA, they are not subject to the PSA’s complaints process.⁴⁵ Complaints against First Nations constables must be pursued under the procedures that are implemented under the agreements.

⁴⁴ Public Safety and Emergency Preparedness Canada, Aboriginal Policing Directorate, ‘About the Aboriginal Policing Directorate’, online: Public Safety and Emergency Preparedness Canada

< http://www.psepc-sppcc.gc.ca/abor_policing/about_abor_pol_direct_e.asp > (last modified: 8 November 2004).

⁴⁵ PSA, s. 2.