

## MINUTES

### OTTAWA-CARLETON POLICE SERVICES BOARD

#### CHAMPLAIN ROOM

22 FEBRUARY 1999

5:00 P.M.

#### PRESENT

Chair: Councillor H. Kreling  
Vice Chair: Mr. G. Baskerville  
Members: Mr. D. Adam, Ms. E. Buckingham, Regional Chair B. Chiarelli,  
Councillor J. Legendre and Mr. J. McCombie

#### CONFIRMATION OF MINUTES

Councillor Legendre referenced a passage on page 4 of the 25 Jan 99 Minutes, referring to a policy discussion on the provision of legal services. The Councillor noted member Vice had asked a speaker, Mr. Teskey, what evidence the speaker had that the Board had dealt with matters in camera. Mr. Teskey responded one example dealt with whether one of the Board's members had violated the Board's code of ethics. Councillor Legendre then noted the final sentence indicated the speaker was not able to be specific about other examples he had heard of in news reports. The Councillor said he remembered interjecting that if member Vice wanted other examples, the Councillor was prepared to provide any number of them. He said he wanted this reflected in the minutes.

Chair Kreling said he recalled the Councillor's comment, and suggest the minutes could be amended accordingly.

**That the Ottawa-Carleton Regional Police Services Board confirm the Minutes of the 25 January 1999 meeting as amended.**

CARRIED as amended

#### SWEARING-IN OF NEW BOARD MEMBERS - D. ADAM AND J. McCOMBIE

Chair Kreling welcomed Des Adam and John McCombie to the Ottawa-Carleton Regional Police Services Board. He then introduced Mr. Barry O'Gorman, Deputy Regional Clerk, to swear in the new members. Following this, Messrs. Adam and McCombie took their oaths of office.

Councillor Legendre extended his personal welcome to the new board members.

PUBLIC DELEGATIONS

1. KANATA, GOULBOURN AND WEST CARLETON  
COMMUNITY RESOURCE CENTRE/OPP PRESENTATION ON  
“PARENT-ADOLESCENT CRISIS EDUCATION BOOKLET”

- copies of the booklet were issued at the meeting

Chair Kreling welcomed OPP Constable Rick Clark, and Ms. Peggy Austin of the Kanata, Goulbourn and West Carleton Community Resource Centre.

Ms. Austin explained that the Parent-Adolescent Crisis Education (PACE) booklet entitled “You’ve had pre-natal, now get pre-teen” had been conceived approximately two years ago, and had been a partnership between the Resource Centre and the OPP. She said that based on several years’ work in the community on youth issues, and on the number of crisis calls received by both the Resource Centre and the OPP, it was discovered a significant number of parents were looking for information about various laws and information about normal teen behaviour.

Ms. Austin said the Resource Centre had started holding parent information nights based on the Ottawa-Carleton model, but had branched out to create a larger partnership with social services, police, education, and public health to bring together a program to inform parents that all in the community were partners in helping to raise their children. Ms. Austin stated the booklet was very popular as it contained the information parents required, presented in the simplest language.

Constable Clark added that an attempt had been made to put issues, problems and concerns faced by parents on a daily basis into the book. He said this information was obtained from his work at area high schools and through meeting with parents at parent information nights. Cst. Clark said the book outlined normal versus abusive teen behaviour, was intended to provide parents with a measuring stick to determine where they were in terms of their relationship with their child, and provided some of the signs and options parents could exercise during a crisis period. He said the booklet also touched on other common areas of concern such as tattoos and body piercing, sexual activity, trespassing, smoking, drinking, substance abuse and school-related problems. Cst. Clark noted the booklet provided information on various provincial and federal statutes. He said it was felt that if parents had a better understanding of how the system works and what the consequences were in terms of involving the legal process, it was hoped parents would make better-informed decisions as to when to involve authorities. The constable added that in addition to identifying potential problems for parents, the booklet included a resource list for a variety of concerns.

Ms. Austin explained that in the past, she would hold community parent nights but noted those who showed up were not the ones being targeted. She stated that as the Resource Centre began partnering with the police and spreading the word about the information and partnerships available to help those who were having problems with their teens, those parents who perhaps had felt stigmatized or shamed at having teenagers who acted out began attending. Ms. Austin said that 340 such parents had attended since June of 1996 when the parent nights began. She added this information had been presented at various community policing conferences in Ontario, and that the OPP was interested in expanding it province-wide.

Chair Kreling thanked the presenters for their efforts and their commitment.

Councillor Legendre felt the information contained in the booklet might be very useful to many communities, and asked who had paid for the preparation and publication of the booklet.

Ms. Austin explained the two agencies had both contributed in terms of time and effort, and that Rideau Kiwanis had provided the funding required to print the first 1,000 copies.

Councillor Legendre noted the booklet contained fundamental information, and did not seem to be culturally-based. He wondered what resources would be required in order to translate the booklet and make it available to the francophone and new immigrant communities throughout the Province.

Ms. Austin responded that the partners have submitted a funding proposal for a Community Policing Grant to the office of the Solicitor General of Ontario. She said it was also hoped that communities would be generating their own funding, but that this issue needed further exploration.

Further responding to a question from the Councillor regarding translation, Ms. Austin explained the document had not yet been translated, but in light of several requests for a French version, this would be a next step.

Councillor Legendre noted that the Government of Ontario has a French Language office which he felt could provide funding or otherwise assist in translating the document.

Constable Clark noted the document before board members was a first edition, and that the group had been uncertain as to how it would be received. He noted the response has been very positive, and it would now be necessary to deal with all the questions recently raised in terms of how to proceed.

Ms. Austin added the original 1,000 copies had targeted Kanata, Goulbourn and West Carleton as a pilot area.

Constable Clark also noted for Councillor Legendre that if the goal was to take the booklet province-wide, the last page dealing with resource centres to which parents could turn for support could be tailored for each individual community.

Vice Chair Baskerville voiced a concern dealing with the integration of areas currently under OPP jurisdiction into the Regional Police. He acknowledged much work has been done, involving a great deal of resource material, documentation and knowledge. His concern was to ensure that this information was transferred to the Regional Police.

Constable Clark said this question had only recently arisen due to the booklet's success, and would have to be studied.

Ms. Austin noted that although the provision of policing services would be in transition, both she and the Community Resource Centre would remain, and that she would advocate a partnership to continue the project.

**That the Ottawa-Carleton Regional Police Services Board receive this presentation for information.**

RECEIVED

MR. JACK MILLER (Speaking to General Board Issues)

Mr. Miller, a resident of Ottawa for over 30 years, said he objected to the seating arrangements for the Police Services Board and the Chief of Police. He felt the arrangement of seating both board members and staff members at the same table was collegial, and was subversive of the Police Services Board's chief duty of exercising oversight over the activities of the Chief of Police. The speaker felt that a collegial seating arrangement would lead, and has already led, to collegiality among working arrangements, which in turn has led to collusion. He said collusion was a reversal of the Police Services Board's first duty as prescribed by Ontario legislation, and said he was certain this had already occurred. Mr. Miller said he had been appalled to learn that the legal counsel for both the Police Services Board and the Chief of Police were the same person, and he found it even more objectionable that a majority of the board were trying to perpetuate this situation. Mr. Miller also felt that meeting with the Chief of Police in camera was another example of the board's deviation from proper behaviour and from its primary duty of protecting the public from police abuse. The speaker felt that for as long as the Police Chief has been sitting with the board at the same table, the Ottawa-Carleton Regional Police Services Board has been failing to do its duty to the public of providing effective oversight of the Chief of Police and police activities.

Chair Kreling assured the speaker that the seating arrangements did not take away from the importance the board placed on its role in delivering governance for the Ottawa-Carleton Regional Police Service. He said the arrangement was not dissimilar from that of any other committee or board the municipality constituted either on its own or in partnership with other

organizations. Chair Kreling informed it was common practice for the senior personnel of a department, board or service to sit at the table with the committee or board providing governance. He said this was not to provide for a level of collegiality, but rather for an opportunity to be able to rely on senior staff to answer questions the board or committee might have arising from the proceedings. Chair Kreling noted Mr. Miller had suggested it was necessary to break away from what the speaker perceived to be a collegial seating arrangement in order for the board to carry out its duties. The Chair in turn suggested that the actions taken by the board were a matter of public record. He further explained that meetings were held in camera for a variety of reasons on sensitive issues. Regarding Mr. Miller's reference to the matters of the provision of legal services and in camera discussions, Chair Kreling noted these items were on the agenda for policy discussion, and that the board would be seeking policy alternatives or directions which might result in amendments to the board's procedural bylaw.

Mr. Miller said he was familiar with such rationalizations, and said he was not asking the board to break up its collegial seating arrangements but to return to separate seating arrangements for the board and for staff which had prevailed in the past.

Speaking to Mr. Miller's comments, Vice Chair Baskerville informed that when he was first appointed to the Ottawa-Carleton Regional Police Services Board, staff used to sit at a separate table. He stated that the acoustics in the Champlain Room were not good, and that as a result of a hearing impairment due to military service, he had pressured board members to consider bringing the Executive to the table so that the board could better perform its business. The Vice Chair said he would take the blame for the present seating arrangement if necessary, but felt that in terms of practicality, the importance lay in what the board did, and not in visual appearances. Vice Chair Baskerville did not agree with Mr. Miller's allegation of collusion, and believed the present seating arrangements made for a more businesslike and practical conduct of the board's proceedings.

Mr. Miller felt amplification arrangements could have been effected to make it possible for one to hear and to be heard at any location within the venue. The speaker said he did not believe the Vice Chair had been at fault. He felt Vice Chair Baskerville might have been the agent of change, but that its source was elsewhere, and that others were responsible.

Councillor Legendre felt Mr. Miller's statement was worth consideration. He disagreed with the Chair's view that the seating arrangement did not matter. The Councillor offered that for those regularly sitting on Regional committees or boards, convenience might be an acceptable reason for such seating, but he noted the room was equipped to enable staff to be heard, and to be separated from the decision makers. He said he had heard from members of the public who had attended such meetings that they felt intimidated by the visual appearance of how the meeting was set up. He felt a clear message was being sent when the decision makers sat at one table and received technical advice from the Chief or from other staff members through the Chief. He believed that a separate seating arrangement was a good scenario, and one which everyone in the public gallery would understand. The Councillor said he would like to reflect on these views, with the possibility of discussing them at a future board meeting.

Chair Kreling thanked Mr. Miller for his comments.

STAFF PRESENTATION

2. PRESENTATION ON INTERNET CRIME / CHILD PORN  
- presentation by Sergeant Keith Daniels

Chief Ford introduced Sergeant Keith Daniels, an investigator with the Criminal Investigation Services of the Ottawa-Carleton Regional Police Service, internationally known for his investigative expertise in the area of computer crime. The Chief said Sgt. Daniels had worked with a number of centres in North America and Europe dealing with this issue, and was also involved with Project "P" for the Province of Ontario, a provincial project unit dealing with child pornography.

Sergeant Daniels gave an presentation on the Ottawa-Carleton Regional Police Service's High Tech Crimes Unit and its investigations into internet crime; a copy of his presentation is on file with the Executive Director.

Sergeant Daniels' overview included a brief history of the High Tech Crimes Unit, beginning in 1996 when the Chief was approached with the idea of working in conjunction with Project P. Sgt. Daniels noted that although the Unit had located and successfully prosecuted pedophiles in Ottawa-Carleton, it had also found predators and pedophiles throughout the world as well. He cited the example of one predator in the United States who had been caught in possession of child pornography and had been given a ten year sentence and a \$10,000.00 fine.

At the conclusion of his presentation, Sgt. Daniels provided board members and members of the public with a graphic example of the type of communications encountered in an internet chat room dedicated to adult pedophile predation upon children, in order to demonstrate the necessity of policing the internet's darker side. Following the demonstration, Sgt. Daniels answered board members' questions.

Sergeant Daniels stated that the police gave presentations to as many schools as possible, but that a program had not yet been designed aimed at cyber-proofing children. The current aim was to cyber-proof parents, who would in turn cyber-proof their children.

Member Buckingham noted Sgt. Daniels had mentioned a number of partnerships established with the RCMP and military police. She inquired as to whether, when on-line predators were found in other jurisdictions, the police in those jurisdictions were advised.

Sergeant Daniels explained that an information package of the on-line contact was created in these situations. He would take notes of the communication, collect images, and would decide if he believed the children in the images were under the age of 18, the key age for child

pornography. Sgt. Daniels said if he believed this was the case, he would put the package together, approach the agency in question and send the information package to the appropriate city for investigation and follow-up by that jurisdiction's unit. Sgt. Daniels reported that successful prosecutions had resulted from using him as a witness.

Responding to Member Buckingham's questions on a recent British Columbia court ruling that possession of child pornography was not illegal, Sgt. Daniels explained the decision was presently being appealed by the B.C. Court of Appeal, and he felt the decision would not make it past the court. In terms of affecting police efforts in this jurisdiction, Sgt. Daniels offered that the only damage inflicted was the tarnishing of Canada's reputation with respect to pedophile investigations.

Member McCombie asked if the RCMP officer and member of the Military Police involved with his unit were on secondment for the project.

Sgt. Daniels explained that they were, although the terms for both would be ending shortly, and he was waiting to see if others would take their places. He said he believed the members of both policing organizations were seconded for between nine months and a year.

Member McCombie informed that he had been retired from the Police Service for five years, and that prior to his leaving, there had been no hint of such criminal activity. He speculated the next five years would bring even more advanced activity, and he wished Sgt. Daniels good luck in his endeavours, and commended him on a job well done.

**That the Ottawa-Carleton Regional Police Services Board receive this presentation for information.**

RECEIVED

ITEMS OF BUSINESS

3. INDEPENDENT LEGAL OPINION ON PROVISION OF LEGAL SERVICES

- Executive Director's memo and report from Gowling, Strathy & Henderson dated 18 Feb 99

Chair Kreling introduced the item and provided an overview on the background. As directed by the Board, the Chair reported independent legal advice had been sought on two issues: the provision of independent legal services to the Board and Police Chief, and in camera meetings.

Chair Kreling introduced Mr. Raymond Ostiguy, Gowling, Strathy & Henderson. Mr. Ostiguy referenced his written report as provided in the agenda, noting the bolded text was an effort to highlight the general principles, issues and indirectly, the recommendations he wished to make. Mr. Ostiguy highlighted two cases on legal representation, as follows:

1. The “Coroner” case from Toronto which resulted in a decision by three judges of the Supreme Court of Ontario, on a majority vote of two and one strong dissent. Mr. Ostiguy summarized the case by stating the coroner found the counsel should not have been representing the board and the police service in those circumstances and disqualified counsel in his ruling. Through an appeal, a majority of the court upheld the coroner’s decision (reference page 6 of agenda).
2. The “Niagara” Police Service case dealt with the identification of those members / employees that should be members of the police service and those that should be identified as being under the Board’s jurisdiction. Mr. Ostiguy believed it was beneficial to review this case in light of the differences of opinion which were expressed by the various representatives.

Mr. Ostiguy commented he also reviewed other material such as the survey of the large police services boards of Ontario. The speaker stated his research determined it was apparent there may not be an unanimous decision on the issue. As a result, the practices varied from board to board, along with the decisions from the Courts. Mr. Ostiguy added one correct answer did not exist and there may always be room for debate on the circumstances.

Referencing his report, Mr. Ostiguy reviewed certain components highlighting the general principles and issues that arose. With respect to the “Coroner’s” case, Mr. Ostiguy pointed out the lawyer and his clients, that being the officers and the board, believed there was no conflict and proceeded with the same counsel. However, he noted the Court determined otherwise.

Mr. Ostiguy suggested the most secure way to deal with the issue was to always obtain independent counsel. However, he acknowledged this created other problems, such as cost and locating experienced legal counsel.

In closing, Mr. Ostiguy stated he met with the parties involved (the General Counsel and the Police Chief) to ascertain their roles. He reported it was his view that there were two clients - the Ottawa-Carleton Police Services Board and the Police Service. Mr. Ostiguy believed under the Terms of Reference for the General Counsel, his primary duty and professional responsibility was to the Police Chief. The speaker continued to explain that when the Board requested the General Counsel to provide advice to them (in particular in the areas of professional standards, disclosure of information and privacy matters, and policy matters), the Board was placing the General Counsel in a difficult position. The consequence was the potential for the General Counsel to face the issue of conflict of interest. With respect to independent legal counsel, Mr. Ostiguy noted cost was an issue. However, he suggested the cost of not having independent representation in terms of the time and delay was also an issue to consider, and there would be an impact on cost either way.

Mr. Ostiguy concluded his presentation and entertained questions from the Board.



Member Legendre commented on Mr. Ostiguy's detailed research. The Councillor inquired if Mr. Ostiguy had been provided with the previous legal opinions requested by the Board and himself. Mr. Ostiguy confirmed that material had been provided to him on a confidential basis.

Member Legendre expressed interest in the "Coroner" case in which even though all parties acknowledged using the same counsel and were in agreement that there did not appear to be a conflict, the issue still surfaced and proved to be a great nuisance to resolve.

Member Legendre inquired if Mr. Ostiguy was recommending the Board assess on a case by case basis to determine when it was appropriate to use the same counsel, or obtain independent counsel. Mr. Ostiguy stated there may be circumstances in which independent advice was not necessary. However, he pointed out it may not be obvious to the parties involved and could still become a problem, such as in the "Coroner" case.

Mr. Ostiguy stated, given the uncertainties involved, his recommendation was to not impose further burden on the General Counsel, and consider independent legal advice as the preferred option.

Member Legendre referenced the current job description of the General Counsel. He believed if the functions were to be separated, the job description would require revision.

In response to a question from Member Legendre regarding the current discussion of this matter in open session, Mr. Ostiguy reported he was comfortable with this procedure. Mr. Ostiguy explained he had a conversation with the Board Chair who confirmed the discussion would be held in public session. Mr. Ostiguy did not wish to comment on the issue of whether it was improper for the original question about independent legal advice to have been raised in a public forum.

Member Adam inquired about the 1998 cost for legal advice and what the future cost implications would be if the Board were to approve Mr. Ostiguy's recommendation. S. Kanellakos, Director General, reported an analysis of the legal fees disbursed for 1997 and 1998 had been prepared. However, since the material was not at hand, Mr. Kanellakos stated he would provide further information on this matter.

Member Baskerville referenced the "Coroner" case and inquired if the conflict was built into the role of the board and not necessarily with the fact there was only one counsel. Mr. Ostiguy referenced the "Niagara" case in which the issue was whether the employees in question should be under the governance of the police chief or the board. He agreed the board had their own duties and had the right to have individuals representing them who do not come under the governance of the police chief. Mr. Ostiguy referenced page nine of the agenda and the need for the board to have legal advice that was independent, objective, confidential and candid.

Member Baskerville referenced the *Municipal Freedom of Information and Protection of Privacy Act* and the recommendation that in those cases, the Board should acquire independent

legal advice. Member Baskerville pointed out the difficulty in obtaining an independent law firm in Ottawa that did not have some form of conflict of interest, either due to representation for the Police Association or the Police Service. Mr. Ostiguy acknowledged that this, along with cost, may be a problem for the Board. In concurrence with Member Baskerville's comments, Chair Kreling noted that of the three law firms solicited for their legal opinion on this issue, two of the firms had potential or perceived conflicts of interest.

Member Buckingham suggested in order to assess the 1998 costs, it was necessary to determine the amount of hours spent by the General Counsel on board related matters and multiply that by an external billing rate. Mr. Ostiguy agreed it would be useful to determine this information so the Board could estimate what it would mean financially if they chose to have independent counsel.

Keeping in mind the costs involved for external legal advice, Member Buckingham stated that based on the jurisprudence, it suggested that any time the Board was involved in judicial or quasi-judicial matters in terms of appearing before some body, then it was best to have separate legal counsel. She suggested the Board would need compelling reasons not to obtain separate legal counsel. Mr. Ostiguy stated that was a fair assessment of his opinion.

Member Buckingham stated, however, there may be occasions where it was not necessary to obtain separate legal advice. Mr. Ostiguy reiterated the problem placed on the General Counsel of having to respond to both the Board and the Police Chief.

Member Legendre believed there were two options in the process of creating a separate independent mechanism for obtaining legal advice. Firstly, to create a position responsible for the Board alone, or secondly, to have an arrangement with an external law firm on retainer that would be available on a call upon basis. Mr. Ostiguy agreed both options could be considered, however, the ultimate concern for the Board seemed to be the financial issue.

Member Legendre inquired if Mr. Ostiguy believed the separation of the function of the Police Chief and the Board was one of the cornerstones of the Act and policing in Ontario. Mr. Ostiguy believed in many respects it was.

Member Legendre proposed two Motions with respect to moving toward obtaining independent legal counsel for the Board. He believed the case had been made that it was best to obtain independent legal advice. He referenced page four of the agenda and the statement "the coroner's ruling was designed, in large measures to ensure the public's confidence in the administration of justice and to avoid the appearance of impropriety". Member Legendre stated when he originally posed the question at the conference, he had used the terms "appearance" and "impropriety". He believed in order for the public to have confidence and credibility in the Police Services Board, it was absolutely crucial there not be any appearance of impropriety. Member Legendre suggested if there was any public mistrust or perception that the Board was in collaboration with the Service, the public's confidence would diminish and the task of policing would be more difficult.

Member Legendre acknowledged that cost was an issue. However, he stated it was a matter of which problem and cost the Board wished to have. He indicated it was his desire to ensure public confidence was upheld.

Member Adam suggested deferral of the matter until the issue of cost was reviewed and further information was available for consideration.

Chair Kreling inquired if Member Legendre would accept an amendment that would allow his Motions to be brought back in the form of a report from staff on the two issues.

Member Baskerville expressed his support for the change in job description. He referenced his position as Chair of the Human Resources Committee, and pointed out the Board did obtain their legal advice separately from the General Counsel for issues related to labour relations and collective bargaining. He stated this fact would require a revision in the present job description in any case.

Member Legendre pointed out the current practice did involve some legal work, such as property matters, being completed by the Region's Legal Department. He stated there would still be some work that may be completed in-house.

Member McCombie concurred with Member Adam's comments that the Board must be aware of the financial issues and anticipated demand prior to making any final decisions.

Member Legendre accepted the amendment to his Motions that they return to the Board for further action accompanied by a staff report. However, he stated it was important that the principle be accepted at this time and there was agreement the Board would move in this direction.

Chair Kreling supported the Motions being topics of a report for further discussion. The Chair stated the issue was before them to avoid any conflict that may arise, although there had not been a problem in that respect to date. Chair Kreling expressed his appreciation for the previous legal advice received from the General Counsel and thanked Mr. Ostiguy for his report.

Moved by Member Legendre

**That the Ottawa-Carleton Regional Police Services Board authorize the preparation of reports to review and determine the approximate costs of the following:**

- 1. The Ottawa-Carleton Regional Police Services Board change the job description of General Counsel to remove the duty to provide advice to the Board;**

**2. The Ottawa-Carleton Regional Police Services Board initiate a process of creating a separate independent mechanism for obtaining legal advice.**

CARRIED

4. **INDEPENDENT LEGAL OPINION ON IN CAMERA MEETINGS**

- Executive Director's memo and report from Gowling, Strathy & Henderson dated 18 Feb 99

Chair Kreling introduced the item and asked Mr. Ostiguy to provide an overview of his report.

Mr. Ostiguy referenced Section 35(3) of the *Police Services Act* which dealt with meetings and hearings of a police board. He stated the first principle was that meetings and hearings of a board *shall* be open to the public. Mr. Ostiguy stated there were exceptions which were permissive and not mandatory. The exceptions were set out in Section 35(4) of the Act and in the Board's Procedural By-law, Section 27(1). The speaker reviewed the exceptions as follows, noting that in cases where the Board *was of the opinion*, the board *may* exclude the public from a meeting in which:

- (a) matters to be dealt with will involve public security and having regard to the circumstances, the desirability of avoiding their disclosure in the public interest outweighs the desirability of adhering to the principle that the proceedings be open to the public; or
- (b) intimate financial or personal matters or other matters may be disclosed of such a nature, having regard to the circumstances, that the desirability of avoiding their disclosure in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that proceedings be open to the public.

Mr. Ostiguy reiterated that the overriding consideration was that meetings should be public in nature. The speaker referenced two relevant cases as set out in his report.

With respect to the *Municipal Act*, Mr. Ostiguy reported the Act was much more definitive, however, it dealt with meetings of a Council and its committees and did not apply to police services boards. Mr. Ostiguy explained the Board must assess whether the two exceptions under the *Police Services Act* apply.

Mr. Ostiguy reported the Board could be challenged under the following parameters:

- 1. After the Board has held the meeting and an individual under *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA) requests the minutes or records disclosed, and appeals the decision under MFIPPA to have it reviewed by the Commissioner; or

2. When faced with the situation where the Board decides to move in camera for an item, however the person affected by the decision to move in camera or not move in camera (which ever the case may be) takes the issue to Court.

Mr. Ostiguy further reported the Courts, in reviewing the types of exemptions available, have been more narrow in terms of which matters should be dealt with in camera.

With respect to procedural matters, Mr. Ostiguy stated the Board's Procedural By-law anticipates a resolution would be passed which would include the time and the *general nature* of the matters to be considered in camera. The speaker emphasized the general nature of the matter to be considered was important, as the Board must be of an opinion that certain matters were too sensitive to discuss in open session.

Mr. Ostiguy continued by stating another test under MFIPPA was in the case where a board moved out of in camera and disclosed the subject matter of the deliberations in the public meeting. He emphasized this action could result in a board losing the benefit of the exemption they may have had in keeping the matter confidential.

Mr. Ostiguy stated there were many cases under MFIPPA which reviewed what constitutes intimate personal and financial matters. He suggested these could be considered to assist the Board in determining what was appropriately dealt with in camera. In closing, Mr. Ostiguy reiterated that the Courts tend to require more openness rather than supporting situations where the meetings were closed to the public.

Member Baskerville inquired about the definition of intimate financial and personal matters. He believed examples of confidential issues were collective bargaining and contract issues, and labour relation matters that arise from collective agreements. Member Baskerville suggested further examples include planning or real estate issues where the knowledge of the Board's consideration could have an effect on the market place and their right to fair negotiation. He inquired if these examples could automatically be considered in camera issues.

Mr. Ostiguy explained the examples provided were specifically identified in the *Municipal Act*. However, he noted those general principles were not extended to the Board and it was not possible to use the items as the Board was bound by their own statutory exemptions. He added the Board must determine if the subject matter falls under the two exemptions which warrant the Board not disclosing in the public interest.

Member Baskerville inquired if the Board could develop a policy that would outline certain issues that were automatically considered in camera and were not open for discussion and resolution in each and every case.

Mr. Ostiguy explained the Board was, in each case, asked to come to an opinion based on the circumstances. He stated to develop a "list" in advance did not come under the concept the

Board was supposed to consider under the circumstances. However, Mr. Ostiguy suggested the rationale to not disclose should not have to be re-examined in all cases.

Member Baskerville referenced the requirement for notice published in the paper. He reviewed the scenario where a meeting was scheduled to discuss a collective bargaining issue which was clearly an item for in camera discussion. Member Baskerville stated there was a need for a mechanism so the Board was able to conduct their business without having to go through a cumbersome process. Mr. Ostiguy suggested a resolution be passed when the Board wished to move in camera which would outline the general nature to be discussed. He did not respond with respect to advertising, but requested the need to review the inquiry further before providing advice.

Member Legendre wondered if the correct procedure would be for the Board to publish all items on the agenda and during the meeting move a resolution to go in camera which would be either supported or denied. Member Legendre stated this process was not currently followed and the public was not aware of any in camera meetings or discussions taking place.

Member Legendre referenced the exemption of personal matters and what he believed to fall within this exemption. He did not believe a name, which may be simple identification, should automatically be considered a personal matter. Member Legendre suggested it would depend on the subject matter being discussed.

Mr. Ostiguy referenced page 57 of the agenda and Order M-380; a request for records, tape recordings, proceedings and minutes. The speaker explained the Commissioner indicated that a submission had been made to the board about whether it should be in camera or not at that time. One factor the Commissioner reviewed was whether it was appropriate to disclose the name of the individual. Mr. Ostiguy reported that ultimately, the Commissioner found it was appropriate because the individual had been named during the open session.

Mr. Ostiguy reiterated guidance could be found in reviewing past decisions that would assist the Board in determining what was deemed suitable for in camera discussion. Member Legendre inquired if this guidance available from MFIPPA was part of the Board's current Procedural By-law. Mr. Ostiguy did not believe it was specifically included, but it was an available resource.

Member Legendre suggested Mr. Ostiguy's recommendation was that the Board only move in camera by resolution discussed in public. Mr. Ostiguy reported the Procedural By-law (Section 9) outlined the order of business for the Board, with in camera discussion falling as (h) on the list. Mr. Ostiguy stated the Procedural By-law suggested a resolution be considered which would outline the *general nature* of the matter to be considered, as provided under the exemptions of the *Police Services Act*. Mr. Ostiguy further explained the Board must demonstrate the manner in which the Board arrived at its opinion that the subject matter was more appropriately considered in camera. He emphasized the concept that if the Board further

reported in open session, the *subject matter should not* be disclosed as this resulted in the loss of the possible exemption.

Member Legendre pointed out the *Police Services Act* was not as clear as the *Municipal Act*, in that the Board must make the determination. Mr. Ostiguy reiterated the items listed in the *Municipal Act* could not be relied on, as the Board must find that, given the circumstances, in their opinion the item should be discussed in camera. He stated similar items could be used, however, they must be relevant under the police service exemptions available.

Member Legendre inquired if Mr. Ostiguy recommended steps the Board should take to eliminate debate on whether matters should be discussed in camera. Mr. Ostiguy stated debate may be anticipated in the discussion of coming to the opinion of whether or not to move in camera.

Member Legendre moved a Motion to incorporate the suggestion that some guidance be obtained from the MFIPPA and this be included in the Procedural By-law.

Member Buckingham inquired about the degree to which the Board would indicate the nature of an in camera item in the published agenda. She referenced the advertisement which appeared in the print media outlining the agenda items. Member Buckingham questioned listing a possible in camera matter, such as a property issue. She noted the agenda was developed in consultation with the Board Chair and the Executive Director. Mr. Ostiguy stated in those circumstances, the Board as a group would not have come to the opinion that a particular matter would be in camera. He referenced the case attached to his report, and the issue of a separation agreement between the Chief and the Service. In that case, the Commissioner determined it was acceptable to be in camera and did not allow the disclosure of certain minutes as they would have indicated the nature of the discussion leading to a decision. Mr. Ostiguy referenced the second bullet on page 52 of the agenda, as follows:

“The Municipality had to establish that disclosure of the records in question would reveal the actual substance of the deliberations of those in camera meetings .... this requirement would not be satisfied if the disclosure would merely reveal the subject of the deliberations and not their actual substance ... deliberations means discussions with a view to making a decision.”

Member Buckingham indicated the Board presently did not rise and report, and believed subject to Mr. Ostiguy's comments, it would be best not to. She suggested the need to possibly amend the Procedural By-law, keeping in mind the consequence of rising and reporting. Member Buckingham stated it would be a learning experience for all members in determining what constitutes in camera discussion. She thanked Mr. Ostiguy for his report.

Member McCombie commended Mr. Ostiguy on his reports, commenting the substance was provided, however, the Board must determine the process.

Chair Kreling expressed concern as the Board Chair about placing all items for discussion on a public agenda. He pointed out as a member of Committee and Regional Council, confidential items are not placed on a public agenda. Rather, a Motion to move in camera took the discussion into an in camera meeting as it met the test under the *Municipal Act*. Mr. Ostiguy clarified they did not have to give public notice in order to consider an item, however, the Board must come to a decision whether to go in camera.

With respect to the Standing Committees and Council, confidential reports and agendas were prepared under the test of the *Municipal Act*. The Chair wished to clarify a process and policy to allow the Board to work in a similar fashion. Mr. Ostiguy stated as long as the Board decided collectively before they dealt with the matter, than it was appropriate to deal with the matter in camera.

Chair Kreling referenced the exemptions under the *Police Services Act* and the *MFIPPA*, and noted there was a fair amount of discretion compared to the exemptions under the *Municipal Act*. Mr. Ostiguy pointed out there may be circumstances where the matter was intimate personal information, however, there was still a right to disclose or go in public with the matter. He stated if certain parameters were established in advance, it did not allow for individual judgment on each case to be made as it was too automatic.

Chair Kreling referenced the occasional need to convene a special meeting for the purpose of discussing an in camera issue, such as interviews for the hiring of a deputy chief. Mr. Ostiguy stated the Chair was able to call a special meeting, however, the Board, with a quorum, would then decide if the subject matter should be discussed in camera or public.

Member Buckingham suggested the need to include a section in the Procedural By-law that took into account special meetings where there may only be in camera material on the agenda. This would require a formal resolution to move in camera.

Member Legendre noted E. Johnston, A/Regional Solicitor, was in attendance and requested he come forward. Member Legendre referenced the issue of the Board rising and reporting, but stated the Board was not doing so. Mr. Ostiguy stated the procedural by-law included a provision under Order of Business to “rise and report to public session” immediately after “consideration of In-Camera items”. He suggested this may need to be amended as the *Police Services Act* does not require the Board to rise and report.

Mr. Johnston agreed there was no obligation on the Board to rise and report by virtue of the *Police Services Act*. He confirmed there was no specific provision in the *Municipal Act* that required Regional Council and Committees to rise and report either. However, under Section 55(8) of the *Municipal Act*, meetings of Council and committees shall not be closed to the public *during the taking of a vote* - a specific prohibition. Therefore, the requirement to rise and report existed if a decision was to be made. Mr. Johnston continued by stating a further exception to the requirement to rise and report did not apply for Committee and Council in the case where the vote was of a procedural nature or for the purpose of giving direction. Member



Legendre summarized the A/Regional Solicitor's comments by stating the difference was that under the *Municipal Act*, a vote could not be taken in camera, however, under the *Police Services Act*, a vote could be taken in camera, although the permissive nature existed.

Member Legendre inquired if the solicitors believed there was a public good served by the Board rising and reporting. Mr. Johnston stated there may be and it was up to the Board to make that decision. However, he cautioned the Board, as stated by Mr. Ostiguy, that the practice to rise and report may negate the exemption under the MFIPPA. He added the Board may rise and report on the *general subject* of the item discussed in camera, however, they must not disclose the substance of the deliberations, as that action may constitute the loss of the exemption under MFIPPA.

In response to the same question from Member Legendre, Mr. Ostiguy suggested it may benefit the public good to rise and report. However, he added the Board must place it in the context of whether or not they wished to protect the deliberations from potential for disclosure. He noted the MFIPPA Commissioner, if the request was denied and appealed, has the authority to review the record and to apply the test of whether it should be disclosed.

In closing, Mr. Ostiguy recommended the Board re-examine Section 27(2) (a) and (b) of the Procedural By-law as the current form was a provision from the *Municipal Act* and was not in the *Police Services Act*. He stated only Section 27(1) (a) and (b) were under the *Police Services Act*. Mr. Ostiguy reiterated there were decisions catalogued by the MFIPPA office that may assist the Board in determining what falls under the exemption. He stated a reference to this in the Procedure By-law would be adequate.

There being no further questions, the Board considered the following Motions.

Moved by Member J. Legendre

**That the Ottawa-Carleton Regional Police Services Board:**

- 1. approve the incorporation of the privacy guidelines contained in the *Municipal Freedom of Information and Protection of Privacy Act* in the Board's Procedural By-law No. 2 of 1996 to assist the Board in determining whether or not to exclude the public;**
- 2. consider the removal of Section 27(2) (a) and (b) from the Board's Procedural By-law No. 2 of 1996;**

CARRIED

With respect to the Legendre Motion No. 2, Mr. Johnston pointed out it was an amendment to the Procedural By-law. He referenced Section 32 which required notice of the proposed

amendment or repeal of the by-law.

Moved by Member Baskerville

- 3. approve the Executive Director of the Board, in consultation with legal advice, review the material presented and discussed at this meeting and draft revisions to the Board's Procedural By-law No. 2 of 1996 for further discussion by the Board.**

CARRIED

5. APPOINTMENTS TO BOARD SUB-COMMITTEES  
- Executive Director's report dated 9 Feb 99

**That the Ottawa-Carleton Regional Police Services Board appoint:**

- 1. Member Buckingham to the Human Resources Sub-Committee;**
- 2. Member McCombie to the Policy Sub-Committee;**
- 3. Member McCombie to the Community Awards Selection Sub-Committee; and**
- 4. Member Adam (replacing Member Buckingham) to the Complaints Committee.**

CARRIED as amended

6. CHANGE IN MEETING DATE FOR MAY 1999

- Executive Director's report dated 9 Feb 99

**That the Ottawa-Carleton Regional Police Services Board approve changing the regular meeting scheduled for Monday, 24 May 1999 to Monday, 31 May 1999.**

CARRIED

7. COMMENDATION LETTERS

- Chief's report dated 15 Feb 99

**That the Ottawa-Carleton Regional Police Services Board receive this report for information.**

RECEIVED

8. ACQUISITION OF MOTORCYCLES FOR TRAFFIC ENFORCEMENT

- Director General's report dated 16 Feb 99

**That the Ottawa-Carleton Regional Police Services Board approve the acquisition of five Harley-Davidson motorcycles for an amount not to exceed \$107,778, excluding shipping and handling.**

CARRIED

9. SUBMISSION TO  
REGIONAL DEVELOPMENT CHARGE REVIEW PROJECT

- Director General's report dated 16 Feb 99

**That the Ottawa-Carleton Regional Police Services Board approve the capital workplan submitted to the Regional Development Charge Review Project.**

CARRIED

10. DELEGATION OF AUTHORITY  
TO ACQUIRE EQUIPMENT AND SERVICES FOR  
THE COMPLETION OF THE CAD/RMS IMPLEMENTATION

- Director General's report dated 16 Feb 99

Vice Chair Baskerville stated his concern regarding this item was the same as that which he had voiced at the board's meeting of 25 January 1999, regarding a request for the approval of delegation of authority for the implementation of mobile workstations, but with no requirement

to report back to the board. He said he would include the amendment he put forward at that time at the end of the staff recommendation, as follows:

Moved by G. Baskerville

**The Chief is to provide at the end of each quarter, a report on the progress of this acquisition, which will include details on the achievements to date regarding quantity and type of equipment purchased, where deployed and total costs.”**

CARRIED

The Vice Chair urged that in future, a requirement to report back to the board on how monies were being distributed be included when the board was being asked for delegated authority.

**That the Ottawa-Carleton Regional Police Services Board delegate authority to the Chief of Police to acquire equipment and consulting services from vendors which may be necessary in order to complete the CAD/RMS implementation, with total expenditures not to exceed \$2,715,000. The Chief is to provide at the end of each Quarter, a report on the progress of this acquisition, which will include details on achievements to date regarding quantity and type of equipment purchased, where deployed, and total costs.**

CARRIED as amended

11. REGULAR REPORT FROM THE CHIEF AND OPP INSPECTOR

- verbal update from Chief B. Ford and Inspector L. Beechey

Inspector Beechey reported that the OPP were monitoring a minor picket situation in Kanata at a theatre being built in the city's new downtown core. The situation arose as a result of the hiring of non-union electrical subcontractors.

Insp. Beechey also advised that the transfers of 41 OPP members from Kanata, Goulbourn and West Carleton out of the area had been confirmed. He noted the remainder would be going to the Regional Police, and that the only two not yet placed were himself and Staff Sergeant Penny Barager.

Chief Ford reported on the following items:

- On 10 Feb 99, an Ottawa-Carleton Regional Police officer received minor injuries during the “Ontario Coalition Against Poverty” protest which took place on Parliament Hill. Eight arrests were made during the demonstration.
- Also on 10 Feb 99, Ottawa-Carleton Regional Police charged James Essaris of Ottawa with two counts of uttering threats and one count of harassing phone calls after he made several calls to 9-1-1 threatening to shoot the Prime Minister and police officers.

- On 17 Feb 99, four Ottawa-Carleton Regional Police officers received minor injuries as a result of demonstrations by members of the Kurdish Community at the Turkish Embassy. One RCMP officer also sustained a broken arm, and was struck by a Molotov cocktail.
- Over 300 "Make the Right Call" ads were heard over local radio during the advertisement campaign of the same name which ended 12 Feb 99. An equal number of ads were placed on OC Transpo buses. Over 3000 information packages were given to community groups, and thousands of brochures were distributed to the public.
- The Chief also reported that over the last two months, Managers and Staff Sergeants were contacted weekly to provide feedback for Show Me, the Ottawa-Carleton Police Service's internal communications magazine. A total of 31 Show Me road shows were held, and 284 questions dealing with the new service delivery model were asked by participants.
- Since its inauguration on 12 Jan 99, the Police Service's Web site ([www.ocpolice.com](http://www.ocpolice.com)) has drawn a total of 71,984 hits for the entire site. An average daily number of hits was 1,755. Wednesday was the busiest day and 3:00-4:00 p.m. was the busiest time of day.
- The Chief noted the Canadian Association of Chiefs of Police (CACP) recently heard a presentation by the RCMP, who have offered to create a bulk purchasing cooperative with other police agencies in Canada. For example, in the area of police patrol vehicles, a savings of about \$4,000.00 per unit could be realized if the Ottawa-Carleton Regional Police Service participated in this program. Director General Steve Kanellakos is looking into this.
- The Chief also reported the CACP has decided to entertain the endorsement of any Government initiative to decriminalize certain offences related to the possession of small amounts of marijuana or other cannabis derivatives, with the provision that there be corresponding initiatives instituted by the Government, including a balance of prevention, education, enforcement, counselling, treatment, rehabilitation and diversion programs. The Chief said the CACP's position on the medicinal use of marijuana and other current illicit drugs is that it feels confident Health Canada and federal legislators will take the necessary action in the best interest of all Canadians to assess, through their approval processes, if the drugs should be approved for medicinal use.
- The Chief also noted the CACP was restructuring its committee structure, and was developing a website in cooperation with a company called EDS.
- The Ottawa-Carleton Regional Police Service and Algonquin College were planning to host a news conference on 23 Feb 99 to announce the joint construction of the Police and Public Safety Learning Centre at Algonquin's Woodroffe Avenue campus in Nepean. The Chief noted the Learning Centre reflects the emerging needs and importance of the professional development of its members, including those coming on board and those at supervisory levels. The Chief said this was something the Government of Ontario was interested in to help defer the cost of police education across the province. He said he looked forward to the opening of the Learning Centre and to the future it would bring for policing in the Ottawa-Carleton community.
- In closing, the Chief noted the Ottawa-Carleton Regional Police Service budget would be reviewed by Regional Council on 24 Feb 99.

**That the Ottawa-Carleton Regional Police Services Board receive this report for information.**

RECEIVED

12. PROVINCIAL ADEQUACY STANDARDS - UPDATE  
- verbal update from E. Buckingham

Member Buckingham reported she, Vice Chair Baskerville and Executive Director W. Fedec had attended a meeting a week and a half earlier involving staff from several of the other "Big 12" boards. At this meeting, it had been agreed that a recommendation would be brought forth at the "Big 12" meeting in Peel on 8 Mar 99 for a meeting of all stakeholders in April. Member Buckingham explained the intent was to try to bring together the major boards, chiefs of police, the Ministry of the Solicitor General, the Ontario Civilian Commission on Police Services (OCCPS), the Ontario Association of Police Services Boards (OAPSB) and the Police Association of Ontario (PAO), all of which have an interest in the adequacy standards, with the approach of their implementation on 1 Jan 2001. Member Buckingham said the implementation timetable would also be discussed as it was felt that notwithstanding the Ministry's suggested time frame, something needed to be ready at least in draft form by the summer of 2000. She said this would recognize in part that the Region would be involved in a municipal campaign in the fall of that year.

Member Buckingham noted several questions arose at the meeting that would be conveyed to the Province. She said some of these involved the Ministry's ability to complete all the work that it intends to undertake. She noted the Ministry has committed itself to a significant undertaking, but she said she was uncertain if it has recognized the limitations on its own staff. Member Buckingham said a list would be put together of administrative managerial board policies that go beyond what the adequacy standards were suggesting, as it was felt there were other boards similar to the Region's which did not have an extensive policy framework in place.

Vice Chair Baskerville introduced Mike Mitchell, Director, Police Support Programs Branch, Ministry of the Solicitor General and Correctional Services.

Mr. Mitchell said Member Buckingham's comments were correct. He noted the Ministry has made a strong commitment to adequacy standards, and will provide guidelines. Mr. Mitchell said the Ministry will work in conjunction with the police community, particularly with the "Big 12" and the OAPSB, to create generic policies that could be adapted by all, regardless of the size of the organization. Mr. Mitchell stated he was personally committed to the creation of training packages, and noted the Ministry is reassuming this responsibility from the OAPSB. He believed a training package on adequacy standards will be finalized by April for review by police communities, and also stated that he will speak on adequacy standards at the April OAPSB meeting in Ottawa. In closing, he acknowledged this is a significant task that represents a large commitment for his staff. He noted that time has been committed to the

completion of the training packages, and that the Ministry will be delivering them to as many organizations as possible.

Chair Kreling thanked Mr. Mitchell for his comments.

**That the Ottawa-Carleton Regional Police Services Board receive this report for information.**

RECEIVED

OTHER BUSINESS

13. RETIREMENT OF SUPERINTENDENT GARRY RAE

Deputy Chief Bevan drew the board's attention to the fact that Superintendent Garry Rae was leaving at the end of the week to take retirement after 35 years of police service.

Chair Kreling thanked the Deputy Chief for bringing the matter to his attention, and asked for a Motion from the board to thank Superintendent Rae for his contributions and for his commitment to the community.

Moved by J. McCombie

**That the Ottawa-Carleton Regional Police Services Board extend their appreciation to Superintendent Garry Rae, retiring after 35 years service, for his contribution and commitment to the community.**

CARRIED

INQUIRIES

1. Request for Transcript of Savage Hearing

Councillor Legendre asked if the Board could be provided with a transcript of Constable Savage's disciplinary hearing. Chair Kreling asked if all board members wished to be provided with a copy of the transcript.

Responding to questions from Member Buckingham as to whether it was normal procedure that a transcript of such hearings be prepared, Chief Ford explained there would be no problem doing so as the matter under discussion was a public hearing. He also noted the hearing officer would be issuing a judgement. Member Buckingham said this would suffice for her.

Chair Kreling said that as Councillor Legendre had asked for a transcript, he would be provided with one, and that if any other members wanted one too, they should so advise, otherwise, only copies of the judgement would be requested for the Board.

IN CAMERA

**That the Ottawa-Carleton Regional Police Services Board adjourn the public portion of its meeting to move In Camera to discuss Confidential Agenda items 1, 2, 3 and 4 pertaining to personnel matters in accordance with Section 35(4)(b) of the *Police Services Act*.**

CARRIED

ADJOURNMENT

The meeting adjourned at 8:20 p.m.

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C. Watson  
A/Executive Director

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H. Kreling  
Chair