

Report on Special Constables in Ontario

A White Paper from the Ontario Association of Chiefs of Police

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1. INTRODUCTION

The use of Special Constables to deliver services related to public safety in Ontario has emerged in recent years as an important issue for police services. For police leaders, the changing role and responsibilities of Special Constables raises serious questions about the future of what may be called “professional policing” – publicly funded police organizations that are held to high standards of accountability, transparency, and professionalism.

The evolution of Special Constables and Special Constable organizations that address safety needs in transit, public housing, etc., needs to be reviewed by the Government of Ontario to ensure the public’s expectations concerning public safety are met.

Since Special Constables hired by non-police organizations are appointed by police services boards and the Commissioner of the Ontario Provincial Police and because Special Constables (regardless of employer) are accountable to the appointing police service board through a local police agency, it is imperative that policing concerns over the state of Special Constables in Ontario be acknowledged by the Provincial Government.

There is clearly a void in the legislation governing Special Constables. This void includes the training, use of force options, accountability mechanisms, and branding or marketing schemes for identification purposes that are distinct from policing.

It is time for the government to initiate a comprehensive review of Special Constables in the Province of Ontario.

2. OACP’S SPECIAL CONSTABLES RESOLUTION

Ontario’s police leaders passed a resolution at the Ontario Association of Chiefs of Police’s (OACP) Annual General Meeting in June 2007 calling on the Minister of Community Safety and Correctional Services to direct a legislative review in relation to oversight and regulation of Special Constables. This consultation, which must include the OACP as the voice of Ontario’s police leaders, should consider:

- developing standards for training, professional development, and certification that recognize the rules, responsibilities, and authority of Special Constables
- creating a standard system of oversight and accountability regarding public complaints, use of force options, and processes for dealing with allegations of misconduct surrounding the exercise of conferred powers and authority
- streamlining the appointment, approval, renewal, and revocation processes for Special Constables

- mandating clear uniform and equipment design and markings for Special Constable services that are clearly unique to enable easy distinction from police officers and police services.

A number of cities and their police services boards have encountered challenges with the standards and accountability of Special Constables within their communities. For example, on June 24, 2008, the Ottawa Police Services Board voted to suspend further appointments of Special Constables until the Board's solicitor explored legal issues related to the position. The Ottawa Police Services Board called Special Constables a "civil risk" – a liability which exposes a police service to a law suit (including a significant risk to the operations of the police service). Similarly, minutes of the Toronto Police Services Board of October 16, 2008, reflect as follows:

*"With respect to the Special Constables services section of the TTC (Toronto Transit Commission), its existence is immaterial to the continuing ability of the Service to provide adequate and effective policing of the public transit system in Toronto. There are no legitimate security functions to be performed by TTC personnel that does (sic) not require the granting of special constable status."*¹

On October 29, 2008, the OACP wrote a letter to the Hon. Rick Bartolucci, Minister of Community Safety and Correctional Services, requesting that the Ministry engage an independent consultant to draft a "White Paper" regarding the regulation oversight of Special Constables in Ontario. Further, the OACP indicated that it was prepared to assist or collaborate with the process and that the White Paper would allow interested parties to consider Special Constable issues in Ontario.

Special Constables have, for the most part, gone unnoticed in their development in Ontario. Unlike police officers, who are governed through the *Police Services Act*² (PSA), there is no specific legislation which governs Special Constables. Instead, the PSA merely discusses the appointments of the Special Constables for an undefined purpose and/or period of time. Each police services board or the Commissioner of the Ontario Provincial Police, in their respective jurisdictions, sign off on the appointment of a Special Constable.

For the most part, Special Constables have been unregulated throughout Ontario and have not been subject to the same scrutiny and governance as police services within the province. The Ontario Civilian Police Commission (OCPC), the Office of the Independent Police Review Director (OIPRD), and the Special Investigation Unit (SIU) – all regulatory, investigative bodies overseeing policing in Ontario – do not have the authority to directly investigate the actions of Special Constables.

¹ Chief's Report to the Board

² R.S.O. 1990, c. P.15.

As the use of Special Constables continues to grow, the demand by Special Constable organizations for increased use of force training and utilization of defensive tactics and weaponry has also increased. This has led to several conflicting issues for police services, as well as Special Constable agencies.

3. HISTORICAL BACKGROUND

In 1673, King Charles II expressed concern about public disorder and the ability to enforce religious conformity in England. As a result, he extended the duty to any citizen that could be sworn in as a temporary peace officer for a specific occasion. In essence, any citizen could be sworn in before a Magistrate as a Special Constable and would be fined or even jailed if he refused service.³ In 1819-1820, there was large demand in England for Parliamentary reform, and riots occurred in Manchester. As a result, the *Riot Act*⁴ was passed which forced individuals to become Special Constables during times of public disorder. In 1831, the British Parliament passed *An Act for Amending the Laws Relative to the Appointment of Special Constables, and for the Better Preservation of the Police*.⁵ This Act created the basis for appointing Special Constables within our British system of government and allowed for their appointment during times of unrest if the regular police force was too small in a particular area or required more enforcement.

A. SPECIAL CONSTABLES IN ONTARIO

The *Police Services Act* (PSA) provides for the appointment of a Special Constables. Section 53 of the Act allows for a police services board to appoint Special Constables to act for a period of time, area, and purpose that the board considers expedient. In addition, the Commissioner of the Ontario Provincial Police may appoint a Special Constable for the same purposes.⁶ The appointment of a Special Constable may also confer upon the individual the powers of a police officer, to the extent and for the specific purpose set out in the appointment.⁷ However, there is a restriction in the appointment in that Special Constables cannot be employed by a police force to perform on a permanent basis (neither part-time nor full-time) all of the usual duties of a police officer.⁸

³ Police Specials.com (www.policesspecials.com/history.html).

⁴ (1714) (U.K.), 1 Geo. I, c.5.

⁵ (1831) (U.K.), 1 & 2 Will. IV, c. 41 (more commonly known as the *Special Constables Act 1831*).

⁶ PSA, *supra* note 2 at s. 53(2).

⁷ *Ibid.* s. 53(3).

⁸ *Ibid.* s. 53(4).

The *Police Services Act* does not prohibit a police service from authorizing Special Constables to escort and convey persons in custody and to perform duties related to the responsibilities of a Board.⁹

A Board or the OPP Commissioner has the power to suspend or terminate the appointment of a Special Constable, but must give written notice promptly to the Solicitor General (Minister of Community Safety and Correctional Services) of the termination or suspension.¹⁰ Similarly, the Solicitor General also has the power to suspend or terminate the appointment of a Special Constable.¹¹ If this occurs, a Special Constable has the right to be given the information for the termination and an opportunity to reply to the Board, Commissioner, or Solicitor General.¹²

Before taking up the position of a Special Constable, an applicant must take an oath or affirmation of office in secrecy before he or she is appointed.¹³ Other than Section 53 of the PSA, no other sections directly apply to Special Constables.

It is important to note that Special Constables are not police officers and are not governed by the same complaint and special investigation processes as outlined in the *Police Services Act*. However, Section 2 of the *Criminal Code of Canada* (which defines a “Peace Officer”) includes a “... Constable, or other person employed for the preservation and maintenance of the public peace ...”.¹⁴ Under most circumstances, a Special Constable would be a “Constable” as contemplated by the definition of a “Peace Officer” under the *Criminal Code*. Nevertheless, a Special Constable’s status as a “Peace Officer” would be limited by the description of the appointment. A Special Constable would only be considered a police officer if, in fact, he or she was acting within the scope of the powers outlined within the appointment.

B. WHERE ARE SPECIAL CONSTABLES EMPLOYED?

Special Constables in Ontario are employed in a number of agencies. Some work for police services boards, Ministries, and agencies throughout the provincial government as well as the federal government, conservation authorities, universities, and crown corporations. Currently, there are more than 3,000 Special Constables in Ontario, each of which is appointed to seven different agencies:

⁹ *Ibid.* s. 53(5).

¹⁰ *Ibid.* s. 53(6).

¹¹ *Ibid.* s. 53(7).

¹² *Ibid.* s. 53(8).

¹³ *Ibid.* s. 53(9).

¹⁴ R.S., 1985, c. C-46.

1. Public transit systems – (e.g., York Transit, Toronto Transit Commission, GO Transit)
2. Court security and prisoner transportation
3. University campuses (e.g., University of Western Ontario, University of Guelph, University of Toronto, Wilfred Laurier University, and the University of Waterloo)
4. Community housing security – (e.g., Toronto Housing Commission)
5. Government security services – (e.g., Niagara Parks)
6. Government Ministry – (e.g., Specialized Agencies or Functions)
7. Snowmobile patrol

Additionally, police officers coming from an outside jurisdiction to Ontario could also be appointed as a Special Constable, e.g., a police officer from British Columbia picking up an individual in police custody in Ontario and transporting the individual back to B.C.

4. SPECIAL CONSTABLES OVERVIEW

A. DEMARCATION OF ROLES/RESPONSIBILITIES

The Ministry of Community Safety and Correctional Services currently has issued a *Special Constables Practitioners Handbook*. However, the *Handbook* is merely a guide/reference manual for police services and agencies employing Special Constables. Nothing in the *Handbook* is a legislated requirement. This lack of Standards has not gone unnoticed.

In February 2003, the Law Commission of Canada hosted an international conference entitled *Inserts of Security: The Roles of Public Police and Private Agencies*. Police Chiefs, government regulators, security practitioners, academics, and members of the public attended this conference. The overall focus was that of “private” policing organizations offering safety and security of citizens and that there is a distinction between “public” policing as an institution, and policing as a function.¹⁵ The participants of the conference agreed that industry standards need to be formalized.

¹⁵ Law Commission of Canada, *Inserts of Security: The Roles of Public Police and Private Agencies* (2002) Discussion Paper at page 7.

In 2004, another report was prepared for the Law Commission of Canada. In this discussion paper, *Report on University Campus Policing and Security in Canada*,¹⁶ the need for Standards to be formalized was also addressed.

Despite such calls for formalization of Standards, Alberta remains the only Canadian province to introduce Standards to govern Special Constables. In 2006, the *Peace Officer Act*¹⁷ was passed in order to remedy some of the shortcomings that are being experienced in Ontario.

B. APPOINTING A SPECIAL CONSTABLE

For the appointment process of a Special Constable (or re-appointment), the Minister of Community Safety and Correctional Services will generally need to be satisfied of the following:

1. The purpose for which the Special Constable appointment is being sought must be clearly defined. In particular, the purpose must include a statement of :
 - a. the specific statute and sections which the appointee will be authorized to enforce
 - b. the circumstances in which the statute will be enforced
 - c. the geographical area in which the appointee will have jurisdiction.
2. After considering all of the alternatives (including the powers that are available to the appointee), the peace officer (or the appointing agency) must demonstrate the need for police powers to perform their duties.
3. There must be a public expectation that “other-than-police” first responders are required to ensure enforcement or compliance.
4. There are appropriate monitoring and control arrangements in place with regard to the performance.
5. A police services board/OPP Commissioner has to sponsor the appointment and must be satisfied that the individual meets the requirements of the appointment.¹⁸

¹⁶ Carol, Edward, Discussion Paper, (August 2004).

¹⁷ S.A. 2006, c. P-3.5.

¹⁸ *Practitioners Handbook* at page 7.

C. THE ROLE OF THE POLICE SERVICE BOARD/OPP COMMISSIONER

The appointing authority for Special Constables is held by the police services board and the OPP Commissioner, subject to the approval of the Minister. In order for the Minister to approve an appointment, the authorizing agency should confirm that the person is, or will become, appropriately trained for the duties and powers applied for and should ensure that:

- the person will be adequately supervised
- there is a who-does-what type of protocol between the employer and the police service boards/OPP Commissioner that sets out the employer's reporting requirements to the Police Services Board/OPP Commissioner and defines when the Police will become involved
- the police services board/OPP Commissioner proposes to make the appointment
- the person to be appointed is qualified and meets the criteria for appointment, including the appropriate background check
- if the individual does not pass a background check, the employer must notify the police services board/OPP Commissioner and the Minister promptly in writing of any substantive allegation of criminal wrongdoing by a Special Constable.¹⁹

D. ROLE OF THE EMPLOYER OF THE SPECIAL CONSTABLE

1. The employer of a Special Constable should ensure that all proposed appointments meet the selection criteria.
2. The employer must ensure that the person is appropriately trained for the position. If the person appointed is authorized to carry and use a weapon, the person will need to be trained in accordance with the Standards established by the Ministry and Police Services Board (a) for use of the weapon, and (b) on the use of force model.
3. The employer must maintain written Special Constable Procedures that addresses (at a minimum):
 - a. the duties of a Special Constable
 - b. standards of conduct

¹⁹ *Ibid.* at p. 8.

- c. administration discipline
 - d. the handling of complaints.
4. The employer must ensure that Special Constables are familiar with its policies and procedures and the relevant policies and procedures of the local police service.
 5. The employer must maintain adequate supervision of Special Constables.
 6. The employer must ensure that the uniforms of a Special Constable are distinguishable from the uniforms of the police in that jurisdiction.
 7. The employer must generally observe best practices regarding the use of Special Constables.
 8. The employer must ensure that the police services board/OPP Commissioner and the Minister are notified promptly of any substantive allegations of criminal conduct by a Special Constable.²⁰

E. DURATION OF EMPLOYMENT

Where the employer is neither a police services board nor the OPP Commissioner, the duration of the employment or renewal will normally not exceed five years. At the end of the employment period, the employer must apply to the police services board or the OPP Commissioner to have the Minister renew the appointment.

F. GROUNDS FOR SUSPENSION/TERMINATION OF APPOINTMENT OF A SPECIAL CONSTABLE

The *Handbook* provides some guidance in terms of the termination or suspension of a Special Constable in the following situations:

- a. The Special Constable contravenes the *Police Services Act*, any Regulation or Ministry policies governing Special Constables
- b. The Special Constable contravenes the terms of an agreement entered into with police services boards/OPP Commissioner, or with the Minister where applicable
- c. The Special Constable knowingly provides false information to police services boards/OPP Commissioner or to the Minister in support of an application to appoint Special Constables, or in relation to the specific activities of their Special Constables

²⁰ *Ibid.* at p. 11.

- d. Contravention of the terms of an agreement entered into with a police services board/OPP Commissioner, or with the Minister where applicable
- e. Actions that exceeds the term of the Special Constable's employment.
- f. Any manner any action by a Special Constable that is contrary to the employer's code of conduct or an agreement entered into between the police services board/OPP Commissioner.²¹

G. SPECIAL CONSTABLE AGREEMENTS

The OPP Commissioner or police services board enter into a contract with the specific Special Constable agency. Contained within the contracts are the terms upon which the appointment of a Special Constable is made under the supervision of the respective police service. Conditions such as the duration of the agreement, powers of appointment for a Special Constable, forms, identification of Special Constable, qualifications for appointments, application and appointment procedure, training, as well as the powers, duties, and responsibilities are outlined within the contract. Further, issues such as transporting persons that are detained in custody, the equipment that they are to be using, reporting requirements and the investigation of complaints, as well as indemnity for the particular Chief of Police and/or police services board is typically outlined in the contract.

During the writing of this White Paper, it was found that the terms of many of these contracts have not been rewritten by many police service boards and are now deficient. Many Special Constable agencies have attempted to act with autonomy from the police service that is supposed to be supervising them. Furthermore, many police services have not properly audited or been in contact with the respective Special Constable agencies they are supposed to be supervising. Given the problems associated with some of the Special Constable programs, police services are now reconsidering the relationships and reporting systems of accountability.

H. POLICE ACCOUNTABILITY

Accountability to civilian oversight bodies and the citizens we serve is an important feature of policing in Ontario. Police officers can be investigated for violations of the *Police Services Act* and required to appear before their own internal Hearing Officers, an arbitrator, a civilian Commission such as the Ontario Civilian Police Commission, an investigator with the Special Investigations Unit, a Coroner, a public inquiry, or the Ontario Human Rights Commission. Civilian members of police services can appear before all of the above listed tribunals, except a Hearing Officer.

²¹ *Handbook*, at p. 17.

The passing of Bill 103²² in May 2007 amended the *Police Services Act*²³ and created the Office of the Independent Police Review Director. OIPRD investigators are able to investigate complaints of police actions similar to the SIU, a Coroner operating under the *Coroners Act*,²⁴ a Commission operating under the *Public Inquiries Act*,²⁵ a Chief of Police, or the Professional Standards Bureau within police services. No such “watchdog” is in place for Special Constables in Ontario.

I. BACKGROUND AND HISTORY OF POLICE OVERSIGHT

In the 1960s, police came under great scrutiny in the Province of Ontario.²⁶ During the 1970s, interest in civilian oversight of policing grew significantly, especially in Ontario.²⁷ In order to remedy the concerns, Arthur Maloney, Q.C., was appointed in 1974 to review the Toronto Police Complaint System.²⁸ Upon completion of this study in 1978, a new procedure for handling complaints was adopted by many local police boards (through their Boards of Commissioners of Police – the predecessors of today’s Police Service Boards).²⁹ For some citizens of Toronto, these procedures were insufficient and again criticized by interest groups calling for reform.³⁰

Based upon the perceived inadequacy, the Provincial Government reacted in 1981 by enacting the *Metropolitan Toronto Police Force Complaints Project Act, 1981*.³¹ Through this new

²² *An Act to establish an Independent Review Police Director and Create a New Public Complaints Process by Amending the Police Services Act.*

²³ *PSA, supra* note 2.

²⁴ R.S.O. 1990, c. C. 37.

²⁵ R.S.O. 1990, c. P. 41.

²⁶ H. Beral and M. Sisk, *The Administration of Complaints by Civilians Against the Police (1963-1964)* 77 *Harvard Law Review* 499 at 499. [hereinafter Beral and Sisk] and see PC. Weiler, *Who Shall Watch the Watchmen? Reflections on some recent literature about the police* (1968-1969) 11 *CRIM L.Q.* 420.

²⁷ Ontario, Police Complaints Commissioner, *Civilian Oversight of Police Conduct: a Position Paper* (Toronto: Police Complaints Commissioner, 1996) (Commissioners: G. Lapkin) at 4.

²⁸ C.E. Lewis, S.B. Linden and J.Kee, *Public Complaints Against Police in Metropolitan Toronto – the History and Operation of the Office of Public Complaints Commissioner (1986 – 1987)* 29 *Crim. L.Q.* 115 at 117.

²⁹ *Ibid.* at 118.

³⁰ *Ibid.* at 119.

³¹ S.O. 1981, c.43 [hereinafter *Toronto Complaints Project Act*].

legislation, the Chief of Police was mandated to create a Public Complaints Investigation Bureau (PCIB) to investigate complaints against police officers.³² A Public Complaints Commissioner, which was a civilian organization, was to monitor the PCIB's investigations. Further, the Commissioner had investigation powers that were independent from that of the police.³³ The Public Complaints Commissioner would hear matters referred by the Chief of Police of Toronto.³⁴

In 1984, this project pilot was made into a province-wide system through the creation of the *Police Services Act*, 1990.³⁵ As a result, the new legislation required all police services in Ontario to establish a Public Complaints Investigation Bureau. The Public Complaints Commissioner was renamed the Police Complaints Commissioner (PCC). The newly formed PCC was given authority to review police complaints throughout Ontario.³⁶ With the new regime, complaints could be made either to the PCIB, PCC, or any police station.³⁷

In the early 1990s, there were several task forces created to review police complaints systems.³⁸ In his *Report of the Advisor on Race Relations to the Premier of Ontario*, Steven Lewis recommended that the PCC be provided with broad powers to perform investigations of all public complaints involving racist conduct by police officers. In 1995, the Honourable D. Cole and M. Gittens authored the *Report of the Commission on Systemic Racism in Ontario Criminal Justice System* which recommended that predecessor of the Ontario Civilian Police Commission – the Ontario Civilian Commission of Police Services or OCCPS – should take a greater role in investigating police conduct.³⁹

³² *Toronto Complaints Project Act*, s. 5.

³³ *Ibid.* ss. 14(1)(b)-(d), 14(2)(3).

³⁴ *Ibid.* ss. 4, 18(3).

³⁵ *PSA*, *supra* note 2.

³⁶ *Ontario Board of Inquiry (Police Services Act), Annual Report 1993 and 1994* (Toronto: Board of Inquiry, 1995 (at 1.))

³⁷ *PSA*, *supra* note 2 at s. 80.

³⁸ Hon. C. Lewis, Ontario, *Report of the Race Relations and Policing Task Force* (Toronto: Race Relations and Policing Task Force, 1992) at 129.

³⁹ Hon. D. Cole and M. Gittens, Ontario, *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System* (Toronto: Queen's Printer of Ontario, 1995) at 388.

In 1996, Rod McLeod, Q.C., investigated how to make civilian oversight of police simpler and more effective.⁴⁰ McLeod's concept envisioned the civilian oversight agencies separated into an adjudication branch and an investigation branch, and that complainants could make complaints at police stations, at community resource centres, or at stand-alone PSB offices.⁴¹ Months after the McLeod Report was written, the Ontario Government introduced Bill 105.⁴²

During the past ten years, the City of Toronto's Auditor made numerous recommendations for improvements with the current structure⁴³ while the Ontario Human Rights Commission reviewed the issue of racial profiling.⁴⁴

5. THE CURRENT STRUCTURE OF POLICE OVERVIEW

The following is an overview of the investigative processes and agencies that govern police accountability. It should be noted that governance for Special Constables is done through a contract between the police services board (or Commission) and the agency employing the Special Constables.

A. RESPONSIBILITY FOR POLICE SERVICES

The *Police Services Act* is divided into nine parts, of which Part V deals with complaints against police. Part I of the *PSA* addresses the issue of responsibility for police services. A violation of the *Code of Conduct*⁴⁵ typically results in an officer being charged and convicted for the violation. If a member is found guilty of misconduct as defined by the regulations, he or she may be subject to discipline leading to dismissal under the powers and procedures established in Part V of the *PSA*.

⁴⁰ R. M. McLeod, Q.C., *A Report and Recommendations on Amendments to the Police Services Act Respecting Civilian Oversight of Police* (Toronto: Queen's Printer for Ontario, 1996) at Appendix E.

⁴¹ *Ibid.* at 34, 40.

⁴² 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*].

⁴³ Jeffrey Griffith, City of Toronto, *Audit Services, Performance Audit: The Public Complaints Process of Toronto Police Service* (Toronto: Audit Services, City of Toronto, August 2002).

⁴⁴ Ontario Human Rights Commission, *Paying the Price: The Human Costs of Racial Profiles* (Toronto: OHRC, 2003).

⁴⁵ O. Reg. 123/98.

The proceedings themselves differ from a criminal trial. They are held before a hearing officer (a high-ranking police officer appointed by the Chief) and the proceedings are governed by the *Statutory Powers Procedure Act*.⁴⁶ The *Charter* has no application to these proceedings.⁴⁷

The *Code of Conduct* makes any finding of guilt in a criminal court, misconduct subject to discipline.⁴⁸ For example, if an officer is found guilty of an assault-related offence in a criminal court, he or she will automatically be subject to internal discipline.

When a member of the public makes a formal complaint against a police officer under the current system, the complaint is initially investigated by the targeted police service's PSB. If the police service does not lay charges against the officer or investigate to the satisfaction of the complainant, the complainant can request a review by the Office of the Independent Police Review Director. The OIPRD may then direct a hearing of the complaint by the targeted police agency if it is of the view that there is evidence, which may constitute misconduct or unsatisfactory work performance.

B. ONTARIO CIVILIAN POLICE COMMISSION

The Ontario Civilian Police Commission (OCPC) is the primary provincial oversight tribunal, tasked with the oversight of all police services in Ontario. OCPC is a quasi-judicial agency that reports directly to the Ministry of Community Safety and Correctional Services. OCPC can review a decision made by a Chief of Police with respect to public complaints and can hear appeals from the disciplinary hearings.⁴⁹ In addition, on its own motion, OCPC can conduct an investigation or, at the request of the Ministry of Community Safety and Correctional Services, a Police Services Board or municipal council. Further, it can investigate a police officer (which includes a Chief and Deputy Chief of Police), auxiliary police personnel, municipal law enforcement officers, Special Constables, and members of the police services board.⁵⁰

Generally, OCPC plays the role of a supervisor or guide, for police service boards and police services within Ontario. Police service boards and municipal police services may be required to comply with adequacy standards and, if they fail to do so, OCPC can remove board members, Chiefs of Police, disband municipal police services, and replace them with the Ontario Provincial Police, and appoint administrators to take over for specific matters.⁵¹ OCPC also reviews

⁴⁶ R.S.O. 1990, c. S.22.

⁴⁷ *R. v. Wigglesworth*, [1987] 2 S.C.R. 541 at 553.

⁴⁸ *PSA*, *supra* note 2 at s. 2(1)(a)(ix).

⁴⁹ *PSA*, *supra* note 2 at ss. 22(1)(e.1), 22(1)(f).

⁵⁰ *Ibid.* s. 25(1)(a).

⁵¹ *Ibid.* ss. 22(1)(a), 23(1).

decisions on amalgamation of police services and provides a review of the termination of employment of police officers and civilian members when a municipal police service is reduced or abolished completely.⁵²

C. MUNICIPAL POLICE SERVICES BOARDS

Any community that has a municipal police service must also have a police services board.⁵³ In municipalities where populations are less than 25,000, these Boards have three people appointed. These appointments typically include the Mayor or the Mayor's designate, a person appointed by municipal council (who is neither a Councillor nor a municipal employee), as well as one Provincial appointee.⁵⁴ In municipalities where there are more than 25,000 people, an additional Councillor and a Provincial appointee are added to create a five-member board.⁵⁵ In municipalities with more than 300,000 citizens, a board may be comprised of seven board members.⁵⁶

The boards are responsible for selecting and hiring the Chief and Deputy Chiefs and establishing policies and priorities for police services within their community.⁵⁷

Boards are required to create guidelines for dealing with public complaints and may review complaints against the Chief of Police.⁵⁸ Where a municipality has contracted with the OPP, the Board is only able to review the complaint, forward it against a local detachment commander, and receive reports with respect to the administration.⁵⁹ Police services boards are not to directly address daily operational decisions with the Chief or Deputy Chiefs.⁶⁰ Rather, the Board is required to provide oversight and assist with the setting of policies through a constant review of the community needs. Boards are also regulated and required to provide adequate and effective policing within their communities.⁶¹ To this end, they are required to review the

⁵² *Ibid.* ss. 6(3), 40.

⁵³ *Ibid.* s. 27(1).

⁵⁴ *Ibid.* s. 27(4).

⁵⁵ *Ibid.* s. 27(5).

⁵⁶ *Ibid.* s.27(a).

⁵⁷ *Ibid.* ss. 31(1) (a)-(d).

⁵⁸ *Ibid.* ss. 31(1) (i)-(j).

⁵⁹ *Ibid.* s. 10(9) (f).

⁶⁰ *Ibid.* ss. 31 (4).

⁶¹ *Ibid.* s. 31 and O.Reg. 3/99.

policies of the police service with the Chief of Police to ensure that proper systems of complaint are established and maintained by the Chief.

D. CHIEFS OF POLICE

Chiefs of Police have the same responsibilities as all police officers in the organization they serve. However, duties specific to Chiefs also include the overseeing the administration and operation of a 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.⁶² Most police services in Ontario have PSB members undertake internal investigations. The investigations can be the result of a public complaint or a Chief undertaking his or her own investigation into the actions (or inactions) of a particular police officer.⁶³

E. SPECIAL INVESTIGATIONS UNIT

As a result of two high profile police shootings in 1988, the Government of Ontario created the Task Force on Race Relations and Policing, chaired by provincial court judge Clare Lewis.⁶⁴ One of the Task Force's recommendations was to create a team to investigate police shootings. The result of the task force report was the addition of Part VII to the *Police Services Act* in 1990 establishing the Special Investigations Unit (SIU). This organization is led by a Director with a mandate to investigate in circumstances of serious injuries and deaths that may have resulted from criminal offences committed by police officers.⁶⁵

Although many SIU investigations focus on motor vehicle accidents and sexual assault allegations, all major allegations involving police use of force are investigated by this independent agency. All deaths caused by police officers in the execution of their duties fall within SIU's mandate. The SIU was established in 1999 and was designed as an independent civilian law enforcement agency that operates on under the Ministry of the Attorney General.⁶⁶ The SIU Director has the power to lay charges against police officers and investigate when police are involved in a serious injury or death.

⁶² *Ibid.* s. 41.

⁶³ *Ibid.* ss. 41(1)(d).

⁶⁴ Consultation Report of the Honourable George Adams to the Attorney General and Solicitor General Concerning Police Co-operation with Special Investigations Unit, (May 14, 1998).

⁶⁵ *PSA*, *supra* note 2 at s. 113(5).

⁶⁶ *PSA*, *supra* note 2 at s. 113(5).

F. PUBLIC INQUIRIES

Public inquiries under the *Public Inquiries Act*⁶⁷ touching on police use of force are used periodically. Under Section 2 of the *Act*, the Government of Ontario can order a commission into any matter connected with or affecting the good government of Ontario. Once established, a commission has the power analogous to those of a coroner presiding over an inquest; a commissioner may issue a summons to witnesses and require witnesses to produce all relevant documents.⁶⁸

G. OFFICE OF THE OMBUDSMAN

The Ombudsman has a great deal of authority to investigate issues (including policing issues) throughout Ontario through the *Ombudsman Act*.⁶⁹ For example, the current Ombudsman, Andre Marin, has investigated the SIU, issuing a report in 2008 called *Oversight Unseen – Investigation into the Special Investigation Unit’s Operational Effectiveness and Credibility*.

H. ONTARIO HUMAN RIGHTS COMMISSION AND ONTARIO HUMAN RIGHTS TRIBUNAL

The Ontario Human Rights Commission (OHRC) has received and investigated complaints from members of the public with regard to the police. For example, the Commission and then the Ontario Human Rights Tribunal directed police policies to be changed and shaped the manner in which police searches were to be conducted in what is known as the *Forrester* decision.⁷⁰ The decision, handed down on May 16, 2006, dealt with the treatment of transsexual persons detained by police.

In a similar fashion, the OHRC has criticized Ontario police services for racial profiling and required police services to conform to the *Policy and Guidelines Racial and Racial Discrimination*.⁷¹ The OHRC is now also providing advice on the disclosure of police records to police services.⁷²

⁶⁷ R.S.O. 1990, c. P.41, as amended S.O. 2000, c. 14, s. 1.

⁶⁸ *Ibid.* s. 7.

⁶⁹ R.S.O. 1990, c. O.6.

⁷⁰ *Forrester v. Peel (Regional Municipality) Police Services Board*, 2006 HRTO 13; [2006] O.H.R.T.D. No. 13.

⁷¹ OHRC policy (June 2005), online: <http://www.ohrc.on.ca/en/resources/Policies/RacismPolicy/pdf>.

⁷² Ontario Human Rights Commission website

<http://www.ohrc.on.ca/en/resources/annualreports/ar0607?page=eng-COMMISSI.html>.

I. CORONER

The *Coroners Act*⁷³ provides the Office of the Chief Coroner and Regional Coroners broad powers to investigate deaths. A Coroner can require the Ontario Provincial Police to assist in their investigation of a death of any person who dies while in the custody of the police.⁷⁴ The Coroner can enter and inspect, without a warrant, any place where a body is or was removed.⁷⁵ Obstructing a Coroner in any way is an offence⁷⁶ and even where the police or SIU have laid criminal charges, the Coroner can still continue with an investigation and inquest.⁷⁷

J. THE CURRENT SYSTEM OF COMPLAINTS TO A POLICE SERVICE

Part V of the *Police Services Act* governs the handling of police complaints. Members of the public can complain about the police officers, the police policies, or services of a police service.⁷⁸

The Office of the Independent Police Review Director (OIPRD) opened on October 19, 2009. The OIPRD is an arms-length agency of the Ontario Ministry of the Attorney General, staffed by civilians. It is accountable to the Attorney General, but the Independent Police Review Director is responsible for the day-to-day decisions.

The Ontario Civilian Police Commission (OCPC) is, “committed to serving the public by ensuring that adequate and effective policing services are provided to the community in a fair and accountable manner.”

In 2002, there were a total of 2,829 public complaints against police services. The great majority of these complaints involved officer conduct (2,687), while 109 were in respect to police services, and 29 complaints involved police policies.⁷⁹ Police services invoked Part V discipline a total of 21,119 times to police officers in Ontario for the same year.⁸⁰

⁷³ R.S.O. 1990, c. C.37.

⁷⁴ *Ibid.* s. 9(4).

⁷⁵ *Ibid.* s. 16.

⁷⁶ *Ibid.* s. 16(6).

⁷⁷ *Ibid.* s. 27.

⁷⁸ *PSA*, *supra* note 2 at s. 56(1).

⁷⁹ Ontario Civilian Commission on Police Services, Complaint Statistics 2002, online: <http://www.occps.ca/englishwebsite/process/publiccomplaints/2002ComplaintsStats.pdf>.

⁸⁰ *Ibid.*

By 2007, the total number of complaints decreased to 2,613 public complaints against the police.⁸¹ Again, the great majority of complaints, 2,204, involved conduct complaints.

There were 93 service complaints and 26 policy complaints during the same year.⁸² Most of the public complaints were unfounded. Police services invoked Part V discipline a total of 23,383 times against police officers in Ontario for the same year.⁸³ This clearly demonstrates that police agencies are engaging in proactive monitoring and disciplining of their own police officers and not necessarily waiting for a member of the public to complain about an officer's behaviour.

6. SPECIAL CONSTABLE CHALLENGES

A. TRAINING AND CERTIFICATION STANDARDS

“What is the appropriate level of qualifications/certification required for designated powers?”

The *Police Services Act* addresses the standards for training and adequacy of police officers and police services. Private Security/Investigative Services adequacy standards are outlined in the *Private Security and Investigative Services Act*. However, there is no legislative requirement with respect to the standards for training of Special Constables.

The Ministry of Community Safety and Correctional Services' *Practitioner's Handbook* outlines that it is the role of the police services board/OPP Commissioner to ensure that a person appointed as a Special Constable is qualified, meets the criteria of the appointment, and is properly trained for the duties and powers included in the appointment. The *Handbook* also provides general training guidelines. However, there are no Standards governing the person or agency providing the training.

Within the *Practitioner's Handbook*, it is outlined that each Special Constable should be provided different training based upon the needs of the particular agency employer.

B. UNIFORM AND EQUIPMENT DESIGN

“What is the appropriate standard for representation to the public and do these standards require legislative regulatory amendment?”

⁸¹ Ontario Civilian Commission on Police Services, Complaint Statistics 2007, online:

<http://www.occps.ca/englishwebsite/process/publiccomplaints/2007ComplaintsStats.pdf>.

⁸² *Ibid.*

⁸³ *Ibid.*

Section 7 of the *Practitioner's Handbook* clearly outlines that the employers of Special Constables are not to refer to themselves as “police”. Despite this clear directive, five universities in Ontario use the term “campus police” on their vehicles and uniforms. This type of “passive personation” of police officers poses a significant risk to the police service which appoints Special Constables as well as to the communities served and Special Constables themselves (e.g., public perception and expectations, liability, etc.).

To most citizens, the term “police” suggests the use of state-sanctioned power, including the authority to use deadly force. Such powers should only be used by what we might call “professional police”. Nevertheless, a number of non-police organizations (e.g., university campus security organizations) all use the term “police” in their identification, contrary to the *Practitioner's Handbook* and the *Police Services Act*. Further, the *Practitioner's Handbook* outlines that the shoulder flash (if issued) should be different from that of a police officer in the jurisdiction served by Special Constables and should bear the words “Special Constables”.

C. EXAMPLES OF CONCERNS BETWEEN SPECIAL CONSTABLE ORGANIZATIONS AND POLICE SERVICES

In the development of this White Paper, some Special Constable agencies provided examples of issues they had with their respective police service. Further, some police services also provided examples with respect to the confusion between jurisdictions and the problems arising from the dual roles of special constables and police services within their own respective jurisdictions. Only a few examples are provided in this paper to demonstrate some issues of concern.

Behaving Like Police Officers

A Special Constable, driving an offender transport vehicle, reported that an individual operator of a motor vehicle was driving dangerously. The Sergeant in the Communications Centre of the police service policing in the jurisdiction where the incident took place instructed the Special Constables in the offender transport vehicle to pull over the dangerous driver. The Special Constables were operating a police vehicle and were wearing uniforms that looked similar to police service uniforms.

When asked why they exerted their authority in this instance, the Special Constables indicated that the public expects them, while wearing such a uniform and driving a police vehicle, to behave as police officers. For his part, the Communications Sergeant was unaware of the roles, powers, and responsibilities of Special Constables, as well as their lack of jurisdiction to pull over motor vehicles. This poses a risk to the safety of drivers, Special Constables, and members of the public.

Furthermore, the risk to the police service of Special Constables exceeding their powers is great in terms of civil liability. In order to alleviate this issue, the particular police service removed the word “police” from the motor vehicles used by Special Constables. Unfortunately, this still does not alleviate the public perception of individuals wearing a police-like uniform and driving a police-like vehicle.

Niagara Parks Police

The Niagara Parks Police employs members designated as Special Constables by the Niagara Police Services Board, under authority of the *Police Services Act*. The Board is the sole authority in the appointment of Special Constables under section 53 of the *Police Services Act*. Appointments are confirmed through the Ontario Ministry of Community Safety and Correctional Services. Currently there are 19 Special Constables working as Niagara Parks Police Officers.

There are unique issues with regard to Niagara Parks Police Special Constables, given that the organization currently has the authority to carry a firearm but are not subject to the routine Provincial oversight. The issues identified in this regard relate to the basic argument that Special Constables are not police officers and are not governed by the complaint and special investigation processes of the *Police Services Act*. Police services are restricted under section 53(4) of the *Police Services Act*, from employing a Special Constable to perform all the usual duties of a police officer on a permanent basis, whether on a full- or part-time basis. The provision restricts Special Constables from performing anything but a supporting role, since the police would be expected to retain principal authority to enforce the *Criminal Code*.

Concern has also been expressed relating to the public service expectations of an official police service in the Province of Ontario, acting under authority of the *Police Services Act*, as compared to an agency such as the Niagara Parks Police that carries the name “police”, without the official authority and designation of a police service as contemplated under the *Act*.

Private Sector “Policing”?

Ontario Judicial Service operated as a process server within the Province of Ontario, having secured Special Constable status for its employees 17 years ago. This came under the review of the Ontario Provincial Police and it was learned that the two-person, process-serving company had the ability to serve civil warrants and immigration warrants. Additionally, this particular company’s corporate emblem resembled that of the Ontario Provincial Police. Further, the employees wore dark police-like uniforms while serving their documents, thereby passively personating police officers. As a result of the review of the broad powers that were initially granted to this agency, the Ontario Provincial Police became embroiled in civil litigation in order to attempt to remedy the problem.

Special Constables and Provincial Offences Officers

There is some confusion between the status of a Provincial Offences Officer and that of a Special Constable in Ontario. By way of example, a Special Constable appointment does not confer upon the appointee automatic status as a Provincial Offences Officer. It should be noted that some Special Constables also have a dual appointment as a Provincial Offences Officer or a Provincial Offences Officer may be appointed as a Special Constable. The various appointments lead to confusion in terms of the powers and authorities that either a Provincial Offences Officer or a Special Constable retains.

Under the *Provincial Offences Act*⁸⁴ a “Police Officer” means a Chief of Police or other police officer, but does not include a Special Constable or by-law enforcement officer.⁸⁵ Similarly, a “Provincial Offences Officer” means a police officer or person designated under sub-section (3).⁸⁶ Under section 1(3) of the *Provincial Offences Act*, a Minister of the Crown may designate in writing any person or class of person as a provincial offences officer for the purposes of all or all classes of offence. To this end, an individual appointed as a Peace Officer may only enforce the particular provincial statute that the Minister of the Crown has appointed to the Provincial Offences Officer to enforce.

On the other hand, a Special Constable is appointed by a police services board and is only allowed to enforce the statute that is the subject of the agreement between the police services board or Commissioner, and the particular agency. This often leads to confusion and has resulted in unlawful arrests by Special Constables who also may have Provincial Offences Officer status.

Transit Special Constables

In November, 2006, an individual was on a Toronto bus. The individual got into a physical altercation with another rider and the police were called. However, transit Special Constables arrived before police and a scuffle ensued between the individual on the bus and the Special Constables. The individual was arrested for assault. Two weeks later, the individual died. Unlike police officers who would be subject to an investigation by the Special Investigations Unit, the Special Constables were under no legislative requirement to be subjected to an investigation by the SIU.

In another example from March 2009, a woman was stabbed in the head while on transit property in Toronto. Police were contacted as well as transit Special Constables. A Special Constable learned of information that ultimately led to identifying a suspect. However, the Special Constable did not pass that information on to police. Instead, the Special Constable drove to the suspect’s home and spotted him on his property. Rather than get a Feeney Warrant⁸⁷ (as required by police officers), the Special Constable arrested the individual without first acquiring a warrant. The matter is still before the criminal courts.

Finally, police received a call in 2009 regarding a shooting at Osgoode Subway Station in Toronto. Officers responded and, prior to entering the stairwell, the officers questioned their

⁸⁴ R.S.O. 1990, c. P.33.

⁸⁵ *Ibid.* s. 1.

⁸⁶ *Ibid.*

⁸⁷ *R. v. Feeney*, [1997] 2 S.C.R. 13.

dispatcher as to jurisdiction (was it the transit Special Constables or the Toronto Police Service?).

Special Constables and Their Weapons

Special Constable appointments allow for a Special Constable to carry weapons (batons and or OC spray/foam) only on the property being protected (e.g., a university). However, if the Special Constable carries a weapon off the particular property, he or she is in possession of a prohibited weapon and is committing a criminal offence. Some universities have multiple campuses and it is necessary for Special Constable to carry the weapon between campuses.

7. CONCLUSION

There are approximately 3,500 Special Constables in the Province of Ontario. This number represents more than the total of all police officers in many Canadian provinces.⁸⁸

Due to the simple principle of supply and demand, what has been created throughout Ontario is a system of two-tiered policing. At one tier is the traditional, professional Police Constable. The second tier is populated by Special Constables. As the demand for policing services continues to be stretched while police services face demands for budget cut-backs by elected officials, Special Constable agencies have stepped in to fill the void. It is expected that the use and demand for Special Constables will continue to increase in the Province of Ontario for the foreseeable future. This will create greater liability for those agencies associated with Special Constables due to the lack of accountability on the part of Special Constable agencies.

The expansion of the use of force, as well as arrest and detention by Special Constables where they have no authority to arrest or detain individuals, is a recipe for a statement of claim. Only by introducing Provincial Standards will Special Constable agencies, police services, and police services boards be provided with a proper structure for training and operational procedures.

The citizens of Ontario have ensured that police officers and police services are held accountable through various external oversight bodies such as the SIU, OCPC, and OIPRD and internally through Professional Standards Units. Similarly, Special Constables should be held accountable to the citizens of Ontario in the same way as police services and police officers. A new system needs to be created.

Ultimately, the success of any new Special Constable system will depend on the commitment of the stakeholders.

⁸⁸ Attached at Addendum A is a list of Special Constables in the Province of Ontario as of October 2008

Ontario's police leaders are calling on the Government of Ontario to initiate a comprehensive review of Special Constables in the Province of Ontario. As per the OACP's 2007 resolution on Special Constables, this review must look at:

- developing standards for training, professional development and certification that recognize the rules, responsibilities, and authority of Special Constables
- creating a standard system of oversight and accountability regarding public complaints, use of force options, and processes for dealing with allegations of misconduct surrounding the exercise of conferred powers and authority
- streamlining the appointment, approval, renewal, and revocation processes for Special Constables
- mandating clear uniform and equipment design and markings for special constable services, that are clearly unique, to enable easy distinction from police officers and police services.

ADDENDUM A

SPECIAL CONSTABLES BY CATEGORY (OCTOBER 2008)

Employer	Special Constables	Category
Alberta Solicitor General and Public Security	4	0
Calgary Police Service	7	0
Gatineau Police Service	131	0
Royal Canadian Mounted Police	118	0
Surete du Quebec	354	0
Winnipeg Police Service	3	0
Total	617	

Employer	Special Constables	Category
Niagara Parks	19	1
Total	19	

Employer	Special Constables	Category
Brock University	13	2
Carleton University	19	2
City of Ottawa Transit	38	2
GO Transit	48	2
Toronto Community Housing Corporation	81	2
Toronto Transit Commission	90	2
University of Guelph	13	2
McMaster University	19	2
University of Toronto	58	2
University of Waterloo	17	2
University of Western Ontario	14	2
University of Windsor	23	2
Wilfrid Laurier University	18	2
York Region Transit	8	2
Total	459	

Employer	Special Constables	Category
Amherstburg Police Service	1	3
Aylmer Police Service	2	3
Barrie Police Service	58	3
Belleville Police Service	9	3
Brantford Police Service	17	3
Brockville Police Service	4	3
Chatham-Kent Police Service	12	3
Cobourg Police Service	7	3
Cornwall Community Police Service	15	3
Deep River Police Service	5	3
Durham Regional Police Service	54	3
Essex Police Service*	1	3
Greater Sudbury Police Service	19	3
Guelph Police Service	11	3
Halton Regional Police Service	25	3
Hamilton Police Service	90	3
Kawartha Lakes Police Service	9	3
Kenora Police Service*	3	3
Kingston Police Service	8	3
London Police Service	47	3
Midland Police Service	6	3
Niagara Regional Police service	72	3
North Bay Police Service	14	3
Ontario Provincial Police	225	3
OPP Collingwood Detachment	1	3
Orangeville Police Service	4	3
Orillia Police Services Board	2	3
Ottawa Police Service	63	3
Owen Sound Police Service	16	3
Oxford Community Police Service**	8	3
Peel Regional Police Service	115	3
Pembroke Police Service	28	3
Perth Police Service	7	3
Peterborough-Lakefield Community Police Service	10	3
Sarnia Police Service	9	3

Employer	Special Constables	Category
Sault Ste. Marie Police Service	8	3
Smiths Falls Police Service	5	3
South Simcoe Police Service	6	3
St. Thomas Police Service	3	3
Stratford Police Service	13	3
Thunder Bay Police Service	10	3
Timmins Police Service	8	3
Toronto Police Service	620	3
Town of Kirkland Lake	6	3
Waterloo Regional Police Service	39	3
West Grey Police Service	2	3
Windsor Police Service	36	3
Wingham Police Service	3	3
York Regional Police Service	45	3
Total	1770	

Employer	Special Constables	Category
Financial Services Commission of Ontario	1	4
Legislative Assembly of Ontario	56	4
Ministry of Government Services	15	4
Office of the Fire Marshal	31	4
Ontario Police College	1	4
Ontario Provincial Police	13	4
Total	117	

Employer	Special Constables	Category
Brockville Police Service	1	5
Cobourg Police Service	4	5
Environment Canada	4	5
Hamilton Police Service	16	5
Kawartha Lakes Police Service	1	5
London Police Service	1	5
Ministry of the Environment	45	5
Niagara Regional Police Service	2	5
Ontario Police College	2	5

Employer	Special Constables	Category
Ontario Provincial Police	149	5
Ontario Racing Commission	4	5
Ottawa Police Service	3	5
Owen Sound Police Service	1	5
Parks Canada	26	5
Peel Regional Police Service	1	5
Peterborough-Lakefield Community Police Service	1	5
Toronto Police Service	6	t
Waterloo Regional Police Service	2	5
York Regional Police Service	6	5
Total	275	

Employer	Special Constables	Category
OPP – STOP	122	6
Total	122	

TOTAL: 3,379

* Now policed by the Ontario Provincial Police

** Now Woodstock Police Service