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Independence, Accountability, and Effective Police Oversight:

Maintaining Public Confidence in the Peterborough Police Services Board

Report by Mark Sandler,
Administrator of the Peterborough Police Service Board
(December 16, 2016 to July 1, 2017)

August 1, 2017

(Disponible en Français)

Please email SLASTOinfo@ontario.ca for questions
or additional copies of the report.

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Executive Summary

Background

1. On March 8, 2016, the Solicitor General requested that the Ontario Civilian Police Commission (“OCPC”) “investigate, inquire into and report on” matters relating to the ability of the Peterborough Police Services Board (“Board” or “PPSB”) to provide civilian oversight of policing in a manner consistent with its statutory obligations.
2. The OCPC commenced an investigation and on December 16, 2016, the OCPC concluded that the ongoing dysfunction of the Board constituted an emergency and appointed an administrator pursuant to subsection 23(1) of the *Police Services Act* (“PSA”).
3. I was appointed as administrator from December 16, 2016 to July 1, 2017 to “ensure that the PPSB comply with its statutory obligations, including ongoing compliance with the PSA and its regulations, and to promote the creation of respectful and/or functional working relationships between those involved in the provision of policing services to Peterborough that nonetheless allow for vigorous debate and the airing of diverse points of view”. I was asked to provide a report with “a detailed analysis of the change to the PPSB process and the reasons therefor.”
4. Peterborough has gone through a tumultuous period during which the Board failed to meet its statutory obligations and contributed to an unfortunate public and political display that unfairly denigrated the character and performance of the Chief and Deputy Chief of Police. The Mayor, while a member of the predecessor board, was directly involved in making inflammatory, disparaging and misleading comments about the senior leadership of the service and the service itself. He was

ultimately found to have violated the *Code of Conduct* for Board members and suspended from the board. He did not contest this finding in the Divisional Court where other allegations against him were dismissed. During this tumultuous period, there were resignations from the Board due to its dysfunction, several *Code of Conduct* investigations into a former Chair of the predecessor board and the Board due to complaints against him, lawsuits between the Board and the Chief and Deputy Chief of Police and a lawsuit initiated by the City of Peterborough against the Chief and Deputy Chief. In the past six years, 13 Board members have populated the predecessor board and this Board.

5. The Board's role during this time and prior to my appointment reflected a failure to meet its obligations, a failure to maintain its independence from the municipal council, and a failure to defend its employees from unfair and politically motivated attacks. Its actions contributed to low morale among the police service and an erosion of public confidence in the quality of policing in the community.
6. During my appointment as administrator, the Board was receptive to my involvement and advice. Even those who had questioned the need for my appointment worked constructively with me. For example, if I had any issues or suggestions respecting the proposed agenda for a Board meeting, I shared them with Ms. Pritchard Pataki and, through her, with the Chair. Since the OCPC's Order reflected concern about how often the Board addressed matters in the absence of the public, I also provided input on which matters should be addressed in public and which in the absence of the public. These suggestions – which were not extensive – were addressed. I was satisfied that items for business were appropriately identified in the agenda and that the Board, pursuant to the Chair's direction and in the spirit of transparency, properly limited matters to be discussed in the public's absence.
7. At the Board meetings, I was a full participant in the Board's discussions. Board members frequently asked me for guidance on a wide range of issues, which I was

pleased to provide. To the credit of the Chair, Mr. Hall, and Ms. Pritchard Pataki, the Board meetings were well-organized, efficient and well conducted. Every Board member had the opportunity to be heard on the issues and spoke to and about each other in a respectful way. As elaborated in my report, they also spoke to and about the Chief and Deputy Chief and their Service in a respectful way. Indeed, every member of the Board publicly expressed admiration for the Service, the Chief and Deputy Chief respecting the high calibre of the work being done by the Service and the quality of its senior leadership. The Chief and Deputy Chief are exceptional, highly dedicated officers who lead a progressive, effective police service. They enjoy wide support in the Service, and for good reason. As described in my report, the Board had not always shown appropriate public support for its Service and senior leadership in the past.

8. All of the Board members kindly acknowledged at my last Board meeting as administrator that they greatly valued the input and advice I provided in that role. I, in turn, acknowledged (as I do in this report) their cooperation with me throughout, and their willingness to adopt or consider my recommendations as to best practices. This was particularly evident at the Board's governance retreat which I facilitated at the Board's request.
9. I am satisfied that the Board is currently functioning in accordance with its statutory mandate and has made significant advances to regain its role as an effective civilian oversight mechanism. For that to be sustainable and to improve, I make a number of recommendations.

The Business Plan

10. A business plan is not only a statutory requirement, but it provides a clear, transparent and effective basis for framing and evaluating the work of the Police Service, the Board and the Chief and Deputy Chief. It is a critical element of civilian

oversight of policing and is a basis for ongoing dialogue with the public about their priorities and concerns.

11. After letting the plan lapse in 2015, the Board was able to develop a substantially complete plan during my term as administrator, though tweaks remain to be made.

12. I recommend:

- a. The development of a business plan should represent an ongoing and continuing process in which the Board is engaged.*
- b. The Board should improve and formalize the process by which it gives substantive input into and direction to the development of the plan.*
- c. The Board should meet periodically to review the business plan and the progress made on milestones.*

The Performance Evaluation and Remuneration Review of the Chief and Deputy Chief

13. Performance evaluation and remuneration reviews of the Chief and Deputy Chief are not only required by the PSA and the employment contracts, but they represent the most direct tool the Board has to evaluate the extent to which the senior leadership of the police service is implementing the Board's policies and executing the business plan. This provides a formal and evidence-based process by which the Chief and Deputy Chief can identify areas of success and areas for improvement and allow the Board to raise any performance issues directly.

14. The Board went over two years without conducting a formal evaluation during which time it contributed to, and failed to address unwarranted negative statements about the Chief and Deputy Chief. During my term as administrator, the Board conducted fair and evidence-based evaluations and reviews of the Chief and Deputy Chief of Police. It is essential that these reviews continue on an annual basis.

15. I recommend:

- a. *The Board, within six months, amend its by-laws to require it to conduct an annual performance evaluation and remuneration review of the Chief and Deputy Chief.*

Public Meetings and Minutes

16. Civilian oversight of policing cannot be effective if it is not public and transparent.

The PSA has strict criteria for when the exclusion of the public is permitted. Unless the Board meetings are dealing with public security or sensitive personal information, they should be public. Greater public access enhances public confidence in the Board's civilian oversight, and assists the Board in identifying and addressing the concerns of the community. This develops and strengthens relationships between the Board, the Police Service and the public.

17. The Board had, in the past, excluded the public for reasons that were not permitted under the PSA. More broadly, the Board had not been sufficiently proactive about public outreach and promoting greater accessibility to its meetings. During my term as administrator, the Board took positive steps to ensure and increase public access to its meetings. It sought clarity on the limits of exclusion under the PSA; it held meetings in Cavan Monaghan and Lakefield and considered holding meetings in more open venues in Peterborough.

18. Minutes of Board meetings are an important tool for transparency and accountability. They also serve as a record of the proceedings to ensure corporate history and continuity.

19. The Board's practice has been to rely on spare minutes that record only formal decisions on motion. More expansive minutes would promote accountability.

20. I recommend:

- a. *The Board should create a policy within six months to govern the use of in camera sessions for Board meetings.*
- b. *The Board should consider opening some committee meetings to the public.*
- c. *The Board should develop a larger strategy for public outreach.*
- d. *The Board should formally incorporate public input into its policy.*
- e. *The Board, within six months, should develop a corporate policy on minutes that incorporates best practices with respect to transparency and accountability.*

The Retainer of Lawyers

21. The Board is often called on to navigate issues that require good and independent legal advice. As a public body, it also has an obligation to ensure that it is spending resources on legal fees wisely and effectively. Care must be taken to ensure that it does not change lawyers who provide advice that is unwelcome or that lawyers are retained without clarity as to who is instructing them. Agreed upon rates should be competitive and ensure value for money.

22. The Board had, in the past, cycled through counsel whose advice some members did not agree on. Lawyers were retained without the agreement of the whole Board and in circumstances where potential conflicts, the nature of their retainer and their instructions were not clear. Significant costs were incurred in this way. During my term as administrator, the Board retained General Counsel and has retained other lawyers at competitive rates to do specialized work. The Board is now able to instruct counsel and access high quality legal advice in a clear and cost-effective manner.

23. I recommend:

- a. *The Board, within six months, implement a policy for retaining lawyers that incorporates best practices and provides clarity around conflict of*

interest, selection, instruction and remuneration of counsel at competitive rates.

- b. The Board, within 6 months, establish clear guidelines governing the indemnification of the Chief and Deputy Chief for legal fees.*

The Board's Relationship with the Chief

24. The Board has a complex relationship with the Chief and Deputy Chief. It must not serve as only a “cheerleader” for the Chief, Deputy Chief and the police service but must provide careful, detailed and transparent oversight and policy guidance. However, the Board is also the employer of the Chief and Deputy Chief and must ensure that it takes steps to clarify and correct seriously misleading and disparaging public statements about them or their work. On a practical level, the Chair of the Board must work closely with the Chief. Board meetings provide a shared opportunity for the public, the Chief and the Board to engage on policy issues and on priorities, objectives and milestones in the business plan.

25. The relationship between the Board and the Chief and Deputy Chief was significantly impaired in Peterborough. Some Board members contributed to the false and disparaging narrative about the Chief and Deputy Chief. That false narrative is described and addressed in my report. Of course, the Board was also in litigation with the Chief and Deputy Chief. The breakdown of that relationship undermined the Board's ability to provide effective public oversight.

26. I recommend:

- a. The Chair of the Board and the Chief have set weekly meetings to address issues of significance.*
- b. The agenda of the Board meetings should not be finalized, absent exceptional circumstances, until the Chief has been consulted about its contents.*

- c. *The Chair continue the important steps taken to build the relationship between him and the Chief.*

Delegation and the Role of Committees

27. The members of the Board are part-time appointees with other personal and professional obligations. At the same time, civilian oversight of policing in Peterborough is complex and time-consuming. Care must be taken to avoid placing undue burdens on individual members or staff and in ensuring responsibility is shared through the effective use of delegation and committees.

28. During my term as administrator, a disproportionate burden fell on the Chair and one of the Board members. This created delays, inefficiencies and, at times, frustration.

29. I recommend:

- a. *The Board continue to address and clarify the respective roles of committees and the Board as a whole.*
- b. *The Board address the uneven allocation of work on a priority basis in accordance with the guidance provided above.*
- c. *The Board should consider greater delegation of the Chair's functions in some clearly defined cases.*
- d. *The Board should amend its by-laws to require that one of the two positions of Chair and Vice-Chair be held by a provincial appointee and the other by a municipal appointee.*

Independence of the Board and the Future Role of the Mayor

30. Although the Mayor has a statutory right to sit on the Board, his past involvement has been highly contentious and contributed to some of the ongoing issues respecting the Board's ability to provide civilian oversight. Given the Mayor's history with the Board, it would be difficult for the Board to maintain its

independence from municipal council should he choose to return to it. This independence is a necessary and important element of the public's confidence in civilian oversight of policing in Peterborough.

31. Before and during my time as administrator, the Mayor made inflammatory, divisive and inaccurate comments about the senior leadership of the Police Service. Legitimate concerns have been expressed about the ability of the Board, and the Police Service itself, to function properly were he to return to the Board.

32. It would be unwise for the Mayor to return to the Board. This view is not only held by his detractors, but by some who admire him. The Board has been through a tumultuous period. It must now look forward. It would be difficult to be forward thinking if the Mayor or an obvious proxy for the Mayor became a Board member at this point in time.

33. The Board, as currently composed, has made significant strides. It would be unfortunate if the existing goodwill were undermined by the introduction of any polarizing influence at the Board.

34. I recommend:

- a. *The Mayor decide, in the public interest, not to sit on the Board.*
- b. *Should the Mayor return to the Board, the Solicitor General and OCPC carefully consider taking timely and effective action to avoid any dysfunction that threatens the Board's ability to discharge its statutory responsibilities.*

35. To be clear, nothing in my report is intended to prevent or inhibit the Mayor from forcefully addressing the issues of concern to him as a non-member of the Board. After all, he is the duly elected Mayor and a member of the municipal council and this community.

Succession Planning

36. When my term as administrator commenced, the Board had no succession plan in place in contemplation of the retirement of members of senior leadership at the Service. Such a plan would promote an objective, evidence-based, non-partisan search for suitable candidates. It would provide opportunities for advancement within the Service, not merely opportunities for external hiring. It would be designed to inspire confidence in the process, and dispel concerns that someone attempt to place their “thumb on the scale” or advance a personal agenda, rather than the best interests of the Service. An outline of a succession planning process is now well under way, and has attracted the full support of the Board.

37. I recommend:

- a. There be a written policy incorporating such a succession plan within three months.*

Conclusion

38. There continue to be challenges for this Board. I am hopeful that the important steps taken during my term will be sustainable. I am also hopeful that additional steps will be taken in accordance with my recommendations.

39. In addition to those already identified, I recommend:

- a. The Board participate in a facilitated governance retreat on an annual basis. (This is in addition to any training required by the Solicitor General pursuant to s. 31(5) of the PSA and s. 3 of O. Reg. 421/97.)*
- b. The Board, within 12 months, release a report publicly setting out what it has done to implement the other recommendations contained in this report.*

40. The Board has the opportunity to succeed in leading what is already a progressive and efficient Police Service into the future. If it is unable to do so, the Solicitor General and the OCPC have tools available to them to act decisively and quickly.

Report

Introduction – The Appointment of An Administrator

1. On March 8, 2016, the Solicitor General requested, pursuant to subsection 25(1) of the *Police Services Act*, R.S.O. 1990, c. P.15 (“PSA”) that the Ontario Civilian Police Commission (“OCPC”) “investigate, inquire into, and report on” matters relating to the ability of the Peterborough Police Services Board (“PPSB” or “Board”) to discharge its statutory responsibilities. The Solicitor General had concluded that, despite receiving “unprecedented support” from the Ministry of Community Safety and Correctional Services (“MCSCS” or “Ministry”), the Board continued to struggle to discharge its mandate. He was concerned that this was having an impact on policing in the community that the Board serves.
2. In response, the OCPC commenced an investigation into the Board. In December 2016, the OCPC concluded, based on the evidence collected during its investigation, that the ongoing dysfunction of the Board constituted an emergency and that the appointment of an administrator pursuant to subsection 23(1) of the PSA was therefore necessary in the public interest.
3. The PSA confers certain powers on the OCPC to oversee police service boards in Ontario. For example, pursuant to subsection 23(1), the OCPC may, after holding a hearing, suspend or remove one or more members of a board and/or appoint an administrator to perform specified functions if it finds that a board has flagrantly or repeatedly failed to comply with prescribed standards of police services.
4. Pursuant to subsection 24(1) of the PSA, the OCPC may also make an interim order to appoint an administrator, without notice and without holding a hearing, if it is of the opinion that an emergency exists and such an order is necessary in the public interest. In December 2016, the OCPC did precisely that.

5. In its December 2016 Order, the OCPC said the following:

The current and ongoing investigation has produced a body of reliable evidence that the PPSB has been, almost from its formation in 2015, in a state of perpetual crisis. The ill will between some members of the PPSB, some members of council and the Peterborough Police Service is palpable and has been present for some time. It shows no signs of abating. The situation in Peterborough over the past few years has been characterized by highly public disputes. Examples include disputes related to the dissolution of the former Peterborough-Lakefield Community Police Service, a dispute triggering a lengthy hearing by the OCPC into the conduct of the Mayor, and, most recently, a very public contractual dispute between the PPSB and the Chief and Deputy Chief of Police, followed by a civil suit by the City of Peterborough against the Chief and Deputy Chief of Police. Based on the information collected, the OCPC is of the opinion that the PPSB has failed to comply with a number of statutory and regulatory responsibilities under the PSA. The PPSB has been unable to complete certain simple and routine statutory duties such as the finalization of a business plan. It has also failed to set priorities and conduct a performance evaluation of the Chief and the Deputy Chief of Police. These failures raise urgent concerns about the PPSB's ability to handle its broader responsibilities and to ensure that the public has confidence in the delivery of police services in the community.

6. The OCPC provided several specifics which it said arose from the evidence it had collected so far:

- Members of the PPSB have consistently engaged in conduct to undermine the role and effectiveness of the Chief of Police and the Deputy Chief of Police;
- Members of the PPSB have attempted to interfere with the deployment of officers;
- Members of the PPSB have repeatedly exercised authority without direction or support from the PPSB itself, acted in a manner contrary to the Code of Conduct, and in a manner that undermines public confidence in the provision of police services in Peterborough;
- The Board has failed to manage routine business required by statute including:
 - Failing to prepare a business plan;
 - Failing to set required objectives and priorities with respect to law enforcement and public safety matters;

- Failing to provide performance oversight of, and set remuneration for, the Chief and Deputy Chief of Police;
 - Failing to establish a policy to indemnify the Chief of Police for legal costs; and
 - Failing to provide public access, as necessary, to Board meetings.
- The support provided by MCSCS to assist the Board has been ineffective and the Board's dysfunction has continued;
 - Members of the public and other civic officials are concerned about the ongoing dysfunction of the PPSB; and
 - Members of the Police Force are experiencing increased stress and damage to morale because of the dysfunction.
7. My appointment as administrator was effective as of December 16, 2016. It was to expire, unless renewed, on July 1, 2017. The OCPC's Order indicated that the administrator was "to ensure that the PPSB comply with its statutory obligations, including ongoing compliance with the PSA and its regulations, and to promote the creation of respectful and/or functional working relationships between those involved in the provision of policing services to Peterborough that nonetheless allow for vigorous debate and the airing of diverse points of view." The administrator was also to produce a report, "including a detailed analysis of the change to the PPSB process and the reasons therefor."
8. Based on the performance of the PPSB during my term as administrator, I am satisfied that the PPSB has taken important steps to comply with its statutory obligations and to promote a respectful and functional working relationship with the Peterborough Police Service ("PPS" or "Service"), its senior leadership and the municipal government. In this report, I identify additional steps, which, in my view, the Board must take. I also make recommendations to promote sustainability of the gains made over the past seven months. Despite the continuing need for improvement and sustainability, I recently recommended to the OCPC, which accepted my recommendation, that my appointment not be renewed.

9. This report completes my responsibilities as administrator. It explains the approach that I took to my duties, and outlines some of the work done by the Board during my term. There are a number of affected individuals who express concern over whether the undeniably good work done by the Board during my term will now continue. As stated above, my recommendations are designed, in part, to address that concern.
10. It was of importance to me that this report be made available to the public. This may not be mandatory under existing legislation. However, the OCPC supported the release of this report to the public. There are compelling reasons for doing so.
11. First, regardless of what gains have been made in ensuring that the Board performs its statutory duties, it is also important that the public have a well-placed confidence in the police force, which services their community, and the Board, which provides civilian oversight. This would be difficult to achieve without a publicly accessible report.
12. Second, as the OCPC observed in its December 2016 Order, the Service, its leadership and the Board have been through a tumultuous period. This included the dissolution of the predecessor police force and board, a contractual dispute between the Chief, Deputy Chief and the Board, a lawsuit initiated by the City of Peterborough against the Chief and Deputy Chief, the prosecution of Mayor Bennett for alleged misconduct while he was a member of the predecessor board, and the investigation of a former Chair of both the predecessor board and this Board for alleged misconduct. (The OCPC investigations into complaints against the former Chair relating to his role on both boards were never completed given his resignation from the predecessor board and the expiry of his term with the current Board.) The legal disputes between the Chief, Deputy Chief, the Board and the City have since been settled. However, the parties each undertook that the terms of settlement were to remain confidential. As a result, I cannot disclose those terms of settlement in my report. However, I can (and do) briefly address some of the misinformation and false public narratives circulated in connection with these issues, which had the potential of unfairly undermining public confidence in the Service, the Chief and Deputy Chief.

13. As will be reflected in the body of this report, I am mindful of the desire for affected parties to set past disputes behind, and look to the future. This is commendable. It is why my report does not dwell on the past disputes, but only provides enough information to correct the public record, and explain my recommendations.

14. Finally, the publication of my report promotes accountability. The public is entitled to ask on a periodic basis whether, and to what extent, my recommendations have been adopted and if not, why not.

How I Exercised My Functions as Administrator

15. The OCPC's Order said that the administrator shall have the "full power and authority to fulfill his or her mandate and functions and shall have unimpeded access to any and all past and current PPSB records as the administrator may specify for the purpose of this Order."

16. As the administrator, I was to perform the following functions:

- Attend, either in person or by conference call or video conference, regularly scheduled and special meetings of the PPSB, including all in camera¹ portions thereof;
- Attend, either in person or by conference call or video conference, subcommittee meetings of the PPSB;
- On his or her own initiative or upon request from any member of the PPSB, provide advice to the PPSB and/or individual members, where appropriate, about: PPSB processes including, but not limited to, issues such as the recording of votes, taking of minutes, scheduling of agenda items, delegation of authority and composition of subcommittees;

¹ In camera meetings are those held in the absence of the public.

- Achieve and maintain compliance with the PSA and any applicable regulations made pursuant to the PSA;
- Establish best practices for the ongoing governance of the Board and a protocol for its relations with the Service, Peterborough City Council and other organizations as necessary;
- Have full power and authority to make any changes he or she sees fit to the PPSB processes;
- Make recommendations to the Executive Chair of the OCPC on the Board's composition, including the power to suspend any or all of its members;
- Work with the PPSB to engage the public in discussion about the PPSB and its role; and
- Advise the Executive Chair of the OCPC about the need to vary or cancel the December 2016 Order in response to changing circumstances and in consultation with the Board.

17. At the outset, I was acutely aware that the OCPC's decision to appoint an administrator without a prior hearing was controversial. Some felt that the Board was functioning appropriately without an administrator, and that, in any event, there was no urgency to prompt the appointment without a hearing. This view was expressed in forceful terms. For example, Mayor Bennett, who had previously been in a lengthy legal dispute with the OCPC, challenged the appointment in the media. He was certainly not alone.

18. Others, including the Chief, Deputy Chief, other senior officers, and several Board members, welcomed the appointment.

19. I met with the members of the Board separately and collectively, as well as with the Board's executive assistant, Niquel Pritchard Pataki. I conveyed the same message at each meeting. It was my preference to work cooperatively with the Board, rather than to "take

over" the responsibilities of the Board or its Chair.² I set a number of goals that I wanted the Board to achieve or work towards, and I discussed how we could collaborate to permit the Board to do that.

20. I attended every Board meeting, held at least monthly, and a number of committee meetings. I also participated in several committee meetings by telephone.

21. At my first Board meeting, I outlined for the Board and the public my background as a criminal and regulatory lawyer for 37 years, as someone who had worked extensively with the PSA, and who had acted for the Ontario Provincial Police, three of its Commissioners, and for front-line officers. I had also served as counsel for a number of public inquiries and systemic reviews, some of which required an understanding of policing practices and procedures, and the systemic issues facing the policing community. It was also important to include my connection to the City of Peterborough where I was born and initially raised. At that meeting, I responded to a number of questions posed by members of the Board.

22. A majority of the Board members candidly advised me that they were unconvinced that an emergency existed or that the specifics identified by the OCPC in its Order were accurate or, if accurate at one time, continued to represent ongoing issues for the Board. Nonetheless, they unanimously voted not to legally challenge my appointment, but instead, to take me at my word and agree to the collaborative approach that I outlined. The Board is to be commended for taking the "high road" in its approach to my appointment from the beginning and throughout my term as administrator.

23. From December 2016 to June 2017, I played an active role in the work of the Board. Ms. Pritchard Pataki provided me, in advance, with the anticipated agenda for each Board meeting, together with materials provided to the Board. Similarly, she provided me with

² I also discussed this approach with the Commission, which agreed with it. This, too, was communicated to the Board.

background materials relevant to committee meetings. I also examined many documents relating to the activities of the Board that preceded my appointment. I met with the Chair, Bob Hall, on a number of occasions, sometimes immediately following a Board meeting.

24. As will be discussed below, the Board had gone through a tumultuous time prior to the OCPC's investigation and my involvement. A number of Board members felt that they had already moved past the tumultuous time in the Board's life before my appointment. For example, they felt that their meetings already had a respectful tone, and were transparent to the public. I accept that some of that perspective is accurate. However, there remained an ongoing failure to meet some of the Board's statutory requirements and there remained some unresolved issues, which threatened the lasting effect of any improvements. These had to be addressed.

25. During my appointment as administrator, the Board was receptive to my involvement and advice. Even those who had questioned my appointment worked constructively with me. For example, if I had any issues or suggestions respecting the proposed agenda for a Board meeting, I shared them with Ms. Pritchard Pataki and, through her, with the Chair. Since the OCPC's Order reflected concern about how often the Board addressed matters in the absence of the public, I also provided input on which matters should be addressed in public and which in the absence of the public. These suggestions – which were not extensive – were addressed. I was satisfied that items for business were appropriately identified in the agenda and that the Board, pursuant to the Chair's direction and in the spirit of transparency, properly limited matters to be discussed in the public's absence.

26. At the Board meetings, I was a full participant in the Board's discussions. Board members frequently asked me for guidance on a wide range of issues, which I was pleased to provide. To the credit of the Chair, Mr. Hall, and Ms. Pritchard Pataki, the Board meetings were well-organized, efficient and well conducted. Every Board member had the opportunity to be heard on the issues and spoke to and about each other in a respectful way. As elaborated upon below, they also spoke to and about the Chief and Deputy Chief and their Service in a respectful way. Indeed, every member of the Board publicly

expressed admiration for the Service, the Chief and Deputy Chief respecting the high calibre of the work being done by the Service and the quality of its senior leadership. As described later in this report, the Board had not always shown appropriate public support for its Service and senior leadership in the past.

27. I also met with, or spoke to, Chief Rodd on a regular basis and with Deputy Chief Farquharson less frequently. I met with other senior leadership of the Service, including the Presidents of the two police associations, and on occasion, rank-and-file officers. The Chief and Deputy Chief are exceptional, highly dedicated officers who lead a progressive, effective police service. They enjoy wide support in the Service, and for good reason. I alluded earlier to a false public narrative that needs to be corrected. One aspect of that relates to the Chief and Deputy Chief and their legal disputes with the Board and the City. They lived through what some would describe as a campaign of misinformation with little means to defend themselves publicly. I return to that point later.

28. I also met with, and spoke to, the external consultants, Michael Mitchell and Moe Hodgson. The Board retained them to prepare the Board's Business Plan. They have a wealth of first-hand experience in policing issues. Their retainer required that they examine the Service's existing processes, relevant qualitative and quantitative data, programs and initiatives, clearance rates, existing priorities and a wide range of other information pertaining to their undertaking. They interviewed many of the Service's employees from both the uniformed and civilian ranks. They met with dozens of community agencies. They met with municipal representatives. They spent hundreds of hours in the Service's headquarters both day and night to observe, first hand, how the police interact with the public and each other.

29. Through this work, it became evident to them (as they communicated to the Board) that the Service provides an "exceptionally high level of service in all of the communities that it serves. No major problems were identified with respect to how the organization is administered or the manner in which it operates. The current resources are being fully and effectively utilized and because of this, the Business Plan focuses on the continuation or enhancement of many of the successful programs which the police currently provide to the

public.” They confirmed that the Service’s clearance rates for crime are high; and its proactive initiatives to address crime, mental health, and addiction and to promote community engagement compare most favourably to other police forces in Ontario. They concluded, as did I, that these successes are attributable in no small measure to the Chief and Deputy Chief, their senior management and to many of the rank-and-file officers under their command.

30. To fulfill my responsibilities, I also met with, and spoke to, Jeeti Sahota, the MCSCS’ Police Services Advisor, Public Safety Division, who attended the Board meetings as an observer. Other MCSCS advisors attended Board meetings before and during my term as administrator. Ms. Sahota was particularly helpful in directing me to relevant guidelines, policies and training manuals, and in providing me and the Board with insights into the likely future of policing in Ontario.
31. Of course, it was the Solicitor General and the MCSCS, which requested that the OCPC take action to address the dysfunction at the Board. If Justice Michael Tulloch’s recent recommendations on civilian oversight of the police are accepted, the Ministry may soon assume the oversight powers pertaining to police services boards currently held by the OCPC. Indeed, the OCPC supported that change in its submissions to Justice Tulloch. As guidance to whomever assumes this mantle in the future, it is my view, admittedly with the benefit of hindsight, that it would have been preferable if the Ministry and the OCPC had acted more forcefully and certainly more quickly in addressing the undoubted dysfunction that existed in Peterborough – for example, during the period that the Chief and Deputy Chief, the Board and the City were embroiled in a series of legal disputes.
32. With the Board’s approval, and sometimes at its specific request, I also reported back to it on several projects, which I undertook on the Board’s behalf. For example, I reviewed the legal bills submitted to the Board by a number of law firms over the years, recommended a best practice that the Board adopted for better monitoring of legal costs, and assisted the Board in hiring its new General Counsel at competitive rates.

33. The Board also requested that I facilitate a governance retreat, which I did at the end of my term as administrator. At the retreat, I facilitated discussion respecting a number of governance issues that arose during or preceding my term. At the same time, I identified best practices around those recurring governance issues, and my views as to how the Board could continue to move forward in a constructive way. The Board committed itself to considering a number of these best practices and to referring them for possible implementation to the Policy Committee.
34. All of the Board members kindly acknowledged at my last Board meeting as administrator that they greatly valued the input and advice I provided in that role. I, in turn, acknowledged (as I do in this report) their cooperation with me throughout, and their willingness to adopt or consider my recommendations as to best practices.
35. I referred earlier to the Board's executive assistant, Ms. Pritchard Pataki. She provides tremendous support for the Board's work. The quality of her work is outstanding. This includes her detailed, accurate, evidence-based reports to the Board. I believe that the tumultuous period in the Board's history was particularly difficult for her since she was compelled, at times, to work in what can only be described as a poisoned environment. This Board is, in part, differently populated, but in any event fully acknowledges her value as its employee. The Board would be unable to fulfill its mandate without someone of her calibre and skill.
36. Throughout my term, at its conclusion and in this report, I have identified areas where there can be continued improvement in governance. Nonetheless, as I stated earlier, I am satisfied that the Board is currently functioning in accordance with its statutory mandate. That is why I recommended to the OCPC that my appointment not be renewed.

Events Prior to my Appointment

37. Pursuant to subsection 27(5) of the PSA, the Board is to be composed of five members: the Mayor or, if he or she chooses not to serve, another member of the municipal council, a

second member of the municipal council, a community representative also selected by municipal council and two individuals appointed by the provincial government.

38. The Peterborough-Lakefield Community Police Service was the predecessor of the current police force. As its name suggests, the City of Lakefield had an “ownership” interest in the predecessor police service. As the negotiated price of that ownership interest, the City of Lakefield contributed approximately \$900,000 to the Peterborough-Lakefield Community Police Service’s annual budget. One of the Board members was a City of Lakefield appointment.
39. Several years ago, the Peterborough municipal council voted to dissolve the Peterborough-Lakefield Community Police Service and its board. This was to take effect on January 1, 2015. The PPS and the PPSB were created. The PPS continued to provide the same level of policing in Lakefield as its predecessor did, but now on a contractual basis only.³ Not surprisingly, since the City of Lakefield no longer had an ownership interest in the Service, it contributed significantly less revenue to the Service’s budget (a reduction of about \$400,000 per year). Another key consequence of this change was that Lakefield lost its seat at the Board table. This meant that Peterborough’s municipal council now controlled (as it still does) the selection of the majority of the Board’s members.
40. The decision to dissolve the predecessor service and board was controversial. Some felt that the decision to dissolve or de-amalgamate was a financially costly exercise conducted solely to allow the Peterborough municipal council and, more particularly, Mayor Bennett, to control the Board. That is for others, not me, to determine.
41. When the predecessor board and service were dissolved, there was initial uncertainty as to whether the Chief and Deputy Chief would be reappointed to serve on the newly constituted Service. The Chief and the Deputy Chief both had contracts negotiated with the

³ The contractual arrangement, to be precise, is with the Township of Selwyn.

predecessor board that unequivocally provided that they were entitled to extensive remuneration (including the equivalent of one year's salary) if the predecessor service was dissolved. This legal entitlement was not dependent on whether the Chief and Deputy Chief were rehired by the new Service or on whether they were rehired in the same positions.

42. Contrary perhaps to the public's perception, these or similar contractual terms are hardly unique. The Chief's contract contained this "dissolution term" since 2010. It was repeated in contract renewals in 2011 through 2014. It originally came from a prototype developed to assist chiefs and deputy chiefs, and was accepted by the predecessor board after full discussion with the Chief and vetting by the predecessor board's counsel. The Deputy Chief's dissolution term was no different in substance. These dissolution terms (which might also be described as "poison pills") are designed, in part, to discourage boards or municipal councils from exercising poor judgement that might adversely affect policing in their community. Indeed, when this term was first introduced into the Chief's contract, it seemed improbable that the fiscally disadvantageous decision would be made to dissolve the service. Later, the dissolution term provided an incentive for the Chief and Deputy to remain with the new Service, despite the obvious political and administrative turmoil which had already surfaced and was likely to continue. The arbitrator in the contract dispute observed that the dissolution term provided the Chief and Deputy Chief some comfort to sign a new employment contract, and that the term effectively constituted a "signing bonus" granted by the predecessor board and guaranteed to be paid by the successor Board. He noted that the fact that the Chief and Deputy Chief continued uninterrupted employment was irrelevant. However, whatever one's views on these contractual terms, the bottom line is that they were negotiated by arm's-length parties and were binding on the predecessor board and on the Board as well. Members of the predecessor board who had discussed these terms also became members of the Board.

43. The language contained in the contracts of the Chief and Deputy Chief was unequivocal. That language clearly addressed the very scenario that unfolded here. The Board had sound legal advice available to it that the contracts were fully enforceable. The Chief and Deputy Chief expressed willingness to the predecessor board to negotiate some reduction

in what they were otherwise legally entitled to. Nonetheless, the newly constituted Board adopted a highly adversarial stance.

44. That stance was manifested in a variety of ways. The contracts provided for binding and final arbitration with no right of appeal. The Chief and Deputy Chief were compelled to take the matter to arbitration. The arbitrator decided in favour of the Chief and Deputy Chief in the summer of 2015. The Board refused to respect the arbitrator's decision. Instead, it initiated an application to judicially review the decision, though judicial review was legally unavailable. When the Board refused to comply with the arbitrator's decision, the Chief and Deputy Chief were compelled to obtain a Court order requiring the Board to comply. The Board chose not to comply with the Court order. The Board's stance was strongly supported by Mayor Bennett – as was a lawsuit initiated by the City of Peterborough against the Chief and Deputy Chief which made a series of serious, inflammatory and totally unsupportable allegations against them, including misfeasance in public office. This could only be described as a war of attrition, especially when the Board declined to indemnify the Chief and Deputy Chief for legal costs in defending against the City's lawsuit.⁴

45. All of this was accompanied by a host of disparaging remarks made in public about the Chief and Deputy Chief. Their employment effectively precluded them from fully defending themselves in public. Ordinarily, the role of defending them from unfair attack would fall upon the Board. To state the obvious, the Board did not assume that role. Indeed, some members of the Board advanced the unfair public narrative about the Chief and Deputy Chief.

46. The legal dispute also exacted a heavy financial toll on the public. The total legal costs consumed by the Board and by the City to fight the Chief and Deputy Chief easily exceeded the costs associated with complying with the Board's contractual obligations.

⁴ To be clear, not all members of the Board supported the stance identified here.

Equally important, the level of rancour shown in fighting the Chief and Deputy Chief infected the relationship between the Service and the Board, and the public's perception of those involved.

47. Nothing I have said diminishes the rights of affected individuals – indeed, the public at large – to engage in vigorous debate on issues of importance. What motivated the municipal government to dissolve the prior police service and board? Did this benefit the community? Should the predecessor board have agreed to the contract entered into with the Chief and Deputy Chief? Should the Chief and Deputy Chief have waived the terms of the contract that they negotiated with the predecessor board? Did the Board and the City act wisely or imprudently in challenging the contracts of the Chief and Deputy Chief? Reasonable people can disagree – and vigorously so – on some or all of these issues. But the public attacks on the Chief and Deputy Chief went well beyond the scope of legitimate debate or criticism. Some of these attacks appear to have been designed to destroy the reputations of the Chief and Deputy Chief. They took a significant toll on them both. These unfair, sometimes uninformed attacks also adversely affected the Service's senior leadership and the rank-and-file officers. Many of them felt – with justification – that their Service and its leadership were being unfairly maligned and that they were left undefended.

48. In less than six years, the PPSB and its predecessor have been populated by 13 different Board members. This is explained, in large part, by dysfunction at the Board.

49. During those six years, two provincial appointees resigned due to the dysfunction they witnessed firsthand at the Board. Mayor Bennett temporarily stepped aside as a member of the predecessor board as a result of charges of misconduct levelled against him under the PSA. He was initially found guilty of multiple offences, though all but one of those findings were set aside, on consent, on appeal to the Divisional Court. He did not dispute the finding that he had engaged in misconduct respecting disparaging comments he made while a member of the predecessor board, about the Chief of Police, the Peterborough-Lakefield Community Police Service and the Peterborough-Lakefield Community Police Services Board, in breach of ss. 8 and 13 of the Members of Police Services Board – *Code of*

Conduct, O. Reg. 265/98. Garth Wedlock, another Council appointee to both boards, resigned from the predecessor board while he was being investigated by the OCPC for potential misconduct relating to the performance of his duties as a member of the predecessor board. Accordingly, that investigation was never completed. Nor did the OCPC complete a second investigation relating to Mr. Wedlock's conduct as Chair of the current Board since his term expired. Any OCPC investigation relating to Mr. Wedlock could only be resurrected in the event that Mr. Wedlock again became a member of the Board.

50. This tumultuous legacy must now be overcome by the Board.

The Board's Compliance with Its Statutory Obligations

51. As indicated earlier in this report, I set goals that I expected the Board to achieve or work towards. These goals are identified here, together with how the Board has dealt with them.

The Business Plan

52. Section 30 of Ontario Regulation 3/99 reads as follows:

30. (1) Every board shall prepare a business plan for its police force at least once every three years.

53. Subsection (2) sets out items that the business plan shall address. These items include the objectives, core business and functions of the police force, including how it will provide adequate and effective police services. As well, the business plan is to include quantitative and qualitative performance objectives and indicators in a number of areas, such as the police force's provision of community-based crime prevention initiatives, community patrol and criminal investigation services.

54. At the outset of my term, the Board had no current business plan in place. Its last business plan expired in 2015. The Board had discharged one external consulting firm, based on

dissatisfaction with its work, and returned to the consultants who created the Board's last business plan.

55. A committee of the Board, the Business Plan Steering Committee, spearheaded almost entirely by Ken East, a member of the Board, was responsible for working with the external consultants and the Service's senior leadership to produce the business plan. Drafts of the business plan were circulated for the entire Board's consideration. The Board devoted a special meeting to evaluating the draft business plan, and providing input on its improvement. Ultimately, the Board approved, in principle, a business plan. This business plan has been submitted to the municipal council on the understanding that the Board would subsequently "fine-tune" the plan and finalize its graphics and physical presentation.

56. I am satisfied that the Board has essentially completed the business plan in fulfillment of its statutory mandate. The committee, most particularly Mr. East, worked very hard, as did the external consultants and the Service's senior leadership to produce the plan.

57. The process leading to its development was less than ideal. Of course, part of the problem (including the added costs associated with the business plan) rested with the perceived need to discharge one external consulting firm in favour of another. I will not comment on the Board's decision to change consultants. The Board was very well-served by the consultants who ultimately completed the plan. They were highly experienced and experts in policing, already had a working knowledge of this Service, and were well situated to assist the Board in identifying priorities going forward.

58. In my view, the process was flawed in other ways. The Board should learn from the experience moving forward.

59. First, the development of a business plan should represent an ongoing process. In a sense, the groundwork for the next business plan starts the day after the previous business plan is finalized. Its preparation should certainly not await the expiry or near expiry of the previous plan. After all, its development is an opportunity for the Board to discuss and identify the

Service's objectives and priorities, and how they will be fulfilled, on an ongoing basis. Indeed, the Board has an obligation in law to identify the objectives and priorities for a given year, in consultation with the Chief, and measure the Service's performance against those objectives and priorities (see s. 31(1)(b) of the PSA). The business plan facilitates this exercise. Simply put, the development of this plan should have commenced far sooner.

60. Second, the committee and the external consultants received little input from the remainder of the Board through much of the process despite the committee's repeated requests for that input. As the administrator, I provided extensive input as various drafts were circulated to the Board for its consideration. Board members generally reserved their comments until the business plan was discussed at a special meeting. The comments at that meeting generated a significant re-writing of the plan. This was, in candour, a reflection that the committee and the external consultants were, to some extent, "flying blind" as to what the Board's expectations were. The committee was entitled to receive earlier direction and guidance respecting this fundamental document. This was especially so since the Board had been without a business plan for a lengthy period of time.

61. Third, too much of the Board's input, once given, involved "word-smithing", that is, efforts by Board members to draft language on the fly. This is always a difficult exercise when the Board as a whole meets to evaluate any lengthy written document. Indeed, I assisted the Board in some quick "word-smithing" myself to better focus the Board on the remaining issues to be considered.

62. I do not regard these comments as criticisms of the Board per se, but instead as useful lessons moving forward. As reflected below, I addressed the respective roles of committees and the Board at the Board's governance retreat.

63. I also wish to impress upon the Board that it should not minimize the importance of the completed business plan. It should not be treated simply as a mandated document that is divorced from the ongoing work of the Board and the Service. It informs the public as to the Service's objectives and priorities, and should form the basis of an ongoing dialogue with

the public. It provides important guidance to the Chief as to the expected policy directions of the Board that must be implemented by the Service. As I have already said, it assists the Board and the Chief to identify annual priorities and objectives. I expect that the Board will periodically review the business plan to determine whether or to what extent milestones have been met.

64. In summary:

- A business plan is not only a statutory requirement, but it provides a clear, transparent and effective basis for framing and evaluating the work of the Police Service, the Board and the Chief and Deputy Chief. It is a critical element of civilian oversight of policing and is a basis for ongoing dialogue with the public about their priorities and concerns.
- After letting the plan lapse in 2015, the Board was able to develop a substantially complete plan during my term as administrator, though tweaks remain to be made.

I recommend:

- a. The development of a business plan should represent an ongoing and continuing process in which the Board is engaged.*
- b. The Board should improve and formalize the process by which it gives substantive input into and direction to the development of the plan.*
- c. The Board should meet periodically to review the business plan and the progress made on milestones.*

The Performance Evaluation and Remuneration Review of the Chief and Deputy Chief

65. Effective Board oversight requires that the Board evaluate the performance of the Chief and Deputy Chief at least on an annual basis (see the requirement reflected in s. 31(1)(e) of the PSA). The evaluation process is itself a means to inform the Board about the ongoing work of the Service, and the extent to which its policies are being effectively implemented. It also provides an important opportunity for the Board to identify areas for improvement. At the outset of my term, the Board had done no performance evaluation of the Chief and Deputy Chief since 2014.

66. The performance evaluation is of course linked to the remuneration of the Chief and Deputy Chief. There is a contractual obligation on the Board to review their remuneration on an annual basis (see also the requirement reflected in s. 31(1)(d) of the PSA). This may result in changes to their annual compensation or benefits.
67. The Board's failure to conduct a performance evaluation of the Chief and Deputy Chief or review their remuneration since 2014 was particularly problematic here. This failure, which extended beyond the settlement of the contractual dispute and lawsuit, could reasonably be regarded by the Chief and Deputy Chief as retribution for the assertion of their legal rights. It could also reasonably be regarded as another example of a Board choosing to disregard its contractual obligations to the Chief and Deputy Chief. This failure did nothing to alleviate the residual tension between the Chief, Deputy Chief and some members of the Board.
68. Against that background, I monitored closely the work of the Labour Relations Committee to whom these issues were delegated. As administrator, I of course supported the completion of these evaluations and the remuneration reviews as soon as possible. To the credit of the committee, composed of Dave Haacke and Mr. East, and the Board as a whole, the entire issue was ultimately dealt with in a fair and dispassionate way. Both the committee and the Board recognized, among other things, that they were required to demonstrate fiscal responsibility, while being sensitive to the fact that no evaluations or reviews had taken place since 2014 and to the need to signal to the Chief and Deputy Chief that the Board was moving forward.
69. The Committee's evaluations were fair and evidence-based. They were considered and supported by the entire Board. Those evaluations reinforced the Board's confidence in the performance of the Chief and Deputy Chief overall.
70. Similarly, the Committee and the Board carefully considered the issues surrounding remuneration. They were assisted by the comparators and extensive data accumulated with the assistance of Ms. Pritchard Pataki. Although the committee and the Board

appropriately discussed this issue in closed session, the committee's recommendations and the Board's ultimate decision on remuneration showed fiscal responsibility, coupled with appropriate acknowledgement of the work that had been done by the Chief and Deputy Chief.

71. The Committee met with the Chief and Deputy Chief as part of this process. I believe that both the Chief and Deputy Chief appreciated the approach taken by the Committee and the Board to their evaluations and remuneration. This process reflected well on the Board. I add that the Chair, Mr. Hall, showed great sensitivity in how this issue was dealt with at the Board level.

72. In the course of this dialogue, the Board identified issues associated with the remuneration or benefits of any future chiefs or deputy chiefs of the Service. For example, Board members questioned whether future contracts should contain different terms in the public interest. They were also mindful of the need to ensure that this Service is always attractive to those seeking leadership or rank-and-file positions in policing. This was an important dialogue for the Board to have, and demonstrated to me that the Board was fulfilling its statutory responsibilities.

73. In summary:

- Performance evaluation and remuneration reviews of the Chief and Deputy Chief are not only required by the PSA and the employment contracts, but they represent the most direct tool the Board has to evaluate the extent to which the senior leadership of the police service is implementing the Board's policies and executing the business plan. This provides a formal and evidence-based process by which the Chief and Deputy Chief can identify areas of success and areas for improvement and allow the Board to raise any performance issues directly.
- The Board went over two years without conducting a formal evaluation during which time it contributed to, and failed to clarify or address, unwarranted negative statements about the Chief and Deputy Chief. During my term as administrator, the Board

conducted evaluations and reviews of the Chief and Deputy Chief of Police. It is essential that these reviews continue on an annual basis.

I recommend:

- a. *The Board, within six months, amend its by-laws to require it to conduct an annual performance evaluation and remuneration review of the Chief and Deputy Chief.*

Public Meetings and Minutes

74. In its Order, the OCPC expressed concern about whether too many matters were debated by the Board in the absence of the public.

75. Subsections 35(3) and (4) of the PSA read as follows:

Proceedings open to the public

(3) Meetings and hearings conducted by the board shall be open to the public, subject to subsection (4), and notice of them shall be published in the manner that the board determines.

Exception

(4) The board may exclude the public from all or part of a meeting or hearing if it is of the opinion that,

(a) matters involving public security may be disclosed 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 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.

76. Section 4 of Ontario Regulation 421/97 is also relevant. It provides that Board members shall keep confidential any information disclosed or discussed at a meeting of the Board, or part of a meeting of the Board, that was closed to the public.

77. There was evidence that, in the past, too many items of business were dealt with in closed session, rather than publicly. As well, Ministry advisors and the executive assistant were unnecessarily excluded during some of the Board's past sessions. Early in my term, I did identify items in several Board agendas that could be dealt with in public despite being marked for closed session. I discussed this issue with the Chair, Mr. Hall. He interpreted the words "may exclude" under s. 35(4) of the PSA as conferring a wide discretion upon the Board to conduct matters in the absence of the public. As elaborated upon below, I respectfully do not agree with that interpretation. However, what was more important was that the Chair readily agreed to my few suggested changes to the agenda which addressed this issue, and expressed his personal commitment to open and transparent Board meetings. He was true to his word. I was satisfied that during the balance of my term, the Board dealt with business items in public, except in the limited circumstances contemplated by the legislation.
78. At the governance retreat, I provided some further guidance on the exclusion of the public at Board meetings. In my opinion, despite the discretion conferred upon a board by the words, "may exclude" under s. 35(3) of the PSA, that discretion is narrowed significantly by the words that follow and by existing jurisprudence.
79. Meetings of the Board are presumptively to be held in public per s. 35(3) of the PSA. This presumption applies to all parts of a Board meeting.
80. The exclusion of the public is only permissible if one of the two exceptions set out in s. 35(4) exist. There is no general discretion to exclude the public beyond those two exceptions.
81. The first exception only applies if matters of public security may be disclosed. Even if this is so, the Board must also determine that the balancing set out in s. 35(4)(a) favours exclusion of the public.

82. The second exception only applies if intimate financial or personal or other matters may be disclosed of such a nature that the balancing set out in s. 35(4)(b) favours exclusion of the public. For example, this exception permits the Board to exclude the public when seeking or obtaining legal advice that is the subject of solicitor-client privilege.
83. At the retreat, we briefly discussed scenarios that would justify the exclusion of the public, and scenarios that would not. The Board appeared to be committed to the best practices identified at the retreat. Indeed, I was somewhat playfully taken to task by the Chair for recommending that the retreat itself be held in closed session. Although I continue to see a distinction between an educational program or retreat for Board members, and a Board meeting accessible to the public, I was delighted at the Chair's position since it again demonstrated a commitment to openness as the default position. With the Board's permission, I outlined at the next Board meeting, in public, what had taken place during the retreat.
84. I recommend that the Board create a policy within six months to address this issue. Not surprisingly, I am of the view that it can largely track the best practices identified at the retreat. At the same time, I recommend that the Board consider, with the assistance of its General Counsel, the extent to which some committee meetings should similarly be open to the public in the future.
85. During my term as administrator, the Board also took steps to improve public access to its Board meetings. At the Board's initiative, Board meetings were held in Cavan Monaghan and in Lakefield. The Board also considered whether some future meetings could be held in locations within the City of Peterborough other than at police headquarters. Police headquarters, and the obvious security requirements associated with a meeting there, do not create the most welcoming environment for members of the public and media.
86. Members of the public, including deputations, did attend several Board meetings. They were welcomed by the Board and treated respectfully. At least one member of the media also attended every public meeting. However, attendance by members of the public was

quite spare and at times, non-existent. I recommend that at least some of the Board meetings held in Peterborough take place in a community centre or another venue more conducive to public attendance.

87. I recommend that this should form part of a larger strategy of outreach to the public. The current Board has already expressed its desire to promote greater outreach. The new business plan supports measures to ensure that citizens and stakeholders are aware of, and engaged in the activities of the Board. Rolling-out the new business plan represents one opportunity for community outreach, as the Board, the Chief and Deputy Chief identify for the public the priorities and challenges of the Service moving forward. Public forums on “hot topics” respecting local policing (such as the fentanyl problem or increased drug trafficking activities or property offences in the downtown core) are useful means for the police force both to inform the public and be informed by them. I should observe that the external consultants received some valuable input from community agencies and members of the public on how the Service might best serve the community. Most were too detailed for inclusion in the business plan. However, the consultants agreed to provide a record of these ideas for future consideration by the Board, the Chief and Deputy Chief. I recommend that this record form the basis for a policy-driven discussion at one or more of the Board’s meetings this year.

88. The OCPC’s Order contemplated that I would evaluate the adequacy of the Board’s minutes for its meetings. In fairness, this issue did not figure prominently in my overall assessment of the Board’s work. Boards take a range of approaches to how their meetings are memorialized. The minutes of some boards capture much of the discussion that takes place at their meetings, including the positions taken by individual board members. Other boards keep extremely spare minutes of their meetings. This Board’s minutes fall into the latter category. They essentially capture only decisions made, on formal motion, by the Board. In fairness to the Board, there are no statutory provisions, Ministry guidelines or policies that assist in identifying best practices in this area. The Chair pointed out that the Board’s approach to its minutes is similar to the approach taken by the municipal council.

89. Nonetheless, in my view, the current minutes fail, in some respects, to promote accountability and transparency. Accordingly, we discussed best practices respecting Board minutes at the governance retreat.

90. The purpose of minutes of Board meetings is only partially to record the Board's formal decisions. They should also serve to memorialize important issues raised at a Board meeting, and the content of verbal reports presented to the Board. For example, at most Board meetings the Board receives comments from the Chair and from the Chief, sometimes in public and sometimes in closed session, depending on their subject matter. At present, no record whatsoever is kept of those comments. Similarly, the minutes do not capture less formal requests for the executive assistant or the Chief or committees to return to the Board with further information. Accordingly, they provide little assistance in monitoring whether such requests were adequately followed up on. They also provide little assistance to absent members of the media or absent Board members as to important dialogue that was not captured in formal motions.

91. Reasonable people can differ as to the adequacy of board minutes. But I suggested to the Board that best practices favour at least a "middle ground" to the preparation of minutes. So, for example, more complete minutes might be necessary:

- where, as already discussed, the Board has received comments from the Chair and/or Chief, the minutes should reflect the substance of what the Chair and/or Chief had to say; otherwise, they do not inform anyone;
- where a decision is deferred or only part of a motion is decided after extensive discussion, the minutes should explain the issue that prompted deferral or a partial decision only; this is to be differentiated, for example, from a pro forma deferral of a motion;
- where the decision is materially different from what was recommended or proposed in a committee report or other report, the minutes should capture briefly why the Board has decided differently;

- where there is no unanimity on a point, the minutes should reflect that the Board was not unanimous, especially if the dissenting Board member(s) would like their dissent to be noted, and what the point of contention was;
- where the Board gives direction, not captured in a motion, the minutes should reflect that direction;
- as already noted, where information is requested from the Chief or the executive assistant to be later provided, that should be captured in the minutes; and
- where oral reports are given by a committee, their substance should be captured in the minutes; of course, the availability of a written report by the committee may make this unnecessary.

92. At the conclusion of the governance retreat, the Board agreed to refer these best practices to its Policy Committee. I recommend that the Board, in consultation with its General Counsel, develop a written policy on its minutes within six months of the release of this report. I also recommend that the Board develop, at the same time, a written policy on committee minutes.

93. In summary:

- Civilian oversight of policing cannot be effective if it is not public and transparent. The PSA has strict criteria for when the exclusion of the public is permitted. Unless the Board meetings are dealing with public security or sensitive personal information, they should be public. Greater public access enhances public confidence in the Board's civilian oversight, and assists the Board in identifying and addressing the concerns of the community. This develops and strengthens relationships between the Board, the Police Service and the public.
- The Board had, in the past, excluded the public for reasons that were not permitted under the PSA. More broadly, the Board had not been sufficiently proactive about public outreach and promoting greater accessibility to its meetings. During my term as administrator, the Board took positive steps to ensure and increase public access to its meetings. It sought clarity on the limits of exclusion under the PSA, it held meetings in

Cavan Monaghan and Lakefield and considered holding meetings in more open venues in Peterborough.

- Minutes of Board meetings are an important tool of transparency and accountability. They also serve as a record of the proceedings to ensure corporate history and continuity.
- The Board's practice has been to rely on spare minutes that record only formal decisions on motion. More expansive minutes would promote accountability.

I recommend:

- a. The Board should create a policy within six months to govern the use of in camera sessions for Board meetings.*
- b. The Board should consider opening some committee meetings to the public.*
- c. The Board should develop a larger strategy for public outreach.*
- d. The Board should formally incorporate public input into its policy.*
- e. The Board, within six months, should develop a corporate policy on minutes that incorporates best practices with respect to transparency and accountability.*

The Retainer of Lawyers

94. Early in my term as administrator, I identified a number of issues around the retention of legal counsel by the Board. First, the Board hired a number of different lawyers for specific projects or litigation, but had no lawyer per se to advise it on the regular, recurring legal issues that arise in the life of a busy police services board. The Board needed such a lawyer, otherwise referred to as its General Counsel, albeit working for the Board on a part-time or as-needed basis. Indeed, I largely assumed that role during most of my term as administrator.

95. Second, there was no consistent approach to when a lawyer would be hired.

96. Third, there was little or no consideration by the Board of the hourly rates of retained lawyers, or any limits on legal fees, which could be incurred without prior authorization.

97. Fourth, the hiring and firing of lawyers during the tumultuous period appeared to reinforce the Board's dysfunction and highly politicized approach to the contentious issues faced. For example, some Board members complained that one lawyer was hired without the approval of the Board as a whole, and despite concerns about that lawyer's connection to another Board member. They felt that the Board was paying for that lawyer's work despite the fact that it was not instructing the lawyer. They also questioned the quality of the advice given by that lawyer. It also appeared, at times, as though the Board's majority fired at least one lawyer because it did not like the advice received, however sound. It is unnecessary for me to dwell on these claims, except to say that my own review demonstrated that the Board was paying, in the first instance described above, an hourly rate that was not truly competitive, but more accurately approximated rates for a downtown Toronto commercial law firm. That was unacceptable. It is also counterproductive to fire any lawyer because the advice given, although sound, is not what the Board would like to hear.

98. During my term as administrator, I recommended to the Board that it hire General Counsel. I created a list of suitable candidates, and provided the Board with some background on each. The Board chose to hire one of those candidates, Mr. Woody McKaig (of Sullivan Mahoney LLP), a highly skilled lawyer with expertise in policing issues. He agreed to competitive rates for his firm's legal services on behalf of the Board. We also established some parameters around his firm's retainer. Mr. McKaig has commenced his work on behalf of the Board, and I am satisfied that the Board is being well served in a fiscally prudent manner through his retainer.

99. I advised the Board that some of the speciality legal work could continue to be done piecemeal by other counsel, again at competitive legal rates. For example, the Board has benefitted from the legal work at competitive rates done by Joel Dubois (Perley-Robertson, Hill & McDougall LLP) and John Ewart (Ewart O'Dwyer) on recent files. I recommend that the Board should seek Mr. McKaig's advice as to what work should continue to be done on a piecemeal basis by other counsel. He has already shown sensitivity in how this issue should be addressed.

100. At the recent governance retreat, I outlined for the Board some suggested best practices around the retainer of legal counsel. We also discussed the distinction (imperfectly understood) between a lawyer hired by the Board and a lawyer hired by the Chief. The distinction is an obvious one in circumstances where the Chief is in an adversarial relationship with the Board. It is less obvious when the legal work to be done for the Chief, by its very nature, nonetheless requires some separation from the Board. For example, the Chief must hire his prosecutors for PSA prosecutions. The Board's lawyer cannot generally serve as prosecutor given the Board's adjudicative responsibilities under the Act.

101. I recommend that the Board formalize a policy around the retention of lawyers within six months. Again, it will not surprise anyone when I suggest that such a policy track some of the best practices I identified at the governance retreat.

102. Such a policy might include the following components:

- Absent exigent circumstances, the retainer of lawyers (other than the Board's General Counsel) to undertake legal work should be pre-approved by the Board;
- More specifically, the Chair or any other Board member should generally not be retaining a lawyer on his/her own initiative without prior Board approval;
- The Board may consider the retention of a lawyer, as needed, through email exchanges or conference calls, subject to confirmation at the next Board meeting;
- Hourly rates and a reviewable ceiling or "cap" on fees per project should generally be set by the Board and approved in advance. (On my recommendation, the Board adopted this approach on specific projects that arose during my term as administrator.);
- The Board is entitled to delegate some of these decisions to a committee or a member of the Board;
- The Board's General Counsel should be first consulted on whether another lawyer will be retained for a specific project;
- In some instances, the Chief has the right/obligation to retain a lawyer where the Board is in a conflict of interest;

- The Chief should discuss with the Board's General Counsel (other than in cases of obvious conflict of interest) whether the Board's General Counsel can provide the Chief with needed legal advice. The Board's General Counsel will often be able to serve this function where there is a commonality of interest between the Chief and the Board;
- The Chief should establish competitive rates and a ceiling or "cap" on fees per project where he/she is required to retain a lawyer; and
- In cases where the Chief is in an adversarial position vis-à-vis the Board, he will of course retain his/her own lawyer to advance that position. However, the Chief should generally not use that lawyer on other matters pertaining to the Service.⁵

103. I also recommend that the Board establish clear guidelines on the indemnification of legal fees for the Chief and Deputy Chief within six months (in accordance with ss. 31(1)(h) and 50 of the PSA). No guidelines or policies currently exist. The tumultuous period demonstrated the need for such guidelines or policies.

104. In summary:

- The Board is often called on to navigate issues that require good and independent legal advice. As a public body, it also has an obligation to ensure that it is spending resources on legal fees wisely and effectively. Care must be taken to ensure that it does not change lawyers who provide advice that is unwelcome or that lawyers are retained without clarity as to who is instructing them. Agreed upon rates should be competitive and ensure value for money.
- The Board had, in the past, cycled through counsel whose advice some members did not agree on. Lawyers were retained without the agreement of the whole Board and in circumstances where potential conflicts, the nature of their retainer and their instructions were not clear. Significant costs were incurred in this way. During my term as administrator, the Board retained General Counsel and has retained other lawyers at

⁵ This is no reflection on the quality of the work done by the Chief's lawyer.

competitive rates to do specialized work. The Board is now able to instruct counsel and access high quality legal advice in a clear and cost-effective manner.

I recommend:

- a. *The Board, within six months, implement a policy for retaining lawyers that incorporates best practices and provides clarity around conflict of interest, selection, instruction and remuneration of counsel at competitive rates.*
- b. *The Board, within 6 months, establish clear guidelines governing the indemnification of the Chief and Deputy Chief for legal fees.*

The Board's Relationship with the Chief

105. During my term, the Board has taken steps to enhance its relationship with the Chief and Deputy Chief. These include the Labour Relations Committee's positive interactions with the Chief and Deputy Chief in connection with their evaluation and remuneration, and repeated public acknowledgements by the Board, and each of its members, of the impressive leadership shown by the Chief and Deputy Chief.

106. I wish to explain the importance of the last point. A police services board is not to serve only as a "cheerleader" for the police service or its senior leadership. This means, among other things, that a police services board should not uncritically assume that any criticism levelled at its police service or senior leadership is wrong, and must be challenged. Indeed, effective civilian oversight requires that the Board constructively evaluate and critique the work of its Service and officers, and how it can contribute, without interfering with day-to-day operational decisions, to a more effective and efficient Service. However, there are circumstances where the Board must defend its Service and senior leadership from misleading, disparaging remarks. As I have already said, during the tumultuous period in the Board's history, it failed to defend its Service and senior leadership from inaccurate, highly misleading attacks, which it knew or should have known to be false. This has had a lingering effect, which will take time to overcome. One way to overcome this history is, simply put, to "give credit where credit is due." That is, the Board should publicly show its support for the Service and its senior leadership when that support is needed or warranted.

107. Another way to repair the relationship between the Board and its senior leadership is perhaps equally obvious. The Board – most particularly its Chair – must communicate with the Chief on a regular basis. A healthy relationship between the Board and its Chief necessarily involves frequent communication. The Board should always seek the Chief's advice, for example, on the content of the Board's meeting agendas. The Chief and Chair should engage in an ongoing dialogue about the Service's priorities and objectives, and whether they are being met and, if not, how the Board might address the issue.
108. During my term, I found the relationship between the Chair and Chief to be somewhat tenuous. The Chief must endeavour to move beyond some of the difficult history described earlier. The Chair, on the other hand, must take exceptional measures to build the relationship. On a number of occasions, the Chair had not met with the Chief prior to Board meetings. On some occasions, the Chief was caught by surprise when third parties raised issues with him that should have been the subject of prior discussion with the Chair or Board. This was an issue that I identified a number of times during my term, and at the governance retreat. It had not been satisfactorily addressed prior to the end of my term.
109. On July 5, 2017, I again raised this issue with the Chair. He gave me his personal commitment to take added steps to improve this relationship. The Chair also committed to the measures I have recommended here. In particular, I recommend that the Chief and the Chair meet or speak by telephone on at least a weekly basis on issues of significance to the Chief or Board. Given their busy schedules, these meetings should be set well in advance (for example, at a fixed time on every Monday afternoon). I also recommend that the agenda for a Board meeting not be finalized, absent exceptional circumstances, until the Chair has consulted with the Chief on its contents. Of course, the Deputy Chief may also participate in the dialogue between the Board and Chief or substitute for the Chief when the Chief is unavailable. I learned that the Chair had taken important steps to fulfill his personal commitment to me after my term expired and prior to the Board's July meeting. He is to be commended for doing so.

110. In summary:

- The Board has a complex relationship with the Chief and Deputy Chief. It must not serve as only a “cheerleader” for the Chief, Deputy Chief and the police service but must provide careful, detailed and transparent oversight and policy guidance. However, the Board is also the employer of the Chief and Deputy Chief and must ensure that it takes steps to clarify and correct seriously misleading and disparaging public statements about them or their work. On a practical level, the Chair of the Board must work closely with the Chief. Board meetings provide a shared opportunity for the public, the Chief and the Board to engage on policy issues and on priorities, objectives and milestones in the business plan.
- The relationship between the Board and the Chief and Deputy Chief was significantly impaired in Peterborough. Some Board members significantly contributed to the false and disparaging narrative about the Chief and Deputy Chief. Of course, the Board was also in litigation with the Chief and Deputy Chief. The breakdown of that relationship undermined the Board’s ability to provide effective public oversight.

I recommend:

- a. *The Chair of the Board and the Chief have set weekly meetings to address issues of significance.*
- b. *The agenda of the Board meetings should not be finalized, absent exceptional circumstances, until the Chief has been consulted about its contents.*
- c. *The Chair continue the important steps taken to build the relationship between him and the Chief.*

Delegation and the Role of Committees

111. Members of the Board serve in a part-time capacity. Most have full-time jobs in addition to their duties to the Board. Board members are to be commended for their service and dedication to the community. But they must be available on a timely basis to respond to issues as they arise in the life of a very busy police service. This is particularly so for the Chair. It is important that the executive assistant be able to obtain timely access to the Chair for executive decisions. During my term, this was not always the case. As well, Board

members may seek direction or guidance from the Chair on a variety of issues pending a formal Board meeting. Sometimes, Board members were frustrated at their inability to obtain timely responses from the Chair.

112. I am very sympathetic to the many demands on the Chair's time. He is committed to serving the Board. As I said earlier, I was impressed with both his intellect and his skill in conducting Board meetings and in navigating the Board through some difficult issues. I believe that he is personally committed to a "forward looking" approach on the Board's part. If he regularizes his communications with the Chief, and puts measures in place to ensure timely responses to queries from the executive assistant and fellow Board members, he is very capable of serving the Board and the community well.

113. I also recommend that the Board consider the delegation of the Chair's responsibilities, in clearly defined instances, to either the Vice Chair or another Board member designated by the Board for that purpose. To promote a balanced approach to the Board's work, and enhanced confidence in its work, I recommend that one of the two positions of Chair and Vice-Chair be filled by a provincial appointee, and one by a municipal council appointee, and that this approach be adopted in the Board's practices and through an amendment to s. 4 of the Board's by-law Number 105-2014.

114. At the governance retreat, I devoted a significant portion of time to the role of the Board's committees. During my term, I was impressed with committee work that had been done on a variety of issues. For example, labour relations (the collective agreement and the evaluations and remuneration reviews pertaining to the Chief and Deputy Chief), business planning, and development of a new limousine by-law and the RFP for towing companies. But I also identified areas for considerable improvement.

115. A disproportionate amount of the Board's committee work was (and continues to be) done by one Board member, Mr. East. He recognizes the demands on his fellow Board members who have their own full-time jobs. Nonetheless, this disproportionate workload is

not healthy and may ultimately discourage Mr. East from continuing to perform his highly valued work on behalf of the Board. This would be very unfortunate.

116. Committee work must be respected. Of course, the Board as a whole has ultimate decision-making duties, subject to delegation. The Board not only has the right, but the duty, to evaluate the work of its committees and their recommendations. However, I saw examples that could only be described as “micromanaging” issues already fully considered by committees. For instance, this included unnecessary “word-smithing” of the draft business plan at the Board level.

117. At the same time, I also observed issues being raised for the first time at a Board meeting, despite the prior opportunities for Board members to provide input at certain intervals in the process. I have already referred to the development of the business plan for which the committee and the external consultants did unnecessary work due to a lack of timely direction or guidance from the Board.

118. These observations should not distract from my ultimate conclusions that the Board is now fulfilling its statutory duties, that the quality of committee work was generally impressive, and that the Board members relate to each other in a respectful, positive way. I also acknowledge that there is no formula for how deferential the Board should be in considering the work done by its committees. Indeed, the answer is not to take a rigid approach to these issues. Sometimes issues will occur – and properly so – to Board members that require a detailed critique or consideration of the work done by a committee, even if the timing is unfortunate.

119. I provide the following guidance to address the issues identified above:

- All Board members should periodically remind themselves that some deference should be shown to detailed work done by a committee in determining the nature and extent of the Board’s ultimate approach to that work. Nonetheless, ultimate decision-making continues to reside with the Board as a whole.

- The Chair and the Board's General Counsel, when present, can play an important part in reminding the Board of its role.
- Generally speaking, detailed drafting at the Board level is unhelpful and does not represent a good use of the Board's time. The Board's focus should be largely on providing overall policy direction, rather than "word-smithing".
- Despite time constraints, Board members must collectively ensure that they are familiar with the distributed Board materials, including committee reports, in advance of their meetings, and take greater initiative in providing input to committees, when requested to do so, between regular Board meetings.
- The Chair should also assume greater responsibility for addressing workload imbalance as it arises. This may mean temporary re-assignment of Board members to a particular project or temporarily assisting committee members personally on that project.
- Workload issues may also mean greater involvement of the Board's General Counsel, now that this position has been filled, in providing support for committee work. My involvement in issues around the retention of lawyers (described earlier) was designed to ensure that legal services are provided in an efficient way and at competitive rates. But the Board cannot be "penny wise and pound foolish." The Board has a single executive assistant and no other support staff. The greater use of General Counsel to support the work of committees will ultimately be both cost-efficient and relieve some of the workload, which is now problematic. It will also assist the executive assistant in ensuring that her workload does not spiral out of control.

120. In summary:

- The members of the Board are part-time appointees with other personal and professional obligations. At the same time, civilian oversight of policing in Peterborough is complex and time-consuming. Care must be taken to avoid placing undue burdens on individual members or staff and in ensuring responsibility is shared through the effective use of delegation and committees.
- During my term as administrator, a disproportionate burden fell on the Chair and one of the Board members. This created delays, inefficiencies and at times, frustration.

I recommend:

- a. *The Board continue to address and clarify the respective roles of committees and the Board as a whole.*
- b. *The Board address the uneven allocation of work on a priority basis in accordance with the guidance provided above.*
- c. *The Board should consider greater delegation of the Chair's functions in some clearly defined cases.*
- d. *The Board should amend its by-laws to require that one of the two positions of Chair and Vice-Chair be held by a provincial appointee and the other by a municipal appointee.*

Independence of the Board and the Future Role of the Mayor

121. I said earlier that the Board must, to some extent, overcome the legacy of a tumultuous period in its recent history. I have already identified several important steps to enable the Board to do so, including frequent, regularly established communication between the Chief and the Chair, and the Board's public support for the Service and its senior leadership. Another important step relates to the Board's independence.

122. The members of the Board have an obligation to act in the best interests of the Service. Indeed, they are bound to comply with the Code of Conduct set out in O. Reg. 421/97. So, for example, they cannot use their office to advance their own personal interests. They must refrain from engaging in conduct that would discredit or compromise the integrity of the Board or the Service.

123. One of the Board's duties is to submit operating and capital estimates to the municipal council, showing the amounts required to maintain the police force and provide it with equipment and facilities; and to pay the expenses of the Board's operation other than the remuneration of the Board members. Municipal council establishes the overall budget for the Board, and in doing so, is not bound to adopt the estimates submitted by the Board. However, the municipal council cannot approve or disapprove specific items in the Board's estimates. Further, if the Board is not satisfied that the budget established for it by council

is sufficient to maintain an adequate number of police officers or employees or to provide the police force with adequate equipment or facilities, the Board may request that the OCPC conduct a hearing to resolve the dispute (see s. 39 of the PSA).

124. As noted earlier, three of the Board members are appointed by municipal council. One is to be a member of municipal council, and one is to be the Mayor or an alternative to the Mayor who will also be a member of municipal council. This creates an interesting and sometimes challenging dynamic when the duties of the Board and of the municipal council intersect. How these duties are reconciled is well beyond the scope of my report, except as discussed below. However, what is clear, in law, is that members of the Board, including a Mayor, are subject to the dictates of the PSA and its Regulations, including the Code of Conduct.
125. During the tumultuous period, some felt that some Board members were not acting in the best interests of the Service, and were advancing an alternative agenda. Given those perceptions, it is of particular importance that the Board both work collaboratively with municipal council, and show its independence from council when in the Service's interests.
126. During my term as administrator, I felt that the Board took significant steps to demonstrate its independence, while working with the municipal council. For example, the municipal council and the Mayor asked the Board to revisit last year's estimated budget, which it submitted to the municipal council. A motion by the municipal council asked that the Services' capital budget be revisited by the Board to consider reducing the budget by \$102,255 and suggested to the Board that it consider deferring vehicle purchases, such as the purchase of a new van for the employment of the Emergency Response Team, in response to the reduced budget allocation.
127. The Board did reconsider the budget that it had submitted, but decided that it should remain as is, a decision ultimately respected by the municipal council. Several Board members also expressed concern that it was inappropriate that the Mayor or the municipal council earmark a specific budget allocation for reconsideration, given council's lack of

authority to approve or disapprove specific items in the estimates under s. 39(4) of the PSA. The point here is that the Board showed independence from the Mayor and municipal council, but approached the issue in a respectful, constructive way. Another constructive dialogue took place over the allocation of surpluses created when the Service came in “under budget” in the last fiscal year.

128. Similarly, on several occasions, the Mayor has been publicly critical of representations made by senior leadership of the Service. He has challenged its use of resources, and its commitment to fiscal constraint. The tone of his remarks is sometimes strident, confrontational and can be disparaging. All of the Board members, in public session, expressed regret at some of the Mayor’s public statements. They felt that his comments, at times, are inaccurate and unfair, and equally important, unhelpful in restoring confidence in policing. In one instance, the Chair, Mr. Hall, responded to the Mayor in writing, pointing out how the Board had shown great fiscal responsibility in the budgets submitted to municipal council. The tone of the Chair’s response was respectful and in keeping with the view that the Mayor is entitled to his opinion. In fairness, the Mayor’s response was equally respectful and constructive.

129. Some of the Mayor’s detractors would have preferred a stronger response. That view was also understandable, given the Mayor’s history with the current Board and predecessor police services board, the Chief and Deputy Chief. However, the point here is that, whether one agrees or disagrees with how the Board dealt with this issue, it made a decision informed by all of the relevant factors, as one would expect from a functioning, independent board.

130. That being said, in discussing the future of this Board, there is undeniably an “elephant in the room.” It cannot be ignored. It relates to the future role, if any, of Mayor Bennett as a member of the Board.

131. A number of individuals have expressed their deep concern about the possibility that the Mayor will return as a member of the Board.

132. There is no doubt that views are polarized on the Mayor and his involvement with the Board. On one hand, some see Mayor Bennett as disruptive and divisive. They feel that the Mayor orchestrated a campaign of misinformation against the Chief and Deputy Chief, and set out to publicly humiliate them - and unfairly so. They believe that the Mayor bears a large share of the responsibility either directly or through his proxies for the tumultuous period in the Board's life, and that he continues to represent an impediment to the effective and efficient policing the community requires.
133. Such individuals point, as an example, to the dissolution of the former police services board as an attempted assertion of control on the Mayor's part.
134. Others praise the Mayor as an independent crusader for fiscal restraint by the Service. In their view, the Mayor appropriately questions whether the Service's allocation of resources is as efficient and effective as it might be.
135. Nothing in this report is intended to prevent or inhibit the Mayor from forcefully addressing the issues of concern to him. After all, he is the duly elected Mayor, a member of municipal council, and a member of the community serviced by the PPS. He is an important voice on the issues of local importance.
136. However, the question is whether the Mayor has a role to play, if he chooses to do so, as a member of the Board. In the past, the Mayor was precluded from sitting as a member of the Board pending the charges against him under the PSA, and during the period of suspension imposed on him. As previously indicated, his charges were mostly disposed of by the Divisional Court. He took no issue with the finding of misconduct that he made disparaging remarks about the Chief, the predecessor board and former police service. In relation to this finding of misconduct, the hearing panel made strong findings. It concluded, for example, that the "comments in public directly undermined the Board. To consciously sabotage the Board in public is contrary to any conduct expected of Board members particularly the conduct obligations explicitly articulated in the Code of Conduct."

137. After a prolonged legal dispute, the Mayor was successful in having all of the remaining charges dismissed against him. As a result of the disposition in the Divisional Court, the Mayor is no longer precluded from returning as a member of the Board.
138. In my respectful view, it would be unwise for him to return to the Board. This view is not only held by his detractors, but by some who admire him. As already stated in this report, the Board has been through a tumultuous period. It must now look forward. It would be difficult to be forward thinking if the Mayor or an obvious proxy for the Mayor became a Board member at this point in time.
139. First, as already indicated, the Mayor was found guilty of making disparaging comments about senior leadership of the Service. Although he abandoned any legal challenge to that finding, his public comments do not display any regrets for his misconduct. He is fully entitled to take that position as a non-member of the Board. However, it is not conducive to promoting and sustaining the healthier environment that now exists at the Board.
140. Second, the Mayor continues to sharply criticize the Service's senior leadership. At times, he uses inflammatory and divisive language. At one Board meeting, the Board collectively in public session lamented the unhelpful comments being made by the Mayor. Several indicated that they had counselled the Mayor not to comment in that way. In my view, there have been several instances where the Mayor's recent public comments were inaccurate and unfair to the Service and its leadership. Again, I fully defend the Mayor's right to vocalize any position – but the obligations of a member of the Board raise different considerations.
141. Third, the Service, its senior leadership and at least some of the rank-and-file officers, rightly or wrongly, have no confidence in the Mayor as someone who can objectively and fairly evaluate the work of the Service and work in a respectful way with its leadership. They believe that the Mayor continues to harbour animosity towards the Chief and Deputy Chief and as a result, will be unable to forge a respectful relationship with the Service and

its officers. A number expressed deep concern when the Mayor publicly expressed his desire to play a part in the selection of any new Chief or Deputy Chief.

142. To date, the Mayor has chosen not to return as a member of the Board. This can only be regarded as a wise decision in the best interests of the Service and the community. In the event that he chooses to return to the Board, the Solicitor General and the OCPC will have to decide whether to intervene to avoid a return to a dysfunctional period in the life of the Board. I recommend that any intervention should be timely.

143. The Board, as currently composed, has made significant strides. It would be unfortunate if the existing goodwill were undermined by the introduction of any polarizing influence at the Board.

144. In summary:

- Although the Mayor has a statutory right to sit on the Board, his past involvement has been highly contentious and contributed to some of the ongoing issues respecting the Board's ability to provide civilian oversight. Given the Mayor's history with the Board, it would be difficult for the Board to maintain its independence from municipal council should he chose to return to it. This independence is a necessary and important element of the public's confidence in civilian oversight of policing in Peterborough.
- Before and during my time as administrator, the Mayor made inflammatory, divisive and inaccurate comments about the senior leadership of the Police Service. Legitimate concerns have been expressed about the ability of the Board, and the Police Service itself, to function properly were he to return to the Board.

I recommend:

- a. The Mayor decide, in the public interest, not to sit on the Board.*
- b. Should the Mayor return to the Board, the Solicitor General and OCPC carefully consider taking timely and effective action to avoid any dysfunction that threatens the Board's ability to discharge its statutory responsibilities.*

A Succession Plan for Senior Leadership

145. Finally, I advised the Board during my term as administrator that I wanted to see a succession plan in place in contemplation of the retirement of members of senior leadership at the Service. Such a plan would promote an objective, evidence-based, non-partisan search for suitable candidates. It would provide opportunities for advancement within the Service, not merely opportunities for external hiring. It would be designed to inspire confidence in the process, and dispel concerns that someone not attempt to place their “thumb on the scale” or advance a personal agenda, rather than the best interests of the Service.

146. Through the hard work of Ms. Pritchard Pataki and Mr. McKaig, the outline of a succession planning process is well under way, and has attracted the full support of the Board. The need for such a process has also been identified in the new business plan. I recommend that the process be incorporated into written policy within six months of the release of this report.

147. In summary:

- A succession plan for senior leadership of the Police Service would inspire confidence that there is an objective, non-political process for the selection of senior leadership in the future.
- During my time as administrator, the development of a succession planning process has commenced. The need for such a process was identified in the business plan.

I recommend:

- a. There be a written policy incorporating the succession plan within three months.*

Conclusion

148. There continues to be challenges for this Board. Some question whether its members have merely been “on their best behaviour” for me, and will revert to dysfunction now that my term has concluded. I prefer to be optimistic about the Board and the good faith of its members. I am hopeful that the important steps taken during my term will be sustainable. I am also hopeful that additional steps will be taken in accordance with my recommendations. In addition to those already identified, I recommend that the Board participate in a facilitated governance retreat on an annual basis. (This is in addition to any training required by the Solicitor General pursuant to s. 31(5) of the PSA and s. 3 of O. Reg. 421/97.) I also recommend that within 12 months, the Board release a report publicly setting out what it has done to implement the other recommendations contained in this report.

149. The Board has the opportunity to succeed in leading what is already a progressive and efficient Police Service into the future. If it is unable to do so, the Solicitor General and the OCPC have tools available to them to act decisively and quickly.

Please email SLASTOinfo@ontario.ca for questions or additional copies of the report.