

HALTON REGIONAL POLICE SERVICES BOARD



BY-LAW NUMBER 2010-02

A By-law to establish guidelines for the administration of the complaints process under Part V of the Police Services Act – Complaints Against the Chief of Police or Deputy Chiefs of Police

WHEREAS Section 31(1) of the *Police Services Act*, R.S.O. 1990, c.P.15, as amended, provides that Police Services Boards are responsible for the provision of adequate and effective police services in the municipality and shall establish policies for the effective management of the police service;

AND WHEREAS Part V of the said *Act*, as amended by Bill 103, sets out obligations of Police Services Boards and Police Services relative to Public Complaints against a Chief of Police or Deputy Chief of Police;

AND WHEREAS Section 31(1)(i) provides that Police Services Boards shall establish guidelines for dealing with complaints made under Part V of the *Police Services Act*;

AND WHEREAS Section 31(6) authorizes Police Services Boards to make, by By-law, rules for the effective management of the police service;

AND WHEREAS the Halton Regional Police Services Board has considered the provisions of Part V in the context of its responsibilities under Section 31(j) of the said *Act* and advocates the principle that a fair, open, prompt, thorough and efficient response to Public Complaints is a cornerstone to establishing and maintaining a positive community-police relationship;

AND WHEREAS the Halton Regional Police Services Board deems it expedient to enact this By-law to ensure that the response to Public Complaints by the Board, adheres to the *Police Services Act* and the principles set out above.

NOW THEREFORE THE HALTON REGIONAL POLICE SERVICES BOARD ENACTS as follows:

1. DEFINITIONS

1.1 In this By-law:

- (a) "Act" means the *Police Services Act*, R.S.O. 1990, c. P.15, as amended,
- (b) "Board" means the Halton Regional Police Services Board;
- (c) "Chief" means the Chief of Police of the Halton Regional Police Service;

- (d) "Commission" means the Ontario Civilian Police Commission;
- (e) "Complainant" means a member of the public who makes a complaint in accordance with the provisions of the *Act*;
- (f) "Complaint" means an allegation made in writing on the Complaints Form and signed by a member of the public or the Board, about the conduct of the Chief of Police or Deputy Chief of Police;
- (g) "Complaints Form" means the form approved for use by the Office of the Independent Police Review Director;
- (h) "Conduct Complaint" means a complaint made pursuant to Section 69 related to the conduct of a Chief of Police or Deputy Chief of Police;
- (i) "Deputy" means the Deputy Chief of Police of the Halton Regional Police Service;
- (j) "Director" means the Independent Police Review Director appointed by the Lieutenant Governor in Council;
- (k) "Internal Board Complaint" means a conduct complaint filed by the Board pursuant to Section 77(1) of the *Act*;
- (l) "Misconduct" means an act or omission on the part of the Chief or Deputy Chief under Sections 80 and 81 of the *Act*;
- (m) "OIPRD" means the Office of the Independent Police Review Director;
- (n) "offence" means a violation of a law of Canada, or of a province or territory;
- (o) "Service" means the Halton Regional Police Service.

1.2 Wherever applicable in this by-law, the singular shall include the plural and the masculine gender shall include the feminine and vice versa.

2. **GENERAL**

- 2.1 A complainant may file a complaint regarding the conduct of the Chief or Deputy Chief in accordance with Section 61(8) of the *Act*.
- 2.2 The Board may generate a complaint on its own motion regarding the conduct of the Chief or Deputy Chief in accordance with Section 77 of the *Act*.
- 2.3 The OIPRD, in accordance with Section 56 of the *Act*, may provide guidance to the Board in the handling of complaints made by members of the public.

2.4 The OIPRD may examine and review issues of a systemic nature that are subject to or give rise to public complaints and may make recommendations on those issues to the Board or other prescribed parties.

2.5 A Board member is prohibited from making a complaint against the Chief or Deputy Chief.

3. **INTERNAL BOARD COMPLAINTS**

3.1 In initiating a complaint against the Chief or Deputy Chief, the Board is not a complainant for the purposes of Part V of the *Act*.

3.2 The Board shall promptly give notice of the substance of the complaint to the Chief or Deputy Chief, unless, in the Board's opinion, to do so might prejudice an investigation into the matter.

3.3 If after an initial review the Board is of the opinion that the Chief or Deputy Chief's conduct may constitute an offence, or misconduct, or unsatisfactory work performance, the Board shall ask the Commission to assign the Chief of Police of another police force to cause the complaint to be investigated promptly and the investigation to be reported on, in a written report at the Board's expense.

3.4 At the conclusion of the investigation, the Investigating Chief may form the opinion that the complaint is unsubstantiated and in such a circumstance, the Investigating Chief shall report that opinion in writing to the Board.

3.5 If the Board receives a written report from the Investigating Chief with the opinion that the complaint is unsubstantiated, the Board shall take no action in response to the complaint and shall notify the Chief or Deputy Chief who is the subject of the complaint in writing of the decision, together with a copy of the written report.

3.6 At the conclusion of the investigation, the Investigating Chief may form the opinion, on reasonable grounds, that the conduct of the Chief or Deputy Chief under investigation constitutes misconduct or unsatisfactory work performance. In such a circumstance, the Investigating Chief shall refer the matter to the Board together with a written report.

3.7 If the Board receives a written report from the Investigating Chief with the opinion that there are reasonable grounds to conclude that the conduct of the Chief or Deputy Chief constitutes misconduct or unsatisfactory work performance, the Board must make a decision regarding the seriousness of the misconduct or unsatisfactory work performance.

3.8 If the Board is of the opinion that the misconduct or unsatisfactory work performance is serious in nature, the Board shall hold a hearing into the matter or may refer the matter to the Commission to hold the hearing.

3.9 If the Board is of the opinion that the misconduct or unsatisfactory work performance is obviously not of a serious nature, the Board may resolve the matter informally without holding a hearing pursuant to section 93 of the *Act*, if the Chief or Deputy Chief consents to the proposed resolution.

- 3.10 If the Chief or Deputy Chief does not consent to an informal resolution as provided for in Section 77(8) and 93(3) of the *Act*, the Board shall hold a hearing in accordance with Section 77(7) of the *Act*.
- 3.11 Informal resolutions must be consented to by the Chief or Deputy Chief and the statutory 12 day cooling off period would not apply, unless it is a public complaint.
- 3.12 If an informal resolution is attempted but not achieved, the following rules will apply:
- a) the Board shall provide the Chief or Deputy Chief with reasonable information concerning the matter and shall give him an opportunity to reply, orally or in writing;
 - b) subject to subsection (c), the Board may impose on the Chief or Deputy Chief a penalty described in section 85(2)(d), (e) or (f) of the *Act* or any combination thereof, and may take any other action described in subsection 85(7), and may cause an entry concerning the matter, the penalty imposed or action taken and the Chief's or Deputy Chief's reply to be made in his or her employment record;
 - c) if the Chief or Deputy Chief refuses to accept the penalty imposed or action taken, the Board shall not impose a penalty or take any other action or cause any entry to be made in the employment record, but shall hold a hearing, or refer the matter to the Commission to hold a hearing under subsection 85(7) of the *Act*.
- 3.13 An entry made in the Chief's or Deputy Chief's employment record under Section 77(9).2 of the *Act* shall be expunged from the record two years after being made if, during that time, no other entries concerning misconduct or unsatisfactory work performance have been made in the record under Part V of the *Act*.
- 3.14 The Board is responsible for the costs of the external investigation and any hearing process undertaken by the Commission.
- 3.15 The Commission may at any stage in the complaints process direct the Board to deal with the complaint as it specifies in accordance with Section 78(1) of the *Act*.

4. **PUBLIC COMPLAINTS**

- 4.1 All complaints about a Chief or Deputy Chief must be made to the OIPRD. The Board recognizes that it has no authority to initially receive a complaint. The Board shall forward any complaint received to the OIPRD within 3 days of its receipt.
- 4.2 The OIPRD will undertake the preliminary screening of the complaint in accordance with Section 60 of the *Act*. The initial screening will consider whether the complaint is made within the statutory six (6) month time frame; whether the complaint is frivolous or vexatious, or whether the complainant was directly affected by the conduct.
- 4.3 If the complaint passes the preliminary screening, the OIPRD shall refer all complaints about a Chief or Deputy Chief to the Board for review in accordance with Section 61(8) of the *Act*.

- 4.4 When a public complaint is referred to the Board by the OIPRD, the Board shall give notice of the substance of the complaint to the Chief or Deputy Chief in accordance with Section 62(5) of the *Act*, unless in the Board's opinion, to do so might prejudice an investigation into the matter.
- 4.5 When a public complaint is referred to the Board, the Board must first review the complaint and if at the conclusion of the review, the Board decides:
- (a) the conduct is not an offence, misconduct or unsatisfactory work performance, then the Board shall take no action and shall notify the complainant, the Chief or Deputy Chief and the OIPRD in writing of the decision, with reasons; or
 - (b) the conduct complained of is an offence, misconduct or unsatisfactory work performance, then the Board must ask the OIPRD to investigate and provide a written report, at the Board's expense.
- 4.6 If at the conclusion of the investigation, the OIPRD is of the opinion that the complaint is unsubstantiated, the OIPRD shall report this conclusion in writing to the Board and the Board shall take no action regarding the complaint. The Board shall notify the complainant and the Chief or Deputy Chief in writing of the decision and provide a copy of the OIPRD report.
- 4.7 If at the conclusion of the investigation, the OIPRD is of the opinion, on reasonable grounds that the conduct constitutes misconduct or unsatisfactory work performance, the substantiated complaint is referred to the Board together with a copy of the OIPRD written report. If the OIPRD is of the opinion that the conduct of the Chief or Deputy is not of a serious nature, the OIPRD can advise the Board when it submits the complaint to the Board.
- 4.8 If the Board receives a written report from the OIPRD under Section 69(6) substantiating the complaint, the Board must assess whether the conduct is of a serious nature.
- 4.9 If the Board views the complaint as serious, it shall hold a hearing into the matter or refer it to the Commission for a hearing.
- 4.10 If the Board considers the matter not to be of a serious nature, the Board may resolve the matter informally without holding a hearing if the Chief or Deputy Chief and the complainant consent to the proposed resolution.
- 4.11 The Chief or Deputy Chief and the complainant who consent to an informal resolution may revoke the consent by notifying the Board in writing of the revocation no later than 12 business days after the day on which the consent is given.
- 4.12 If consent is not revoked by the Chief or Deputy Chief or complainant, the Board shall give notice of the resolution to the OIPRD and shall provide the OIPRD with any other information respecting the resolution that the OIPRD may require.
- 4.13 If consent to the informal resolution of a matter is not given or is revoked, the following rules apply:
- a) the Board shall provide the Chief or Deputy Chief with reasonable information concerning the matter and shall give him an opportunity to reply, orally or in writing;

- b) subject to subsection (c), the Board may impose on the Chief or Deputy Chief a penalty described in Section 85(2)(d), (e) or (f) of the *Act* or any combination thereof, and may taken any other action described in subsection 85(7) and may cause an entry concerning the matter, the penalty imposed or action taken, and the Chief's or Deputy Chief's reply to be made in his or her employment record;
 - c) if the Chief or Deputy Chief refuses to accept the penalty imposed or action taken, the Board shall not impose a penalty or take any other action or cause any entry to be made in the employment record, but shall hold a hearing, or refer the matter to the Commission to hold a hearing under subsection 85(7).
- 4.14 Any entry made in the Chief or Deputy Chief's employment record under Section 69(12) shall be expunged from the record two years after being made, if during that time no other entries concerning misconduct or unsatisfactory work performance have been made in the record.
- 4.15 Section 69(15) authorizes the Board and Chief or Deputy Chief to enter into an agreement to permit penalties or actions other than those permitted by Section 69 if the Chief or Deputy Chief consents, without a hearing.
- 4.16 In accordance with Section 72(3) of the *Act*, the OIPRD has the power, at any time after a public complaint has been made and before a hearing is commenced, to:
- (a) direct the Board to deal with the complaint as the OIPRD specifies;
 - (b) assign the conduct of a hearing to the Commission, or
 - (c) take or require to be taken by the Board any other action with respect to the complaint that the Director considers necessary under the circumstances.
- 4.17 If at any time during a review or investigation into a complaint about the conduct of the Chief or Deputy Chief the conduct appears to be obviously conduct that is not of a serious nature, the Board may resolve the matter informally, if the chief of police or deputy chief of police and the complainant, if any, consent to the proposed resolution.
- 4.18 If a complaint made by a member of the public is informally resolved under section 18, the Board shall give notice to the OIPRD of the resolution, and shall provide to the Director any other information respecting the resolution of the complaint that he or she may require
- 4.19 A hearing held by the Board shall be in accordance with the provisions of the *Statutory Powers Procedure Act*.

5. WITHDRAWAL OF PUBLIC COMPLAINTS

- 5.1 A complainant who has made a public complaint against the Chief or Deputy may withdraw the complaint on notice to the OIPRD unless a hearing in respect of the complaint has commenced.
- 5.2 If a complaint is withdrawn, the OIPRD will notify the Board.
- 5.3 Within 30 days of receiving the OIPRD notification of the withdrawal of the complaint, the Board shall make a determination of whether it is appropriate to continue to deal with the complaint.

- 5.4 Within 30 days of receiving the OIPRD notification of the withdrawal of the complaint, the Board shall notify the Chief or Deputy Chief of the withdrawal and whether it seeks to continue to deal with the complaint.
- 5.5 If the Board determines it appropriate to continue with a complaint, the complaint shall be processed in accordance with Section 77 of the *Act*, namely as a Board initiated complaint.
- 5.6 The notification obligations of the Board are subject to the Board's discretion to delay notification, if to do so may prejudice the investigation.
- 5.7 A complainant may withdraw their complaint against the Chief or Deputy Chief after the hearing has commenced if the Board and the OIPRD consent.

6. **RESIGNATION**

- 6.1 If at any time after a complaint about the conduct of the Chief or Deputy Chief is made, either by the Board or a public complainant, and the Chief or Deputy Chief resigns before the complaint is finally disposed of, the Board shall take no further action.
- 6.2 If the complaint was made by a member of the public, the Board shall promptly notify the OIPRD of the resignation of the Chief or Deputy Chief.
- 6.3 If the complaint was initiated by the Board, the Board shall promptly notify the Commission of the resignation of the Chief or Deputy Chief.

7. **PUBLICATION OF DECISIONS**

- 7.1 The Board shall ensure that every decision made by it after a hearing held under Subsection 69(8) is made available to the public in the manner that it considers appropriate in the circumstances and shall give a copy of ever such decision to the OIPRD.

8. **EFFECTIVE DATE:**

- 8.1 This by-law is hereby enacted by the Halton Regional Police Services Board on this 16th day of December, 2010, and shall take effect immediately upon its passing.

CHAIRMAN

EXECUTIVE DIRECTOR