



POLICING IN 2020 AND BEYOND:

PAO Perspective on Ontario's Policing Landscape

2020 is likely to be remembered as a pointed time in history for policing in North America. In the midst of a global pandemic, scores of community members have come together in protest to demand that political leaders at all levels of government take steps to immediately address issues that have prevented the provision of policing in communities from meeting the necessarily high standards set by that community. At the top of these issues is the continued, pervasive effects of systemic racism. In addition to calling out racism, many community members and civic leaders have also pointed to perceived issues in the structural elements of the policing framework as an impediment to meaningful reform.

A number of issues have been raised in relation to this movement, and they all share the theme of changing the current policing model in Ontario. It is vital that Black, Indigenous and People of Color (BIPOC) voices be central to any discussion around changes to Ontario's policing model.

Where appropriate, it is necessary for policing stakeholders to play a role in these ongoing discussions, including police associations. In order to affect any necessary change, it is important to understand the current framework around police associations and their involvement in the way that policing is provided in their communities.

The Role of the Police Association

Ontario has over 50 regional and municipal police services, 47 of which have local police associations that are members of the Police Association of Ontario. The employees of those services, like all Canadians, have the right to collectively bargain the terms of their employment. Once a workplace is governed by a collective agreement, the union or association is the way in which workers assert their collective rights. In a typical workplace, these rights are broad and impact all elements of employment. Sometimes workers gain greater rights in the workplace by collectively withdrawing their work through an organized strike.

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Ontario's *Police Services Act*, and its not-yet-in-force successor, *Community Safety and Policing Act*, outlines a great deal of the terms of work for a

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police officer and civilian police service employees. These Acts restrict police employees' right to collectively bargain. Police officers cannot bargain regarding misconduct, discipline, or civilian oversight. On top of this, police officers are not protected by the minimum standards set out by the *Employment Standards Act* (ESA) that governs things like breaks between shifts, minimum wages, call-in pay, and other standards that nearly every other worker in Ontario receives and may take for granted. Instead, police officers must use their bargaining power to replicate, or in some instances exceed, ESA standards.

All police employees are prohibited from going on strike or working-to-rule. In the event that there is a disagreement about the collective agreement, or the employer/police service board and association are not able to agree on a contract, a mandatory arbitration process is undertaken that is binding for both parties.

When the collective agreement is violated by the employer, the association has a legal duty to seek a solution. This is called the "duty of fair representation". Even in cases where a majority of the membership would prefer that a member be treated in a way that violates the collective agreement, the association's duty does not change. The association also has a duty to ensure that the employer is providing a safe workplace in line with the *Occupational Health and Safety Act*.

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The duty of fair representation does not apply to police officer misconduct matters. By law, misconduct is not a matter between the association and the employer/police services board but between an individual officer and the Chief of Police. The law sets out the behaviours that constitute misconduct and the process that a police chief must follow if they wish to discipline a

member. The association's role is not to "protect" the member from serious discipline but to ensure that the Chief is following the processes laid out in the *Act* that are meant to ensure due process for the officer and accountability for the police service as a whole. For more on this, please refer to the Misconduct and Transparency section below.

The PAO has heard calls for reform that include taking "power" away from police unions. Again, under Ontario's framework, police associations have limited ability to set the manner in which policing is provided, the consequences for misconduct, or the tactics used by police generally. These matters are either set by law or subject to the discretion of the local chief. When a police association is involved in these sorts of conversations, it is only to ensure that the *Charter* rights of individual workers to bargain collectively are respected and the processes set by legislation or the collective agreement are followed.

Police Funding

Local police services in Ontario are funded directly from the municipalities in which they operate. Municipal budgets are made up of a variety of different funding sources such as property taxes, user fees, fines, and grants from provincial and federal governments. Municipal councils decide how to distribute this budget among the various services they provide, and their role includes approving budget requests from the local police services board.

In Ontario, police service budgets average 14% of a municipality's total budget (FIR 2018, <https://efis.fma.csc.gov.on.ca/fir/FIR2019.htm>), with some communities funding police services as low as 8% and others as high as 20%. The share of municipal budgets dedicated to policing has remained static over the last five reporting years (2013-2017) (FIR, 2018). Despite this, demands on policing as a community service have increased significantly. Though there are multiple examples of this throughout the province, in York Region, their police service has experienced a 47% increase in mental health-related calls to police over a 7-year period. In 2012, the service recorded 3,007 mental health-related calls, and that rose over the years to 4,430 calls in 2018 (Anderson, The Globe and Mail, <https://www.theglobeandmail.com/canada/article-forced-to-the-frontlines-of-mental-health-police-have-become-the-new/>).

When communities call for police services to be “defunded” in favour of more mental health and social programming, they are echoing the sentiment of police unions. Our members are first hand witnesses to what occurs when a province and/or a community systematically fails to devote adequate resources to preventative, localized measures that are meant to assist individuals in vulnerable circumstances. We believe that it is preferable to increase funding to these types of programs as opposed to defunding police in order to set up a parallel 24/7 first responder network of specialists, such as social workers, addictions counselors, and medical professionals. Police already have the infrastructure to respond to calls for assistance in an expedited fashion. Communities should aim to leverage this existing structure to get more specialists working collaboratively with emergency services in our communities. This would allow for individuals in distress to get the right help at the right time while ensuring that the potential volatility of any call for emergency assistance is managed with a priority for the safety of all involved.

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In determining what other systemic changes are needed in our communities across Ontario, local leadership should be actively listening to and amplifying BIPOC voices to learn more about where and how to effectively deploy civic resources to ensure that prevention and response strategies are customized wherever necessary and not implemented on a one-size-fits-all framework.

Body-Worn Cameras

Whether or not body-worn cameras are adopted is not dependent on the consent or support of the local police association. Every police service in Ontario could, if so desired, implement a body-worn camera program in its community. The PAO supports the adoption of body-worn

cameras as they will likely act as another tool to maintain transparency and build public trust in policing.

With this being said, body-worn cameras should not be considered a panacea to address the issues present in local policing today. Body-worn cameras do not see inside of an officer's mind and do not inform the viewer of the myriad other factors that may contribute to various

enforcement or public safety provisions. In addition, cameras create significant privacy concerns around minors in the justice system as well as members of the general public. Before endorsing or demanding a body-worn camera program, advocates should ensure they have turned their minds to camera storage, access, and use of footage; rules around activation and deactivation; and community sentiment about potentially being filmed without explicit consent.

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Public Oversight

There is no reason for a modern policing system to not have robust oversight performed by bodies unaffiliated with the police. In Ontario, there are three such bodies:

- The Special Investigations Unit (SIU) investigates potential crimes committed by police when a person is seriously injured, dies, or makes an allegation of sexual assault.
- The Office of the Independent Police Review Director (OIPRD) manages the public complaints system and investigates complaints where there is a public interest in an independent misconduct investigation.
- The Ontario Civilian Police Commission (OCPC), investigates police services themselves and chiefs of police. They are also the appeals body for police officer misconduct matters.

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These oversight bodies are not without their flaws but it's the view of the PAO that they are appropriately powerful and robust.

When the SIU is called to investigate an incident, those police members who were involved but are not directly under investigation are compelled by law to participate in interviews with the SIU about the events giving rise to the investigation. Members are denied the right to counsel established by the *Charter* until they have filed a potentially self-incriminating narrative of the events with the police service. The SIU has robust access to records and evidence, much of

which can be seized without a warrant. The officer under investigation may be suspended, or passed over for advancement opportunities, while the investigation is ongoing. These are all appropriate measures given the extraordinary powers vested in police officers to use force in the lawful execution of their duties.

Police associations often negotiate with police services for the provision of legal counsel for members who are required to interact with the SIU either as the subject of an investigation or as a compelled witness. We support the right of every Canadian who interacts with the justice system to have qualified, competent legal counsel guide them in these interactions. Police associations may also engage with SIU personnel to ensure that the relevant law is being followed and to ensure that members who may have experienced trauma receive the care they need in a timely fashion.

On the public complaints side, the OIPRD (and its eventual successor, the Law Enforcement Complaints Agency) is also a powerful public agency. The Director has extensive powers to investigate police members and to seize evidence. Under the new *Act*, it is a crime for a member of a police service, including the officer under investigation, to fail to comply with a direction from an investigator.

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Misconduct and Transparency

As mentioned, unlike some policing counterparts in the United States, police officers in Ontario are not permitted to bargain around their discipline system. In fact, the association has no formalized legal role in the discipline process under the

current *Police Services Act* or the forthcoming *Community Safety and Policing Act* (CSPA). The behaviours that constitute misconduct are set by public regulation and it is up to the local Chief to determine a fit punishment. In the event that the misconduct is serious enough to warrant demotion or dismissal, a public hearing must be held. Public hearings are also held when the officer feels that the Chief has imposed inappropriate discipline and wishes to engage in a formal process. The Complaints Director may also direct that public hearings be held.

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When facing discipline, police officers are subject to measures that would be unlawful for other workers in Ontario. Earned wages can be withheld or deductions from banked time can be made. This means that police officers are sometimes forced to work for free when they have been found to have committed even very minor misconduct.

The police misconduct framework is essentially a method by which workplace issues are given an appropriate public element to recognize that such workplace transgressions can sometimes be perceived as a betrayal of the public faith placed in each police officer. Again, the police association does not have the same power as a typical bargaining agent to negotiate around discipline or launch a grievance when discipline is unwarranted. Given that, police associations will sometimes choose to provide support to members who are facing discipline – the support of one’s union is something every unionized employee in the country should be able to count on when faced with the sometimes-heavy hand of the employer’s disciplinary decisions.

Conclusion

If Ontario’s police services wish to continue providing the community safety, emergency response, and law enforcement functions that they have in the past, they will have to reckon with the issues raised by the public in 2020. These issues are not new, and work continues to root out and eliminate systemic racism, conscious and unconscious bias, abuse of power, and unnecessary force.

Police association members, by-and-large, are prepared to renew and commit to this work. Our leaders stand ready to listen, learn and answer any questions about the role they play in the policing framework. If all police stakeholders can take the same approach, policing in Ontario will continue to be among the most well-regarded systems in the world.