

Independent Citizen Governance of Police - Reasons & Principles

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Introduction

Police governance in Ontario varies greatly across the province. There are a range of different governance models provided for in the Police Services Act with different responsibilities and authorities accorded to differing municipal structures and approaches to policing. There is wide variation in the application of similar models. There is inconsistent understanding and application of legislated governance responsibilities among “governors”, municipal representatives and the general public. There are also widely varying opinions on the distinctions between police governance and police operations with complex and controversial tension between what precisely is included under the ambit of strategic direction and where operational decisions step into the realm of legitimate accountability.¹

In realistic terms, police governance in Ontario relies more on individual diligence and personality to succeed rather than on legislative design, empowerment and support.

The Ministry of Community Safety and Correctional Services (MCSCS) recognizes these inconsistencies and legislative shortcomings, and is currently exploring structural and procedural options for local governance of police in Ontario.

The purpose of this paper is to inform the Government of Ontario’s decisions regarding the future of police governance, and to share the perspective of the Ontario Association of Police Services Boards with the broader public safety community. This paper is intended to influence future legislation, rather than be bounded by existing legislation.

It is important to emphasize that this paper addresses police “governance” and not police “oversight.” Murphy and McKenna (2007) of Dalhousie University have commented on that.

“It is also useful to make a distinction between police governance and police oversight. Police governance is more closely aligned with the approaches taken to the overall guidance and direction of a police service, including the formulation of organizational strategic goals and objectives. Police oversight is commonly

¹ *Rethinking Police Governance, Culture & Management*, Christopher Murphy and Paul McKenna, Dalhousie University, Dec 3, 2007, p. 38 http://www.publicsafety.gc.ca/cnt/cntrng-crm/tsk-frc-rcmp-grc/_fl/archive-rthnk-plc-eng.pdf

associated with the mechanisms and methods established for the handling of complaints against a police service, including those pertaining to policy or individual officer behaviour.”²

We believe that sound decisions regarding future police governance format and methodology must first consider the purpose of local governance of police, and its associated principles before they address the mechanics. To be meaningful, structural design and associated procedures of police governance must be driven by, and therefore subordinate to, that purpose. In other words, form must follow functional intent.

In this paper we identify the pressing social imperative for independent local governance of police, as well as the principles that might guide functional intent. We believe this paper should serve as the framework from which the specific design (e.g. size and composition) and mechanics (e.g. appointment processes, training, etc.) should be subsequently determined.

Reasons for Independent Citizen Governance of Police

Policing throughout the British Commonwealth, including Ontario, is based on Sir Robert Peel’s *Principles of Policing* dating back to 1829. Central to these principles is the notion of **Policing by Consent**: “the ability of the police to perform their duties is dependent upon public approval of police existence, actions, behavior and the ability of the police to secure and maintain public respect.”³

Policing by consent is rooted in the understanding of, and ability to respond to, *local* needs, values and expectations⁴. For policing to be effective in a democracy, it must be based on community-wide consent for police to exercise their extraordinary powers over fellow citizens. Furthermore, “consent is not unconditional, but depends on proper accountability, and the police should be accountable in two senses – the “subordinate or obedient” sense and the “explanatory and cooperative” sense.”⁵

² Murphy and McKenna, 2007, p. 38

³ <https://www.gov.uk/government/publications/policing-by-consent> , 10 Dec 2012

⁴ Manitoba Police Services Act

⁵ *A New Beginning: Policing in Northern Ireland*, United Kingdom, Independent Commission on Policing for Northern Ireland (Rt. Hon. C. Patten, Chair), London, 1999, <http://cain.ulst.ac.uk/issues/police/patten/patten99.pdf>

In order to maintain that public consent, police must exercise their powers with integrity and transparency, and be accountable⁶ to a governing authority. That governing authority, which represents the community, should be separate and distinct from local government, in order that the police may be instruments of the law and safety in the public interest, rather than instruments of government (or any individual for that matter).⁷ Hence emerges the notion of independent citizen governance of police.

The role of independent citizen governance of police is to hold police to account for the use, and non-use, of their extraordinary powers in the community. The role is exercised by the governing authority (a board or commission) by (1) defining the community's needs, values and expectations, (2) empowering the police to act on behalf of and within the community (i.e. consenting), and (3) holding the police to account for their actions and inactions. Refer to Figure 1 – The Role of Governance of Police.

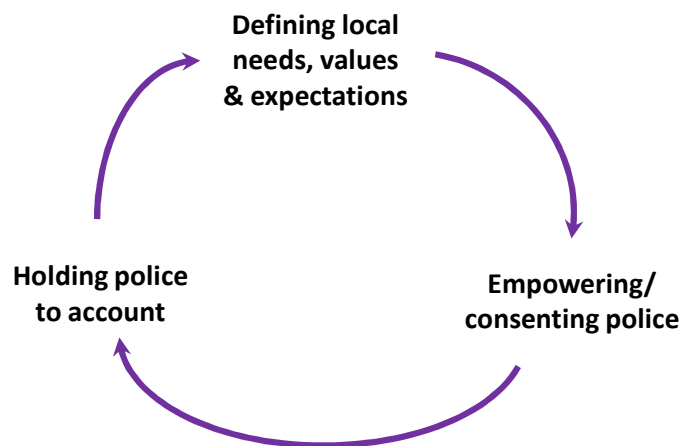


Figure 1 – The Role of Governance of Police

Principles of Independent Citizen Governance of Police

The following principles have been identified to guide the development and practice of independent citizen governance of police. The principles are inter-related and can be likened to success factors: the more these principles are present in the design and practice of police governing authorities, the more effective the governing authority will

⁶ "Surveillance Camera Code of Practice". UK Government Home Office. June 2013. p.5

⁷ Calgary Police Commission, <https://www.calgarypolicecommission.ca/content/about-us>

be. Conversely, the absence of these principles in the design and/or practice of a police governing authority will result, at best, in its ineffectiveness and/or irrelevance.

1. **Relevant Responsibilities and Authority.** First and foremost, the responsibilities of a local police governance body must be relevant to the needs, values and expectations of the local community. Its legislated governance authority must be sufficient to effectively align police activities with community requirements through a robust program of performance evaluation and, where needed, corrective action. Legislated governance responsibilities and authorities must embrace all that police do, and don't do, while at the same time preventing the governing authority from interfering with ongoing police operations. This is how public consent for policing should be appropriately garnered.

Relevant responsibilities and authority serve to instruct the scope and nature of governing policies and decisions. The clearer, more relevant and more robust legislated governance responsibilities and authorities are, the more likely that local police activity will be relevant to community needs, values and expectations. For example, "recruit and appoint the chief of police" clearly articulates a police services board's responsibility and authority, while "monitor his or her performance" is neither a clear statement of responsibility and authority, nor is it robust. A more appropriate, more transparent, and more accountable statement of responsibility and authority would be "evaluate his or her performance", or perhaps even more appropriately "evaluate organizational performance or the police service/service provider".

2. **Stewardship.** Stewardship is the ethical concept and practice of putting the public safety interest ahead of the interests of any particular individual or group, including police officers and police services board members, and local politicians. Good stewardship ensures that police priorities, objectives and activities benefit the community as a whole, and ensures that no one person or group of persons can profit – financially, influentially or electorally – as a result of police activities. Independent citizen governance of police needs to be designed, legislated, resourced and overseen in a manner that ensures that stewardship is facilitated, and conflicts of interest can be, and are, effectively and expeditiously dealt with.

Otherwise, governance effectiveness is dependent upon personalities rather than legislative design, empowerment and support.

3. **Independence.** To prevent undue interference with planned and ongoing police operations, the governing authority must be sufficiently independent from the police, from special interest groups, from police sector suppliers, and from governments. “The police still have this duty to the public and not to any one person or group in particular. Because of this, the police do not take direction from politicians but instead work to do what’s best for everyone in society.”⁸ In independent citizen governance of police local government is a constituent party, rather than the other way around. “The power of the police coming from the common consent of the public, as opposed to the power of the state.”⁹
4. **Universality.** Public consent for police is obligatory in a democratic society; independent citizen governance of local policing should also be obligatory. In the absence of governance mechanisms, there is no accountability for the fulfillment of local needs, values and expectations - and without such accountability there can be no public consent. Independent governance must be in place for all the communities in Ontario, not just some of them. To fulfill this principle, everywhere in Ontario where municipal policing occurs or could occur must be the jurisdiction of an independent citizen governing authority, i.e. a police services board.
5. **Competent, Supported and Accountable.** To fulfill its mandate, the independent citizen governance of police agency (i.e. police services board) must be competent in its work. Its policies and plans must be forward-looking, relevant to its community’s requirements, timely and clearly communicated. Its audits of organizational performance must also be relevant to community requirements, and they must be rigorous and demonstrate integrity and transparency. Finally, its decisions must be sound, timely, transparent and well-communicated.

⁸ Calgary Police Commission, <https://www.calgarypolicecommission.ca/content/about-us>

⁹ *Policing by Consent*, UK Government. 10 December 2012.

<https://www.gov.uk/government/publications/policing-by-consent>

The police services board needs to be comprised of a representational sampling of the community it represents. At the same time, board members must have the requisite skills, knowledge and abilities to effect sound public safety policies, plans, evaluations and decisions. The board as a whole must include sufficient professional diversity to possess the range of expertise needed for rigorous inquiry into police plans and activities, e.g. professional backgrounds in community engagement, community safety, policy development, strategic planning, organizational evaluation, risk management, financial oversight, etc. The more competent the board members, the more likely the board as a whole will be competent and meaningful to the community.

As the goal is *effective* governance of police, board member remuneration should reflect the quality of board member desired. Furthermore, each board should be supported by capable support staff, and/or independent contractors, for strategic planning and organizational evaluation. The board should not be reliant on the police or the municipal government for planning, developing board policies, evaluating organizational performance, decision-making or communicating. If the police services board relies on others to do its work for it, then it is dependent – not independent.

Board member training should be relevant, robust, empowering and mandated province-wide. This will help ensure consistency in independent citizen governance among communities across the province. The skills and knowledge needed to govern police must be inculcated in all board members, regardless of background. This implies that, in addition to information, board members require experiential training, feedback and coaching.

Finally, just as the police must be transparent and accountable, so must police services boards. “Legitimacy of policing in the eyes of the public is based upon a general consensus of support that follows from transparency about their powers, their integrity in exercising those powers and their accountability for doing so.”¹⁰ The Provincial Government, and/or an independent oversight agency (e.g. the Ontario Civilian Police Commission) should be evaluating each board’s fulfillment

¹⁰ *Policing by Consent*, Dec 2012

of their responsibilities, and taking corrective action as necessary. Board member misconduct should be subject to significantly stronger penalties than dismissal. To be effective, those provincial agencies to which police services boards are accountable must themselves be competent regarding local independent governance of policing.

Next Steps

Independent citizen governance of police should now be designed based upon the five principles explained above. The design should include:

- Board responsibilities and authorities
- Board composition and appointment process including selection criteria and appointing authority(s)
- Mandatory governance training
- Board member compensation
- Board staffing, funding and resourcing
- Individual board jurisdictions (i.e. service(s), functions and territory)

Subsequently, change plans should be developed and new legislation regarding independent citizen governance of police should be enacted.

As public safety models become more and more integrated, consideration should also be given to governance of public safety at large, including both public and private sector service providers in addition to police.

Summary and Conclusion

Police in Ontario ‘police by public consent’. That consent is not unconditional. Rather, it is dependent on police integrity, transparency and accountability. The role of independent citizen governance of police (i.e. police services boards) is to hold the police to account by defining community needs, values and expectations; empowering/consenting police activity; and evaluating police organizational performance.

Five inter-related principles, or success factors, define how police services boards should be legislatively designed and how they should perform. Their inclusion correlates directly with governance relevance and effectiveness; their absence correlates with irrelevance and/or ineffectiveness. They are:

1. **Relevant Responsibilities and Authority.** The clearer, more relevant and more robust that legislated governance responsibilities and authorities are, the more likely that local police activity will be relevant to community needs, values and expectations.
2. **Stewardship.** Independent citizen governance of police needs to be designed, legislated, resourced and overseen in a manner that ensures that stewardship is facilitated, and conflicts of interest can be, and are, effectively and expeditiously dealt with.
3. **Independence.** The governing authority (i.e. police services board) must be sufficiently independent from the police, from special interest groups, from police sector suppliers, and from governments.
4. **Universality.** Everywhere in Ontario where municipal policing occurs or could occur must be the jurisdiction of an independent citizen governing authority, i.e. a police services board.
5. **Competent, Supported and Accountable.** Police services boards must be competent in developing policies and plans, evaluating organizational performance, and making sound public safety decisions. They must be representative of their communities, and at the same time include the professional diversity needed for rigorous inquiry of police plans and activities. They must be appropriately supported by staff and/or consultants, with expertise in strategic planning and organizational evaluation, who are independent of the



police service and municipality. Board member remuneration should reflect the quality of board member desired, and board member training should be relevant, robust, empowering and mandated. Boards must be held to account by credible, competent oversight agencies.

Independent citizen governance of police should now be designed based upon the five principles explained above, change plans developed and new legislation enacted.

As public safety models become more and more integrated, consideration should also be given to governance of public safety at large.