

Research Article

THE POLICE EXECUTIVE AND GOVERNANCE: ADAPTING POLICE LEADERSHIP TO AN INCREASE IN OVERSIGHT AND ACCOUNTABILITY IN POLICE OPERATIONS

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In a democracy, it is generally understood that the police serve at the will of the people and are accountable through police governance. This usually consists of elected and/or appointed officials whose primary legal authority is to set policy and appoint the police leaders whom they hold accountable for ensuring that effective policing operations are carried out. It is widely held in common law jurisdictions that the governing body is limited in their role and cannot get involved in “operational policing issues.” In June 2010, the G20 world leaders’ conference was held in Toronto, Canada. The events surrounding the police actions during this conference caused a great deal of concern and led the Toronto Police Services Board, who are the governing authority for the Toronto Police Service, to commission a review to look at their own role. The findings in relation to “board” involvement in the operational side of policing challenged a long held belief regarding the limited role of governance in police operations. These findings will be examined in relation to the lack of board expertise and the challenges faced by police leaders to adapt and develop their attitudes, skills and abilities to respond to any expansion of governance authority.

Keywords: police governance, police leadership, police executive, police operations

INTRODUCTION

This study will examine the role of the Toronto Police Services Board (‘the board’), the governing body of the Toronto Police Service, in relation to the findings of a report done by Justice John Morden (2012) who reviewed the actions of the police during the G20 world leaders’ meeting in Toronto in June,

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2010. Though Morden's comprehensive report looks at many areas related to the police response, the focus of this paper is on the findings related to the role of the board in police 'operations'. If Morden's findings are accepted and adopted, this will alter the police chief/ board relationship and will create new challenges surrounding developing board competence as well as creating an increased responsibility for the chief police executive to inform the board on operational issues that have traditionally been understood as being the exclusive purview of the chief.

BACKGROUND

The Toronto Police Service is the largest municipal police force in Canada with about 5,600 police officers serving a population of 2.8 million people, and an annual operating budget approaching CAN\$1 billion dollars (Toronto Police, 2011, p. 5).

The police service is led by a chief of police who is appointed by the governing police services board that is comprised of seven members; four are appointed by the City of Toronto and the other three are appointed by the Province of Ontario. The legislation that enables this governance structure is the *Police Services Act* of Ontario (RSO, 1990).

In Canada, the constitutional responsibility for policing falls to the individual provinces. With the exception of the federal police known as the Royal Canadian Mounted Police, and two provincial police services in Canada that report directly to government; the rest of the country has numerous local municipal police services that report directly to their police services boards that are created by provincial statute (Randal & Ramirez, 2011, p. 7). The traditional view in this governance model is that the police have autonomy over their operations and the board's role is to develop policy (Sossin, 2007, p. 48). This leads to the question: what is the municipal board's authority in police operations?

Between 25 and 27 June 2010, the G20 world leaders' conference was held in Toronto, Ontario, Canada. This event required a large police presence. A major concern in the planning stages was the protection of the world leaders and the security of the downtown area of Toronto. An important consideration was the disruption caused at previous G20 conferences by a group known as the "Black Bloc." During the three days of the Toronto conference there was a great deal of violence and damage attributed to the Black Bloc. Police cars were

burned and property was damaged amounting to millions of dollars. The police response was to arrest over 1,000 people and, at one point, use a crowd control technique called *kettling* to confine the movement of several hundred people who were exposed in the rain for several hours. Many of these people had no involvement in the demonstrations at all. At the conclusion of the conference there was a media and public outcry as to the perceived human rights abuses and the apparent lack of accountability and control over the police (G20 Breach of Peace Report, 2011; Morden, 2012; G20 After Action Report, 2011; G20 Public Hearings Report, 2010).

The police services board was asked to explain what direction was given by the board, and what role did they play in the planning and oversight of the police actions. The chair of the board indicated that; despite requesting information from the chief prior to, and during, the G20 conference, the board had little information and no input into setting policy. The reason given was that it was understood that this was an operational matter and thus they had no authority to ask because they could not interfere in police operations (Poisson & Yang, 2012).

The Toronto Police Services Board subsequently commissioned a report by retired Justice John Morden to examine the role of boards in relation to this G20 event. The review, known as the 'Morden Report' (2012), suggested that the board had misunderstood their role and did not have the authority to be involved in the planning of large scale police operations, and to ask questions of the chief, and also had a duty to be informed of such planning by the chief of police. This challenged the commonly held belief that the board is restricted to policy decisions and cannot get involved in police operations. Morden also questioned the competency of the board to properly carry out its responsibilities. He further suggests that, keeping their respective roles in mind, a collaborative approach between the chief of police and the board is necessary for the board to carry out its responsibilities (Morden, 2012).

POLICE GOVERNANCE AND OPERATIONS

Goldstein (1977) points out that, "The police, by the very nature of their function, are an anomaly in a free society. They are invested with a great deal of authority under a system of government in which authority is reluctantly granted and, when granted, sharply curtailed" (p. xi). This goes to the heart of the issue in ensuring that the police have sufficient authority to carry out their duties,

while at the same time imposing governance restraints on their power to ensure that this power is not abused.

The role of the police in a democracy creates the challenge of giving a group of people extraordinary power over others. At the same time safeguards are put in place to ensure that those very people; those whom we call the police, do not abuse that power. To ameliorate this threat we create governance structures over the police to control their actions. This oversight power creates a danger of the governing body using the police for their own ends and the potential for political corruption arises. To lessen this threat, rules are put on the governance role that limits a board's involvement in the operational side of policing (Beare & Murray, 2007, p. 4). Defining "police operations" is somewhat inexact. Indeed, what level of independence should a chief have over this area of policing? Hess & Wroblewski (2006) give a definition of police operations as "activities conducted in the field by law enforcement officers as they 'serve and protect,' including patrol, traffic, investigation, and general calls for service" (p. 4).

The imprecise definition of police operations contributes to what Christie (2007) describes as a necessary tension between police leaders, "who strongly guard their operational autonomy and the governing bodies who actually hire the police leaders, have to set policy that impacts on operations, and has to acquire the funding necessary to carry out police operations" (p. 2). He describes the independence of the police as being "antithetical," and proposes that a 'synthesis' is demanded wherein a reasonable amount of police independence is preserved while at the same time facing the need for the police to be publicly accountable. This synthesis is described as a collaborative approach between governance and the chief police executive around the issue of 'operations'.

Prenzler (2009), when looking at the evolution of democratic accountability in Australia describes the creation of a 'cross-party parliamentary oversight committee' made up of government and opposition parties who include police oversight, and the police oversight bodies, in their mandate. Care is taken to ensure that there are confidential protocols in place for sensitive matters. This oversight committee is designed to ameliorate the concern of political interference versus the accountability to citizens through the elected officials in parliament. Their authority extends to reviewing and reporting on the agency's performance as well as allegations of misconduct. A "parliamentary inspector" is assigned who has legislated powers to investigate and report back to the committee (p. 171). This approach allows for a broad oversight of police

activities while creating a process for ensuring that there is a level of police independence consistent with the will of the people through their elected officials.

Stenning (2007) points out that the concept of police independence is not necessarily universal and is usually found in common law countries where the concept has been a creation of judicial decisions and inquiries and is not supported by legislation (p. 8). He presents as an example of this the 1962 Royal Commission of Police in the United Kingdom where police independence in operations was addressed in recommendation #6 that states:

6. Specific operational decision-making: the chief constable would enjoy complete political independence with respect to “quasi-judicial” law enforcement decisions (i.e. decisions re: investigation, arrest and prosecution in individual cases). (Stenning 2007, p. 18)

This recommendation suggests that police independence in operations is more focused on the quasi-judicial law enforcement decisions without specifically directing the governing body or the police chief as to how they will manage their roles. It is interesting to note that the 1962 Commission in the UK also recommended that, although the police chief should have a great degree of operational independence, the local supervisory board and the Home Office should have an advisory role in police operations. If their advice was regularly disregarded, then they should have the ability to remove the chief, “because he has ceased to be effective and no longer enjoys its confidence in his ability to command the force properly” (Stenning, 2007, p. 16).

Since policing is a provincial responsibility in Canada, there is an array of approaches to police services boards within the various jurisdictions. Morden (2012) points out that of the 169 police service boards in Ontario only fifteen of them, the larger ones, have staffs to serve them (p. 79). The approaches to board training in other parts of Canada are somewhat more progressive.

Examining the police governance policy guidelines in the Province of New Brunswick in Canada, one finds that it is significant that a panel of government officials, board members, and police executives came together to agree to a policy document and address the issue of the role of governance in police operations. In clause 1.2 they accept a definition of governance that states:

Governance is the exercising of direct authority over an organization or entity. It is the ability to control and direct the making of policy, as well as directing and influencing decisions made by the organization. It includes the capability to ensure that decisions made by the governing body are carried out in accordance with the governing bodies direction (oversight); with recourse to corrective action should this not occur. Governance is the process and structure used to provide direction to an organization's 'general operations' and activities. (Police Governance in New Brunswick, 2011, p. 9)

This view gives governance a stronger role in police operations.

Morden (2012) addresses the issue of *operational independence* in his report and indicates that amendments to the *Police Services Act* were specifically designed to increase the authority of the board and give them greater oversight authority (p. 4).

THE MORDEN REPORT

When examining the Toronto board's involvement in operations at the Toronto G20, Morden (2012) finds that it is apparent that there was confusion and even misunderstanding over what constituted the chief's independence in the operations of policing (p. 19).

He points out that before 1990, in Ontario, there was a lack of legislated clarity as to the role of the board in relation to the chief of police. The general understanding was that the chief had independence over operations and the board was in charge of policy. In revisions to the Ontario *Police Services Act* (RSO, 1990) the board's role was given more clarity. The new board mandate was expressed in section 41(1)(a) as having the, "responsibility for the provision of adequate and effective police services in the municipality"; and shall "generally determine, after consultation with the chief of police, objectives and priorities with respect to police services in the municipality" and shall "establish policies for the effective management of the police force."

Morden (2012) suggests that Police Services Boards were now given clearer and greater responsibility over the police services in Ontario (p. 50). He points out that the Ontario Solicitor General, David Tsubouchi, when presenting the revisions, stressed that the changes were intended to provide boards, police officers and chiefs of police with a "clear direction and a more precise definition

of their roles and responsibilities and to strengthen the role of the police services board” (p. 51).

Section 31(1) of the *Police Services Act* outlines the chief’s responsibilities over day-to-day operations that include: “administering the police force and overseeing its operation in accordance with the objectives, priorities and policies established by the board under subsection (1).” Subsection (4) provides that, “The board shall not direct the chief of police with respect to specific operational decisions or with respect to the day-to-day operation of the police force.” Morden states that this does not apply to:

. . . consultations between a police services board, who have the statutory responsibilities to provide adequate and effective police services, and the chief of police. Indeed, if it were applied to deprive a board of important information it would have a negative effect on the provision of these services. (2012, p. 58)

Morden concludes that the answer to the dilemma of police operational independence versus accountability to the board is the necessity of a dialogue around police operations between the board and the chief where there has to be flexibility in each of the roles to support the other. He states that, “[i]n other words, civilian oversight is the way we ensure that the public and police remain partners in the preservation of public safety” (Morden 2012, p. 100). This is similar to the 1962 UK Commission report that recommended an ‘advisory role’ for the governance body in police operations.

Morden (2012) makes many recommendations in his report and four of these stand out as impacting this board/chief relationship surrounding operations:

1. All Toronto Police Service procedures and processes should be filed with the board as a necessary step to strengthen the exercise of its monitoring and oversight responsibilities;
2. There needs to be a mechanism for an information exchange between the board and the chief of police on all subject matters;
3. The board should create a policy that defines “critical points” where the board needs to be notified of operational matters in advance; and
4. The board should determine appropriate objectives, priorities, and policies for major events, operations, and organizationally significant issues. (pp. 6–9)

Morden (2012) concludes that the board has more authority over operations than considered. He warns that putting this authority into practice is the challenge. He suggests that this can be addressed by a “consultation protocol” that will create challenges for both the police services board and the chief if adopted. He notes that the prohibitions in section 31(4) of the *Police Services Act* do not prevent a board from obtaining any information, including operational information, from the chief of police, nor from discussing any matter relating to policing in the municipality with the chief of police. These prohibitions also do not prohibit a board from expressing its opinions, or making suggestions, to the chief of police on any aspect of policing in the municipality (p. 85).

Morden (2012) distinguishes between the governance accountability of the chief after an event as compared to prior to the event in this consultation protocol. He believes that the board always has the responsibility to ask the chief about specific operational decisions and to hold the chief accountable for those decisions after an incident (p. 96). He points out that, in Ontario, section 31(1)(b) of the *Police Services Act* clearly provides for consultation being held both before and after the event. This section states that the board: “is responsible for the provision of adequate and effective police services in the municipality and shall, ... (b) generally determine, after consultation with the chief of police, objectives and priorities with respect to police services in the municipality...” He further surmises that, if operational information is only provided after the operation is over, the board will be missing important information it requires to carry out its statutory responsibility for governance (p. 98).

After a lengthy review of the law surrounding police governance in Ontario what becomes clear in the Morden Report (2012), and the literature on police governance, is that there is no broad agreement as to the level of independence of the chief of police in operations, thus creating the tension with the board that Christie (2007, p. 2) describes. Perhaps the key statement of this report is made when Morden says: “ this (communications) protocol does not require any amendment to the *Police Services Act*, but instead requires a mutual commitment on the part of the Board and the Toronto Police Service to engage with one another as true partners in the delivery of policing services in Toronto” (pg.100). This raises the question of the ability of the board to have the competence to communicate with the chief as a true partner. Graham puts the issue succinctly:

[S]o how do you measure and quantify or qualify even how much you should know [as a police board member]? Indeed, you should know the business. I mean, one of the criticisms on the corporate side of governance [is a] failure [of the corporate board] to develop an understanding of the business that you are providing oversight to. (cited in Morden 2012, p. 98)

In the complex field of policing there is an imbalance of power if only the chief has sufficient knowledge to fully understand the issues. Grange, one of the police services board members during the 2010 G20 event in Toronto stated, “The questions you ask are only as good as the information you have in front of you and if you don’t have the information, you don’t know what questions to ask. And that’s always been the struggle” (cited in Morden 2012, p. 98).

A CASE FOR INCREASED BOARD COMPETENCE

The appointment of board members in Ontario is a political decision made at two different levels of government. Neither level has a specific level of competence by way of board background, training or education. Section 135 (1) (6.2) of the *Police Services Act* (RSO, 1990) enables the Lieutenant Governor in Council to make regulations “prescribing courses of training for members of boards and prescribing standards in that connection.” To date no regulations have been made under this provision. The Ontario Association of Chiefs of Police (OACP) submitted to the Morden review that the vast majority of members of police service boards do not have “a broad policing background” and that there is a lack of effective training for police service board members. What is also significant is that the OACP submitted that chiefs of police should not be responsible for training board members and that boards should not be “training themselves on what their legislative authority is” (Morden 2012, p. 78).

The board has a responsibility to hold the chief accountable and ultimately the board is legislatively in charge of the police service. With this legal authority, they need to exercise their due diligence to ensure that they have the information they need to make informed decisions. The board also has a responsibility to develop their own competency to properly carry out their duties by seeking out resources, including the chief police executive.

It is argued that to accomplish their mandate the board also needs access to operational information before, during, and after events. It is the confidentiality and the use of this operational information that becomes the issue.

The size and scope of the Toronto Police Service allows it to be considered a large and complex organization that would clearly require a high level of competence for someone sitting in a governance role (Toronto Police, 2011, pp. 3–7). An appointed member of the Toronto Police Services Board, without any knowledge of policing, would be at a definite disadvantage in their oversight role.

The police boards in Ontario recognize their need for greater competence and, subsequent to the Toronto G20 event, the Ontario Association of Police Services Boards (OAPSB) passed a resolution asking for the Ontario Minister of Community Safety and Correctional Services to facilitate and fund training for police services boards (OAPSB, 2011). This resolution requested that the Province provide training for board members that can be prescribed by the Solicitor General. They pointed out in this motion that:

Failures in governance can have devastating (and headline-grabbing) impacts on public confidence in police. In the recent past, police service board members have been suspended for misuse of public property, criminally charged when overstepping their authority, and put under intense public and media scrutiny for decisions (or lack thereof) regarding police oversight. Witness the public outcry over G20. One of the most effective and efficient ways of mitigating these risks is through education. (OASPB, 2011, p. 1)

In the Province of New Brunswick, the government has worked with police leaders and police boards to develop ‘policy guidelines’ for police governance. In these policy guidelines there is a focus on board training. This training is very specific. It takes place over several months and includes legal training on board roles and responsibilities, an overview of the procedures they will follow and finance matters. They meet with the police executive, and ride along in police cars (Police Governance in New Brunswick, 2011, p. 28).

It is apparent from a review of the literature that, although the level of police independence in operations is not clearly defined, police governing bodies have a responsibility to ensure that policing is effectively applied in their jurisdiction and that they have an influence on operations, at the least to set policies and approve funding that impacts operations. There is a strong argument to be made that the board needs to develop a high level of competence if it is to carry out their duties effectively. It is also apparent that the

commissions, reviews, and legislation all support a collegial dialogue between the chief and the governance board surrounding their roles and responsibilities.

A CASE FOR AN INCREASED ROLE FOR THE POLICE EXECUTIVE IN GOVERNANCE

The idea of police being active participants in enabling governance is not a new concept. In a conference report of the International Association of Chiefs of Police (1999), the delegates listed responsibilities of the chief executive to the governing body as including, “[m]ost prominently; demonstrating integrity, trust, truthfulness, candor, and commitment.” Also included were; “supplying information and education on the needs and complexities of the department; maintaining good communications and access; being honest in communications and; being responsive to governing body concerns” (p. 1).

Lalonde & Kean (2003) in their review of the literature regarding the police chief and board relationship refer to Hayes (1992, p. 151) who points out the “ambiguous role that the chief plays.” This role is not one of a master servant since the chief is also arguably ‘an agent of the crown’ and swears allegiance to the Queen, though the governing board has the ability to hire and fire the chief. Stenning (1981) states that, “They [chiefs] are considered to be answerable not to their civic masters but to the law itself and the court” (p. III).

Lalonde and Kean (2003, p. 28) illustrate the symbiotic relationship between police boards and chief constables by referring to an Ontario Police Commission report into the Waterloo Regional Police Service:

Boards of Commissioners of Police, by the very nature of their composition, must rely heavily upon their Chief of Police for the expertise required to operate the police force. They must spell out general policy through regulations and direction, but in the administration of the Force, they must rely upon the Chief of Police, otherwise the board is assuming the prerogative of the Chief, and is, in effect, becoming the Office of The Chief, for which the board has neither time nor the expertise (Ontario Police Commission Report, 1978).

We have previously seen that the Ontario Association of Chiefs of Police representatives, when interviewed by Justice Morden (2012), did not believe that chiefs of police should be involved in training the board on what their legislated authority is. It is interesting to note that they restricted their comment to the

narrow issue of training in the board's legislated authority (p. 78). Morden (2012) concluded:

I accept without reservation that chiefs of police should not be responsible for training board members, if this means that they are the only source of the training;" he goes on to say, "There is, however, much in the way of information and training that a board can and should receive from the chief of police with respect to the responsibilities of and challenges facing the police force. Without this, the board's training would be seriously incomplete. (p. 79)

Morden (2012) is very direct in saying that there is much in the way of training that the board can and should receive from the chief of police. The suggestion is that part of the competence development of the board is within the chief's responsibilities. Lalonde and Keane (2003) state that:

In addition to role clarity, boards must also be clear as to what information they regularly require from the Chief Constable, when they need it, and the form and manner in which it is to be communicated. At the same time, the Chief Constable needs to reserve the right not to report information that relates to ongoing investigations and is outside the board's immediate need to know. (p. 107)

here is also a personal interest for the chief police executive to ensure that they provide the board with the information they need to carry out their mandate. Ellis (2005) refers to Murray (2001) who points out that in the previous decade fifteen percent of Canadian police executives had left their position under duress. Murray states that research by the Police Futures Group has showed that those were, "often among the best, the brightest: those with reform agendas, and those prepared to take risks when necessary" (p. 45).

One of the reasons she gives for this exodus of police leaders is the lack of support or confidence from the police boards. The Canadian Police Sector Council (2010) recognizes the importance of the chief executive and their interaction with the governing bodies. In their recommended competency selection matrix for Canadian police chiefs, one of the high priority selection criteria that was identified as important for police leaders is the ability to, "develop relationships with leaders, organizations, and oversight and governing bodies" (p. 25).

A strong case can be made that the chief police executive should expect, demand, enable, and support expert governance. This involves nurturing a

relationship where, as Morden (2012) states, “the burden is on the chief to take the initiative in ensuring that the board is properly informed about matters – past, present, or future – that fall under the purview of the board’s responsibilities” (p. 59).

CONCLUSION

Without a clear definition of police operations and what the limits to police independence are, there will always be a potential for an adversarial relationship to develop between the chief police executive and the governing body. In his report on the police action related to the 2010 G20 in Toronto, Morden (2012) makes an attempt to reconcile this conflict in roles by suggesting that the board needs to be better educated as to their authority, and policing issues in general, and that the chief police executive has a role to play in this. If adopted, this will involve a level of dialogue, cooperation, and agreement with the board as to the extent of the chief’s operational independence. It will also involve an ongoing process of clarifying roles as issues arise.

It would seem sensible that informed “expert oversight” should balance the ‘expert police.’ An imbalance in oversight competence exposes the chief executive as being vulnerable to criticism and accusations of abuse of authority. This ultimately weakens and nullifies police oversight. This raises the questions as to how a board can hold the police accountable if they do not understand the world of *policing*?

It is apparent that neither the board nor the chief can fulfill their respective roles to serve the public without the support and cooperation of each other. The chief is the expert who has the information, tools, visibility, and people to effectively develop and execute policy. To limit the role of the chiefs to day-to-day operations without them being a strong influencer in the setting of policy would be a mistake. This requires the chief to establish their credibility with the board as being trustworthy and competent and ultimately this puts the chief in the role of educating the board. Accepting the role of being, at least in part, responsible for educating the board will require chiefs to take the lead in assuring that the board has the information they need to make informed decisions. A board that has confidence in their chief will listen to the chief.

The recommendation in the Morden Report (2012), and in the literature, is that a chief police executive needs to take a leadership role in embracing, demanding, and informing strong governance, while at the same time

maintaining the ‘law and spirit’ of operational independence that protects society from political interference and corruption in the administration of policing. At the end of the day it needs to be remembered that the purpose of police oversight is to ensure that the office of the chief police executive is accountable to the will of the people through the governance of the board.

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