



February 26, 2019

Ref: 552283

Ms. Laurie Hurst
Chief Administrative Officer
Township of Esquimalt
1229 Esquimalt Road
Esquimalt BC V9A 3P1

Her Worship Barbara Desjardins
Lead Co-Chair, Victoria and Esquimalt Police Board
Her Worship Lisa Helps
Deputy Co-Chair, Victoria and Esquimalt Police Board
850 Caledonia Avenue
Victoria BC V8T 5J8

Dear Ms. Hurst, Mayor Desjardins and Mayor Helps:

Re: Request of Director of Police Services Under Section 27(3) of the *Police Act*

I write in my capacity as Acting Director of Police Services¹ to provide you with my decision regarding the February 1, 2018 and April 6, 2018 applications of the Township of Esquimalt (Esquimalt) and the Victoria & Esquimalt Police Board (Police Board) pursuant to section 27(3) of the *Police Act* (the Act).

Section 27(3) section states:

“If a council does not approve an item in the budget, the director, on application by the council or the municipal police board, must

- (a) determine whether the item or amount should be included in the budget, and
- (b) report the director’s findings to the municipal police board, the council, and the minister.”

Background

On December 19, 2017, the Police Board approved amendments to the 2018 Victoria Police Department (VicPD) provisional budget originally approved on September 19, 2017. The budget

.../2

¹ The Director’s powers in relation to this matter have been delegated to me as Acting Director of Police Services.

amendments included an increase of six additional police officers. The City of Victoria Council passed a resolution on January 11, 2018 approving its share of the cost for these positions under the Victoria-Esquimalt Framework Agreement dated April 17, 2014 (the Framework Agreement). On January 22, 2018, Esquimalt Council defeated a motion to approve the funding request for the six additional police officers.

Subsequently, Esquimalt Council and the Police Board made separate applications under section 27(3) for a determination of whether the addition of six police officers should be included in the VicPD's 2018 provisional budget. The applications were directed to, then Director of Police Services, Clayton Pecknold (the Director). The particulars of those applications are contained in the letters attached as Appendix A.

In preparation for making a determination, the Director initiated a review of the budget and expenditures of the VicPD from the date of the current Framework Agreement (April 17, 2014) to April 6, 2018. The review was conducted under section 27(3) and section 42 of the Act (the Review), which authorizes the Director of Police Services to study, investigate and prepare a report on matters concerning policing, law enforcement and crime prevention. Two experienced and neutral consultants were engaged to assist with the Review.

The parties were notified of the Review in a letter dated May 14, 2018 and attached as Appendix B.

The Review was conducted in two phases. Phase one focused on service delivery and gathering and analyzing information related to the Police Board's budget, estimates and expenditures from the date of the Framework Agreement. Chief Constable (Ret'd) Peter Lepine examined the VicPD deployment model and resource levels for Esquimalt and City of Victoria. Peter Lockie of Inverleith Consulting Inc. focused on the financial management of the VicPD, including examination of budget expenditures and deployment against the terms of the Framework Agreement. The consultants' reports are attached as Appendix C.

After the Review was initiated, a request was made by the Police Board on May 18, 2018 to engage the Administrative Committee established under section 12 of the Framework Agreement to provide a decision as to whether it is required by the Framework Agreement to allocate the six police officers between Esquimalt and City of Victoria Divisions. On June 8, 2018 the Director advised the Police Board Co-Chairs that, as the Review was in progress the Director could not participate in the Administrative Committee. The Director further advised that he would not initiate phase two of the Review if the Administrative Committee came to a determination on the budget request for six additional police officers and the request under section 27(3) was rescinded. On December 10, 2018, the Co-Chairs advised that after extensive discussion, the Administrative Committee was unable to reach a decision.

.../3

Accordingly, the Director undertook the second phase which focused specifically on whether the additional resources in the provisional budget request are required to provide adequate and effective policing under the Act.

On January 8, 2019, the Director provided copies of the consultants' reports to the parties seeking their comments on the reports or any other matter relevant to the Director's determination. On January 22 and 23, 2019 respectively, the Police Board and the Mayor of Esquimalt provided their response. Both letters point to the Framework Agreement and its interpretation as the source of many of the challenges the parties face in connection with deployment and resource allocation and, by extension the budget approval process.

Decision:

In making my decision, I have reviewed and considered the following documents:

- All relevant correspondence with the Police Board and Esquimalt;
- The *Police Act* (British Columbia) and its standards and regulations;
- Mr. Peter Lepine's August 13, 2018 report, Review of the Victoria Police Department's Resource Levels and Deployment Model Phase One;
- Mr. Peter Lockie's August 13, 2017 [*sic*] report, Review of the Victoria Police Department Phase One Report; and
- The Framework Agreement.

The core issue that I must determine under section 27(3) is whether the Police Board's request for six additional police officers, which was approved by the City of Victoria Council, but rejected by Esquimalt Council, should be included in the VicPD 2018 provisional budget.

The Act does not provide a test for this determination, so the Director of Police Services must look to the broader provisions and purpose of the Act. Broadly speaking the requirements on the different levels of government are to provide "adequate and effective policing" in their areas of responsibility. In the case of a municipality, section 15 states that a municipality with a population "greater than 5000 persons must bear the expenses necessary to generally maintain law and order in the municipality". Where a municipality fails to provide adequate policing, section 17 of the Act provides for corrective actions where there is a "failure" to police. I stress that this is not the case with the municipalities of Victoria and Esquimalt.

Successive studies and oversight of VicPD reveal that it is an effective police department.

On page 38 of his report, Mr. Lepine concluded that:

.../4

“It is our conclusion that from the information gleamed from the various interviews and reports; VicPD’s policing model is consistent with the manner in which most other leading-edge police agencies conduct their business.”

On page 9 of his report, Mr. Lockie made the following conclusions on the financial accountability framework of the VicPD:

“overall we think that VicPD has a reasonably strong financial accountability framework in place. We observed a culture of financial accountability that included sound financial policy and procedures, a clear delegation of individual financial responsibility, regular monthly financial reporting and appropriate governance oversight mechanisms. While the budget planning processes meet the needs of VicPD, their application is not currently meeting the needs and expectations of Victoria and Esquimalt and this may have contributed to the recent failure to gain acceptance of the proposed 2018 Budget. These concerns are rooted in perceptions of a lack of information sharing, insufficient collaboration and incomplete consideration of options.”

However, the consultants’ reports and the studies on which they rely, equally demonstrate that the VicPD struggles to meet the resource pressures associated with high violent crime caseloads, growing population and increasing complexity of crime². Additionally, there has not been a permanent increase in the VicPD’s authorized strength since 2010³.

The VicPD is unique in British Columbia among municipal police departments. It exists under an amalgamation order dated December 18, 2002, bringing forth the municipalities’ policing obligations under one structure and Police Board. This has not been without friction, but by and large has worked well over the last several years. At the heart of that agreement is an understanding that two independent and autonomous communities, while served by one police department, have different policing needs and expectations.

The intent of the Framework Agreement is to ensure that service-delivery and resourcing reflects those differences. Beyond what may best be described as “shared” common resources necessary to maintain policing structure, “dedicated” resources for each municipality are contemplated. Also contemplated, are accountability and reporting with respect to how those resources are utilized and deployed.

.../5

² See for example: excerpt from MNP report, Efficiency Review of Victoria Police Department, March 15, 2017 p. 32, in Review of the Victoria Police Department’s Resource Levels and Deployment Model Phase One, Peter Lepine. August 13, 2018, p. 13

³ Police Resources in British Columbia, 2015, Ministry of Public Safety and Solicitor General, Police Services Division

In this case, when one sifts through the deliberations that Esquimalt was required to make in response to the request for additional resources, there was not sufficient communication as to how those resources aligned with community needs, the Framework Agreement or what the value proposition was for the community. I have come to the conclusion that, despite considerable efforts undertaken by the Police Board and VicPD leadership, these matters were not effectively addressed. The reality is however, that police agencies can be challenged to demonstrate return on investment and value for money. Policing, by its nature, is driven by broader societal demands in responding to calls for service. As a 24/7 front line service, demand is highly driven by matters well beyond strict crime detection and prosecution. Matters related to public safety, mental health, addictions and other challenging societal concerns impact the demands for police time and resources; while innovative cross-disciplined teams such as Community Action Teams and outreach are attempts to put policing into the proactive and preventative place among health and social services responses, the fact remains that front-line policing will continue to be required for the maintenance of public safety and ensuring public confidence in police.

When resource pressures exceed available personnel, what greatly suffers first is the proactive and preventative work. In my view, such work is not a “nice to have” but is in fact a necessity⁴. Strategies that seek to engage the public, build relationships, reach out to vulnerable groups and thereby prevent crime are central to Canadian policing where the measure of any police agency’s effectiveness is the deterrence of crime and disorder, not the number of criminal charges or statistics. While related deployment decisions fall under the Chief Constable’s authority, the Police Board has a role in determining the priorities, objectives and policies of the police department that in some cases may include establishing such proactive or preventative programs necessary to safeguard the public and be responsive to its needs.

In light of the forgoing and in consideration of all the material put before me, I have concluded that the six police officers requested as part of the 2018 provisional budget request should be included in the VicPD Budget. I add however, one condition to this decision, that deployment of the six police officers must include allocation of dedicated resources to meet the service delivery needs of Esquimalt without regard to the demands driven by the downtown core and to ensure consistency with the Framework Agreement. While the Chief Constable is responsible for the operational decisions related to the day to day deployment of the six police officers, generally, the Police Board has a responsibility to uphold the Framework Agreement and its intent in this regard, including fair and equitable allocation and use of police resources.

While not part of my decision under section 27(3), I would like to address two other matters

.../6

⁴ *Police Act*, s. 26(2) states: “The duties and functions of a municipal police department are, under the direction of the municipal police board, to ... (c) prevent crime.”

related to this budget dispute which should, I hope, mitigate the recurrence of future budget disputes between the parties. First, it is clear by the material put before me that the intent and provisions of the Framework Agreement are not being upheld. In particular, and relevant to this case, there appears to have been insufficient information and data presented to Esquimalt to justify its contribution for the additional resources under the Framework Agreement. It is the Police Board's responsibility under the Framework Agreement to, among other things, ensure that sufficient and relevant information and data is provided to each municipality to enhance decision making under the Framework Agreement that will ensure adequate policing within their jurisdictions. This includes ensuring sufficient information and data is presented to the municipalities on the specific service or gaps and how any new resources will specifically address those services or gaps.

Second, I encourage the parties and the Chief Constable to give consideration to adopting and actioning the recommendations as applicable, on page 9 of Mr. Lockie's report.

I wish to thank the parties, the consultants and ministry staff for their patience and assistance during the Review.

Yours truly,



Tonia Enger
Acting Assistant Deputy Minister
and Director of Police Services
Policing and Security Branch

Attachments: 1) Appendix A – February 1, 2018 and April 6, 2018 letters to the Director of Police Services
2) Appendix B – May 14, 2018 letter to co-chairs of the Victoria and Esquimalt Police Board
3) Appendix C – Consultants' Reports