



Background on Policing Arrangements between Victoria and Esquimalt and the Police Budget Approval Process

Introduction

In British Columbia, municipal police departments operate at arms length from the municipalities they serve. Police officers are not municipal employees and report, through chief constables, to appointed police boards rather than to the elected municipal councils. The role of municipalities in relation to policing is limited to establishment of a police force and payment of its expenses. Mayor of a municipality is *ex officio* the chair of the police board. Municipal council also appoint one other member to the board but the majority of the board is appointed by the province.

Normally, the relationship between a municipality and its police is governed solely by the provisions of the *Police Act*. However, Victoria and Esquimalt are in a unique situation of having an amalgamated police force. This amalgamation occurred in 2002 and was implemented through a provincial [Order in Council](#) (the "OIC"), which supplements the provisions of the *Police Act* as it relates to Victoria and Esquimalt. Finally, pursuant to the OIC, the two municipalities and the police board entered into agreements to clarify their relationship with regard to policing. The first agreement, entered into in 2009, expired in 2013. The [current agreement](#) was entered into in 2014 and is in force until December 31, 2023 subject to automatic renewal for a further 10 years, as well as to optional early termination clauses.

Municipal Obligation to Provide for Policing

The *Police Act* requires that a municipality with a population of more than 5000 persons must bear the expenses necessary to generally maintain law and order and must: provide policing and law enforcement in the municipality with a police force of sufficient numbers "to adequately enforce municipal bylaws, the criminal law and the laws of British Columbia"; provide adequate accommodation, equipment and supplies for the police force; and provide for care and custody of persons detained by the police.¹ A municipality may fulfill its obligation to provide for adequate policing in one of three ways: by establishing a municipal police department; entering into an agreement with the Province whereby policing in a municipality is provided by the provincial police force (RCMP); or entering into an agreement with another municipality that has a police department whereby policing is provided by that department.²

In the event that a municipality fails to provide for adequate policing in the municipality, as determined by the Provincial director of policing services, the Province may appoint police officers to police the municipality, use the provincial police force (RCMP) to police the municipality, or take

¹ Section 15(1) of the *Police Act*, R.S.B.C. 1996, c. 367

² Section 3(2) of the *Police Act*.

other steps the minister considers appropriate.³ Under the *Police Act*, the cost of providing policing by the Province under this authority must be borne by the municipality and is a debt payable to the Province.⁴

Policing in Victoria and Esquimalt

Prior to 2003 both Victoria and Esquimalt had their own police forces established and operating in accordance with the *Police Act*. In 2002, the Province decided to amalgamate the two departments into a single police force. This was done pursuant to the specific ministerial order – the 2002 OIC, and is a unique policing arrangement in British Columbia and possibly entire country⁵. The amalgamated policing is not one of the options for municipal policing specifically mentioned in the *Police Act*, although it is indirectly authorized through the general power to make regulations to “reorganize policing... ..in any or all areas of British Columbia”.⁶

The OIC disbanded the two municipal police boards and replaced them by a single amalgamated police board composed of the two mayors, two municipal appointees (one by each municipality) and five Provincial appointees (the “Board”). All the duties and functions of the two municipal police boards were transferred to the Board.⁷ Most importantly, the OIC established a single amalgamated police department and provided that the amalgamated police department is to serve the “combined area of the City of Victoria and the Township of Esquimalt.”⁸

Under the OIC, the two municipalities are liable for the expenditures necessary for the provision, in accordance with the *Police Act*, of policing in the combined area of the two municipalities. The default formula for allocation of the policing costs between the two municipalities is on the basis of “a converted assessment”⁹ unless the two councils agree on a different allocation formula.¹⁰ The significance of these provisions is that, unlike in a case of a service contract where one municipality agrees to provide policing for another municipality on the basis of a fee for service, in the case of an amalgamated policing, the obligations of the two municipalities are for all the policing within the amalgamated area. While the allocation of costs may be uneven, all policing costs wherever they are incurred are the joint responsibility of the two municipalities.

The City and Township of Esquimalt could not agree on a new formula for allocating costs of policing and, therefore, the Agreement provided for a specific allocation of costs over the first five years and for the parties to work on the new formula starting in 2017.¹¹ Until a new formula is agreed to, the Agreement provides that the 2018 allocation (Victoria 85.3% / Esquimalt 14.7%)

³ Section 17(2) of the *Police Act* – it is worth noting that prior to taking this step, the director must provide notice to the board and to the council of the municipality.

⁴ Section 17(3) and (4) of the *Police Act*.

⁵ This arrangement is not a contract between two municipalities (as contemplated by s. 3(2)(c) of the *Police Act*), a model used elsewhere, but a single board and department serving two municipalities.

⁶ Section 4(1) of the *Police Act*.

⁷ Sections 3 and 4 of the *Victoria and Esquimalt Municipal Policing Reorganization Order*.

⁸ Section 5(3)(b) of the *Victoria and Esquimalt Municipal Policing Reorganization Order*.

⁹ The term “converted assessment” is defined in section 6(3) of the *Victoria and Esquimalt Municipal Policing Reorganization Order* to mean how allocations between municipalities are generally established within the CRD for such expenditures – see section 6(3) of the *Victoria and Esquimalt Municipal Policing Reorganization Order*.

¹⁰ Section 6(2) of the *Victoria and Esquimalt Municipal Policing Reorganization Order*.

¹¹ Sections 11.1 and 11.2 of the Agreement.

shall continue to be in effect as long as the Agreement is in effect. Should the Agreement be terminated or not extended, the default formula in the OIC would come back in force.¹²

Dedicated Municipal Divisions and Optional Resources

Recognizing the unique issues associated with a single amalgamated department serving two distinct communities with different policing needs, the parties included in the Agreement several unique provisions for dealing with this. The first was the establishment of the “dedicated municipal divisions” to serve each municipality.¹³ The goal was to provide both higher visibility in the communities and to provide for better relationship between the communities and the police. The Agreement contemplated symmetry in the arrangement, namely that there would be a dedicated municipal division established for each municipality. However, in practice only one dedicated municipal division has been established for Esquimalt. No dedicated municipal division exists for Victoria which, instead, is served by the remainder of the police force.

Notwithstanding that the dedicated municipal divisions are intended to primarily provide policing to their assigned municipality, they are part of the amalgamated police force. Their composition and strength is determined by the Board, in consultation with the municipality they serve, on the basis of what is required to provide adequate policing and law enforcement. Therefore, the cost of the dedicated municipal divisions forms part of the overall police budget and is borne by both municipalities in accordance with the allocation of the overall police budget between them.

In addition to the dedicated municipal divisions, the Agreement provides each municipality with an option to increase police resources above the level determined by the Board as required to provide adequate policing and law enforcement in the combined policing area. Section 5 of the Agreement allows a municipality to request the Board to provide such additional resources as the municipality considers appropriate. While not exhaustive, section 5.1 of the Agreement provides a list illustrating the types of optional resources that a municipality may request:

- (a) Additional police officers;
- (b) Changes to the dedicated municipal division;
- (c) Establishment of police storefront office(s);
- (d) Specialized tools or equipment to be used by the dedicated municipal division; or
- (e) Anything else that in the opinion of the municipality is needed to better serve its community.

Although this is not specifically listed, additional training resources for officers in the dedicated municipal division or civilian staff could also be requested as optional resources. This could also include alternative approaches to law enforcement that are contemplated elsewhere in the Agreement.¹⁴

¹² It is worth noting that the Agreement contains obligations in the event of termination to co-operate on new arrangement for policing in both municipalities (see section 2.6 of the Agreement).

¹³ Section 4 of the Agreement.

¹⁴ Section 3.4 specifically requires the Board, in consultation with the Chief Constable, to work with each municipality on alternative methods for provision of law enforcement, including use of bylaw enforcement officers, reserve police constables and volunteers to provide community policing services.

Subject only to the requested optional resources being consistent with the *Police Act*, other laws, or collective agreements, the Board is required to provide the resources requested by a municipality. The cost of any optional resources is to be borne solely by the municipality that has requested such resources and must be reported on separately in the police budget. A municipality may opt-out the optional resources it has requested provided at least one year has passed since they have been implemented and the municipality pays all costs related to their cancellation.¹⁵

Optional resources can only be requested by a municipality and cannot be resources that the police (either Chief Constable or the Board) require. If a resource is required to provide adequate policing or law enforcement in accordance with the *Police Act*, it is not “optional” and must be part of the amalgamated police budget shared by both municipalities. It does not matter whether the resource is used in both municipalities or exclusively serves one municipality. If it is required to adequately police any part of the combined area served by the amalgamated police force, it is not an optional resource. At this time, there are no optional resources within the police budget.¹⁶

Police Budget Process

The *Police Act* contains very clear, if somewhat general, provisions¹⁷ for approval of police budget. These provisions, applicable to all municipal police forces in BC are:

1. By November 30, a municipal police board must prepare and submit for approval by council a provisional police budget for the following year;
2. By March 1, a municipal board must submit to council any changes to the provisional budget for the year;
3. Subject to council not approving any item or items within the budget submitted by the board, the cost of the provisional budget (as adjusted) must be included in the municipality’s budget; and
4. Unless otherwise approved by council, a board must not make any expenditure, or enter into any agreement to make an expenditure, that is not specified in the board’s budget and approved by municipal council.

Section 27 of the *Police Act* deals with municipal council’s ability to reject part of the police budget:

- (3) If a council does not approve an item in the budget, a director, on an application by the council or the municipal police board, must
 - (a) determine whether the item or amount should be included in its budget, and

¹⁵ Sections 5.3 to 5.4 of the Agreement.

¹⁶ The 2019 Provisional Police Budget identifies “Special Duty Funding” as optional resources, however, that is not correct as these expenses relate to costs of policing required for special events, they are not additional resources requested by either municipality. Costs associated with Late Night Great Night program, which are paid directly by Victoria rather than forming part of the police budget, are more similar to optional resources under the Agreement. However, because that arrangement pre-dates the Agreement, they are not treated as optional resources within the police budget.

¹⁷ Section 27 of the *Police Act*.

- (b) report the director's findings to the municipal police board, the council and the minister.

- (4) Subject to subsection (3), a council must include in its budget the costs in the provisional budget prepared by the municipal police board.

The OIC does not contain any provisions for development and approval of the police budget. However, the Agreement contains very specific process¹⁸ for development of annual police budget:

1. The Board must consider input received from the two municipalities while preparing its budget;
2. By May 31, each municipality must provide the Board with any financial targets for the following year and the police department's director of finance is to meet with municipal directors of finance "as necessary" during the preparation of the police budget;
3. By October 31, the Board must submit the provisional budget to the municipalities (this is a month prior to the deadline under the *Police Act*);
4. By November 30, the Board and the councils of the two municipalities are to hold a joint meeting to discuss the provisional budget for the following year;
5. By January 31, the Board is to hold a meeting with each municipal council to discuss the provisional budget;
6. By February 28, the Board is to submit to each municipality its final budget for approval by the municipal councils;
7. All budget submissions must clearly identify each municipality's share of the police budget in accordance with the funding formula and must identify any optional resources;
8. Each municipality must consider and include in its budgeting process the provisional police budget; and
9. On approval of the final police budget, each municipality must include its share of the total police costs in its budget.

The Agreement allows each party to invoke the dispute resolution process (section 12 of the Agreement) at any time during the budget process, however, until there is an agreement or final decision, the party must follow the budget process contained in the Agreement.¹⁹

Until the final police budget is approved by the municipalities, monthly payments based on the last approved police budget, must continue to be made by municipalities to cover policing costs.²⁰

¹⁸ Section 7 of the Agreement.

¹⁹ Section 7.3 of the Agreement.

²⁰ Section 9.1 of the Agreement.