

<b>Request for Consideration</b>		
<input checked="" type="checkbox"/> <b>Agenda Item</b> (Submitted to Municipal Clerk's Office by Noon at least 5 working days prior to the meeting)	<input type="checkbox"/> <b>Added Item</b> (Submitted to Municipal Clerk's Office by Noon at least one day prior to meeting)	<input type="checkbox"/> <b>Request from the Floor</b>  <input type="checkbox"/> <b>Notice of Motion</b>
<b>Council or Committee:</b> Board of Police Commissioners		<b>Date of Meeting:</b> July 20, 2020
<b>Subject:</b> Independent opinion on Legal Council for Board of Police Commissioners		
<p><b>Motion for Council to Consider:</b>                      That the Board of Police Commissioners seek an independent opinion to determine if the Board of Police Commissioners should or shouldn't have its own legal counsel separate from HRM and HRP. The opinion should include:</p> <ol style="list-style-type: none"> <li>1. If the Police Act or the Board of Police Commission's Policy Manual allows the Board to seek independent legal counsel</li> <li>2. If the current legal counsel arrangement provided by HRM could present as a conflict of interest</li> <li>3. How the board could receive on-going counsel for Commission meetings and any other responsibilities of the Board.</li> </ol> <p><b>Reason:</b> The Board's Mission is to provide independent civilian oversight, governance, and strategic leadership to the HRP and the RCMP within Halifax, reflecting the needs, values and diversity of Halifax's communities. The Board's independent status is achieved by ensuring accountability for oversight of the police services and their employees. To do this, the board needs to be able to receive unbiased legal opinions and advice when requesting reviews of policy's and procedures. If HRP and HRM are providing the legal opinion for the board, this could be perceived as a conflict when seeking legal advice. In order for the Board to ensure independence when providing oversight of the operation of policing in Halifax the board must also feel confident that the advice that is being received is unbiased as possible.</p> <p><b>Outcome Sought:</b> Independent opinion on if the Board of Police Commissioners should have independent legal counsel</p>		
<i>Councillor Lindell Smith</i>		<i>District 8</i>

Excerpts from Halifax Board of Police Commissioners Governance Review - prepared by Fred Honsberger and Mike Moreash (September 16, 2016) Pages 52-53

## 2. Legal Support to Board

At the end of the HRM staff presentation, Police Board Commissioners were informed by the Clerk that HRM legal services are the Board's only and final source for information regarding legal issues. It was also noted by HRM staff that the existence of a legal background by a Commissioner was not relevant to the interpretation of the Board's legal role. Both of these statements are incorrect.

Lawyers provide advice – not direction. If the Board sought legal advice from HRM legal services, it could accept such advice or reject it and seek legal advice elsewhere as it deems appropriate. As noted previously in this Review and in Appendix 19, Justice Morden dealt with this issue in his recommendation that Boards should have their own legal counsel. In addition:

a) The legal background of a Commissioner is relevant. Although such a Board member should not purport to act as the Commission's legal advisor, that person is in a position to recognize when legal issues arise and understand the matter of such legal issues. A Commissioner with a legal background may assist the Board in determining when legal advice and representation is required and when legal services should be sought from a source other than Municipal legal services due to any real, potential or perceived conflict in that office.

Board member qualifications are particularly relevant because each volunteer on the Police Commission presumably brings a unique background of education and skill sets to contribute. Such a background should be valued, rather than discounted by HRM. This fact was noted in the report of the 1982 Halifax Commission on City Government. (see Appendix 6)

The staff presenter on this matter was not a lawyer and did not understand issues of statutory conflict and the status of the Police Commission as a statutory body.

All Board members are required, by oath, to comply with the requirements of the Nova Scotia Police Act strictly on the basis of their own "judgement, skill, knowledge and ability." For this reason, if a member does not judge that the advice received is appropriate, they are obligated to seek another opinion if they wish to comply with that oath based on their individual judgement of what is right.

b) The Commissioner appointed to the Board by the Province of Nova Scotia has both a special interest and an obligation, by oath, to ensure that the Board respects the requirements of the Province as provided for in the Police Act and Regulations. Ideally, the Province should require feedback from all Provincial appointees to Police Boards in the Province regarding such oversight.

c) Further to the above, the Police Act is Provincial legislation under the auspices of the Attorney General who is the Chief Law Enforcement Officer for the Province. Department of Justice authority supersedes the Municipality, and that is the appropriate body from which to seek a definitive legal opinion related to some governance issues as the Board deems appropriate.