

A POLICY TO REGULATE HEARINGS BEFORE THE BOARD

WHEREAS Section 37 of the *Police Services Act* provides “a board shall establish its own rules and procedures in performing its duties under this Act and, except when conducting a hearing under subsection 65 (9), the *Statutory Powers Procedure Act* does not apply to a Board.”

NOW THEREFORE the Kingston Police Services Board enacts as follows:

1.0 DEFINITIONS

- (1) “ACT” means the Police Services Act, R.S.O. 1990, c. P.15, as amended, or any successor legislation.
- (2) “BOARD” means The Kingston Police Services Board.
- (3) “CHAIR” means the Member elected as Chair of the Board by its Members, pursuant to the *Act*.
- (4) “CHIEF OF POLICE” means the Chief of Police for The Kingston Police Service or his or her designate.
- (5) “MEMBER” means a Member of the Board and includes the Chair.
- (6) “SECRETARY” means the Secretary of the Board.
- (7) “HEARING” means the decision-making process of the Board pursuant to sections 44, 47, 52 and 53 of the *Act*.
- (8) “HEARING COMMITTEE” means a Hearing Committee comprised of two or more Members who have the delegated authority to conduct any Hearing on behalf of the Board as provided for under the *Act*, including the authority to make any decisions on the Board’s behalf.

2.0 HEARINGS

2.1 A Hearing pursuant to section 44, 52 and 53 of the *Act* shall consist solely of the written reasons for the termination, the written reply of the police officer, auxiliary member or special constable, as applicable, and the oral submissions as provided for in this Policy. No other submissions, information or documents, whether oral or in writing, shall be permitted.

2.2 A Hearing pursuant to section 47 of the *Act* shall consist solely of the written evidence and the oral submissions as provided for in this Policy. No other evidence, submissions, information or documents, whether oral or in writing, shall be permitted.

2.3 For greater certainty, the provisions set out in this Policy are solely for the purpose of assisting the Board in making its decision pursuant to sections 44, 47, 52 and 53 of the *Act* and nothing herein shall give any police officer, employee or special constable of the Board, as applicable, any greater rights than as set out in the *Act*.

2.4 In accordance with section 37 of the *Act*, the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended, does not apply to the Board, including the conduct of any Hearings as provided for herein.

2.5 The respondent police officer, employee, auxiliary member or special constable of the Board, as applicable, may request an opportunity to make oral submissions at a Hearing pursuant to sections 44, 47, 52 and 53 of the *Act*. However, the Board retains the discretion to determine the manner of the hearing and whether oral submissions will be permitted.

3.0 DELEGATION OF HEARINGS

3.1 The Board may conduct a Hearing or may delegate to a Hearing Committee that is comprised of two or more Members the authority to conduct any Hearing on behalf of the Board as provided for under the *Act* including the authority to make any decisions on the Board's behalf.

3.2 The decision of a Hearing Committee exercising any authority delegated to it by the Board is final. There is no appeal from the decision of a Hearing Committee, by any party, to the Board. The Board shall not take any action, including but not limited to consideration of any motion by a Member with respect to such decision, except as required in furtherance of the implementation of such decision. The individual that is the subject of the decision pursuant to section 47 of the *Act* has rights of appeal to the Ontario Civilian Police Commission as provided for under the *Act*.

4.0 PARTIES TO A HEARING

4.1 The parties to the Hearing are the Chief of Police and the respondent police officer, employee, auxiliary member or special constable of the Board, as applicable. A party may be self-represented or represented by counsel or agent.

5.0 NOTICE OF HEARING

5.1 The Secretary shall set the time and place for a Hearing and shall give notice of the Hearing to the parties in writing:

(a) personally;

(b) by electronic mail to any party who provides an electronic mail address and written consent to notice in such manner (which may be in electronic form) to the Secretary; or

(c) by regular mail or prepaid courier to the party's most recent address known to the Secretary and notice shall be deemed to have been given, unless the contrary is shown, on the fifth (5th) business day following the day on which it was mailed or on the second (2nd) business day following the day on which it was couriered, as the case may be.

5.2 A notice of a Hearing should include:

(a) a reference to the statutory authority under which the Hearing will be held;

(b) a statement of the time, place and purpose of the Hearing;

(c) a statement that if the party does not attend the Hearing then the Board or Hearing Committee, as the case may be, may proceed in the absence of that party and the party will not be entitled to any further notice in the proceeding; and

(d) information pertaining to any deadlines for written replies by the parties.

5.3 Where a notice of Hearing has been given to a party in accordance with this Policy, and the party does not attend, the Board or the Hearing Committee, as the case may be, may proceed in the absence of the party and that party is not entitled to any further notice in the proceedings.

6.0 PRODUCTION

6.1 With regard to a Hearing pursuant to section 44, 52 and 53 of the *Act*, at least twenty-one (21) calendar days before the date of the Hearing, the Secretary shall provide the police officer, auxiliary member or special constable, as applicable, with reasonable information in writing with respect to the reasons for the termination (including any submissions or law relied upon) and the police officer, auxiliary member or special constable, as applicable, may provide a written response (including any submissions or law relied upon) to the Secretary and the Chief of

Police, provided that such written response is received by the Secretary and the Chief of Police by no later than ten (10) calendar days before the day of the Hearing. The Chief of Police may provide written reply (including any submissions or law relied upon) to the aforementioned written response provided that such reply is provided to the police officer, auxiliary member or special constable, as the case may be, by no later than four (4) calendar days before the day of the Hearing.

6.2 With regard to a Hearing under section 47 of the Act, at least thirty (30) calendar days before the date of the Hearing, the Secretary shall provide the employee party with a copy of the two reports of medically qualified practitioners and any other written evidence, submissions and law relied upon which the Board or the Hearing Committee will consider at the Hearing and the employee may provide any written evidence, submissions and law relied upon to the Secretary and the Chief of Police, provided that such written evidence is received by the Secretary and the Chief of Police by no later than fifteen (15) calendar days before the day of the Hearing. The Chief of Police may provide written reply to the employee's written evidence provided that such reply is provided to the employee by no later than four (4) calendar days before the day of the Hearing.

6.3 For the purposes of subsection 6.2 of this section, any written evidence of the parties may: (a) be sworn or unsworn; (b) include reports of any expert; and (c) be a photocopy thereof provided that the Board or Hearing Committee, as applicable, is satisfied with its authenticity.

6.4 A party may refer to case law in his or her oral submissions at the Hearing, provided that such party provides copies of such case law to the other party(ies) of the subject Hearing and to the Secretary as part of their written submissions as set out in this section.

6.5 The Secretary shall provide all documentation provided by the parties to a Hearing pursuant to this section to the Board or the Hearing Committee conducting the hearing, as the case may be, at least three (3) business days prior to the Hearing.

7.0 EXPERT WITNESSES

7.1 For the purposes of subsections 6.2 & 6.3, an expert witness is a person who is qualified to provide professional, scientific or technical information and opinion based on special knowledge through education, training or experience in respect of the matters on which he or she will testify.

7.2 Where a party intends to rely on or refer to the evidence of an expert witness, that party shall provide to every other party the following information in writing:

- (a) the name of the expert witness;

(b) the qualifications of the expert witness, referring specifically to the education, training and experience relied upon to qualify the expert;

(c) a report that sets out the expert's conclusions and the basis for those conclusions on the issues to which the expert will provide evidence to the Board; and

(d) where that party intends to rely on or refer to a report of the expert witness at the hearing, a copy of the report signed by the expert witness.

8.0 CLOSED HEARING

8.1 The Board or Hearing Committee, as applicable, may make the determination to exclude the public from all or part of a Hearing if they are of the opinion that:

(a) matters involving public security may be disclosed and, having regard to the circumstances, the desirability of avoiding their disclosure in the public interest outweighs the desirability of adhering to the principle that proceedings be open to the public; or

(b) intimate financial or personal matters or other matters may be disclosed of such a nature, having regard to the circumstances, that the desirability of avoiding their disclosure in the interest of a person affected or in the public interest outweighs the desirability of adhering to the principle that proceedings be open to the public.

8.2 Notwithstanding subsection 8.1, a hearing or part of a hearing shall be closed to the public if the subject matter to be considered cannot be publicly disclosed pursuant to the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990. c.M.56 as amended.

8.3 Notwithstanding subsections 8.1 & 8.2, the Board or the Hearing Committee, as the case may be, may, after the Hearing is complete, exclude the public and the parties to deliberate in relation to its decision.

9.0 ORDER OF PRESENTATION

9.1 Where oral submissions are being made, the order of presentation at the Hearing will be as follows:

(a) the Chief of Police will be invited to make an oral submission pertaining to the written documentation before the Board or Hearing Committee, as applicable;

(b) the police officer, employee, auxiliary member or special constable, as applicable, will be invited to make an oral submission pertaining to the written documentation before the Board or Hearing Committee, as applicable; and

(c) the Chief of Police will be invited to make any oral reply submissions to the submissions of the police officer, employee, auxiliary member or special constable, as applicable.

9.2 The Board or Hearing Committee, as applicable, may limit any oral submissions pursuant to subsection 9.1 of this section if the oral submissions are unduly repetitious or abusive.

10.0 DECISION

10.1 At the conclusion of the Hearing, the Board or the Hearing Committee, as applicable, shall render its decision in writing, with reasons. The Board or the Hearing Committee, as applicable, may reserve its decision and provide its decision in writing to the parties on a later date as soon as reasonably practicable following the Hearing.

10.2 The decision of the majority of the Board or the Hearing Committee, as applicable, who presided at the Hearing, shall constitute the final decision.

10.3 A notice of decision should be provided by the Secretary to the parties to the Hearing as soon as reasonably practicable following the rendering and release of the decision by the Board or Hearing Committee. A notice of decision shall be provided in writing:

(a) personally; or

(b) by electronic mail to any party who provides an electronic mail address and written consent to notice in such manner (which may be in electronic form) to the Secretary; or

(c) by regular mail or prepaid courier to the party's most recent address known to the Secretary and the notice of decision shall be deemed to have been given, unless the contrary is shown, on the fifth (5th) business day following the day on which it was mailed or on the second (2nd) business day following the day on which it was couriered, as the case may be.

10.4 A notice of decision by a Hearing Committee shall be provided by the Secretary to the Board, for information purposes only, as soon as reasonably practicable following the rendering and release of the decision.

11. GENERAL

11.1 Despite anything in this Policy, the Board or the Hearing Committee, as applicable, may vary these procedures provided herein in respect of any Hearing if it determines that such variance is reasonably necessary to make its decision or for efficiencies.

11.2 A Hearing may be adjourned from time to time by the Board or a Hearing Committee, as applicable, of its own motion or where it is shown to the satisfaction of the Board or Hearing Committee, as applicable, that the adjournment is required to permit an adequate Hearing to be held.

11.3 The Board or the Hearing Committee, as the case may be, is not required to provide minutes, transcripts or any other recording of any of the proceedings under this Policy.