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REPORT ON THE POLICE COMPLAINTS SYSTEM IN ONTARIO

THE HONOURABLE PATRICK J. LESAGE, Q.C.

April 22, 2005



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April 22, 2005

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Dear Attorney:

I am pleased to submit my report following a review of the police complaints system in Ontario.

Thank you for the opportunity to participate in this process.

Yours sincerely,

Patrick J. LeSage, Q.C.

PJL:iw

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1. Mandate

In June 2004 the Ontario Government asked me to review the provincial system dealing with public complaints regarding the police. My mandate was to advise on the development of a model for resolving public complaints about the police, to ensure that the system is fair, effective and transparent.¹ At my request, Messrs. John Lee, John Twohig, and Graham Boswell, all counsel from the Policy Division of the Ministry of the Attorney General, assisted me in discharging this mandate. I also appreciate the assistance of Mr. Mark Leach, Assistant Deputy Attorney General, Policy. Ms. Sarah Perkins and Mr. Grant McLeod, articling students at Policy Division, provided additional valuable support. I was able to access information at any time from the Ministry of Community Safety and Correctional Services and am grateful for the assistance of Mr. Ron Bain, Assistant Deputy Minister of the Policing Services Division. I very much appreciate the administrative support of Ms. Iris Wordsworth of Gowlings and Ms. Monica McCorquodale of the Policy Division, and am also most grateful to Dean Nathalie Des Rosiers of the University of Ottawa's Faculty of Civil Law who moderated public meetings held in Ottawa and Toronto and to the University of Windsor Law School's Professor Rose Voyvodic who moderated the Windsor public meeting. Mr. Jerry Amernic provided excellent communications support services for those meetings. While I appreciate the assistance of all of those who assisted in the creation of this report, the views expressed and recommendations made are my own.

¹ The full details of my terms of reference are found in Appendix A.

The Government asked me to consult widely with interested parties to determine their views on the police complaints system. During the first half of the year, the Attorney General had written to key groups and all Members of the Provincial Parliament requesting that they submit names of parties who would be interested in participating in the review. Upon my appointment, I contacted over 200 groups and individuals and I requested that they present written submissions on the topic by August 16, 2004. This deadline was later extended to September 21, 2004.

At the beginning of July, a website was set up to provide information about the review and to solicit submissions. The Ministry of the Attorney General was able to provide a prominent link to it on its own website.

On June 21, 2004 I began to hold informal meetings with groups and individuals that have historically been interested in policing matters. Among those participating in meetings were a broad range of community groups and police organizations. In addition to those that I specifically invited to meet with me, I met or spoke with many groups and individuals who contacted me and expressed an interest in sharing their views on the subject. While I was unable to meet or speak with every interested party, everyone was encouraged to provide a written submission.

Private meetings were held with over 200 individuals, representing more than 85 groups and organizations. I met privately with these groups and individuals to allow for full and frank discussions that otherwise may not have been possible in a public environment. Private meetings were held in Toronto, Kingston, Ottawa, Thunder Bay, Kenora, Windsor, London, Hamilton, Oshweken, and Sault Ste. Marie. I also received written submissions from over 100 groups and individuals from across the Province, all of which I read.

Public meetings were held at the Ottawa City Hall Council Chamber, the Windsor Public Library, and Toronto's Metro Hall Council Chamber on October 18, 25, and 28 respectively to reach out to those from whom I otherwise would not have heard. These meetings allowed those with whom I met informally to hear what others were saying about the system and allowed members of the general public to better understand the issues. Fifty presentations were made at these meetings. Additional comments in reaction to the public meetings were accepted in written form until November 12, 2004. All three meetings were recorded and transcripts were posted on the website. I also held a number of follow-up meetings with some groups that I wanted to meet again and requested additional submissions so that I could fully understand their positions.

2. Policing in Ontario

The *Police Services Act*² (PSA) governs policing and civilian oversight in Ontario. The PSA is divided into nine parts.³ Although this review focuses on Part V of the PSA, which deals with complaints, one should be aware of the legislative context in which Part V is found. The most significant parts of the PSA are summarized in this section and the current complaints process is reviewed later in this report.

Responsibility for Police Services

Part I of the PSA deals with responsibility for police services. Ultimately, the Minister of Community Safety and Correctional Services (formerly the Solicitor General) is responsible for the PSA and general oversight of policing in Ontario. Among his duties, the Minister is responsible for monitoring police services and police services boards to ensure that adequate and effective services are provided and that standards are met.⁴

Although the Minister oversees policing generally, specific police operations are not subject to Cabinet-level direction. The complex relationship between police and government is set out by Professor Kent Roach who writes:

² R.S.O. 1990, c. P.15 [hereinafter PSA].

³ Part VI of the PSA was repealed by Bill 105, *An Act to renew the partnership between the Province, Municipalities and the Police and to enhance community safety*, 1st Sess., 36th Leg., Ontario, 1997 (assented to June 26, S.O. 1997, c.8) [hereinafter Bill 105]. However the numbering of other Parts of the Act remains unchanged.

⁴ PSA, s. 3(2).

On the one hand, the idea that the police are a law unto themselves is unacceptable in a democracy that prides itself on restraint in the use of coercive state-sponsored force and on accountability for the use of such powers. On the other hand, the idea that the police are directed by the government of the day raises concerns about improper partisan concerns influencing or appearing to influence the machinery of justice. There is a need to respect and balance both the principles of independence and accountability and to do so in a manner that advances our aspirations to be a democratic nation that is governed by law.⁵

The PSA requires municipalities to provide adequate and effective policing services and specifies minimum requirements for such services.⁶ Municipalities may establish their own police services, work cooperatively with each other for the provision of police services, or contract with the Ontario Provincial Police (OPP) for policing.⁷ There are 60 municipal police services in Ontario. They range in size from seven sworn members of the Stirling-Rawdon Police Service to approximately 5200 sworn members of the Toronto Police Service.⁸ The role of the OPP is to police parts of Ontario without municipal police services, police certain navigable waters, patrol highways, and maintain investigative services to assist municipal forces.⁹ There are 8225 OPP personnel, including 5411 sworn officers, who report to the Commissioner of the OPP.¹⁰ It should be noted that the total cost of policing in Ontario for 2003 was approximately \$2.8 billion.¹¹

⁵ K. Roach, 'Four Models of Police-Government Relationships' (Ipperwash Inquiry Symposium on Government/Police Relations, Osgoode Hall Law School, York University, 29 July 2004) at 2, online: The Ipperwash Inquiry <www.ipperwashinquiry.ca/policy_part/pdf/Roach.pdf> (date accessed: 12 October 2004).

⁶ PSA, ss. 4(1)-(2).

⁷ *Ibid.*, s. 5(1).

⁸ Ontario Civilian Commission on Police Services, *Annual Report 2003* (Toronto: Ontario Civilian Commission on Police Services, 2004) [hereinafter OCCOPS 2003] at 54-55.

⁹ PSA, s. 19(1).

¹⁰ Ontario Provincial Police, *Annual Report 2003*, (Toronto: Ontario Provincial Police, 2003), online: Ontario Provincial Police

Ontario Civilian Commission on Police Services

The second part of the PSA relates to the Ontario Civilian Commission on Police Services (OCCOPS). An arm's length, quasi-judicial agency, OCCOPS is a responsibility of the Minister of Community Safety and Correctional Services.¹² Among its many roles, it may review police chiefs' decisions on public complaints and hear appeals from police disciplinary hearing decisions.¹³ OCCOPS also has the power to conduct investigations either on its own motion or at the request of the Minister of Community Safety and Correctional Services, a municipal council, or a police services board. It may investigate the conduct or performance of police officers (including chiefs and deputy chiefs of police), auxiliary police personnel, special constables, municipal law enforcement officers, and members of police services boards.¹⁴ Cabinet is also empowered to direct the Commission to undertake inquiries on any matter relating to crime and law enforcement.¹⁵

OCCOPS plays a general supervisory role in relation to municipal police services boards and police services within Ontario. It is empowered to direct boards and municipal police services to comply with prescribed standards and, if they

<<http://www.gov.on.ca/opp/organization/english/reprte03.pdf>> (date accessed: 28 November 2004) at 3.

¹¹ Statistics Canada, Canadian Centre for Justice Statistics, *Police Resources in Canada, 2004* (Ottawa: Statistics Canada, 2004) at 25.

¹² OCCOPS 2003, *supra* note 8 at 6.

¹³ PSA, ss. 22(1)(e.1), 22(1)(f).

¹⁴ *Ibid.*, s. 25(1)(a). In 2003, five such proceedings, regarding the conduct of police services board members and one police officer, were commenced. See OCCOPS 2003, *supra* note 8 at 15-16.

¹⁵ PSA, s. 26.

repeatedly fail to do so, OCCOPS may suspend or remove board members or chiefs of police, disband municipal police services and replace them with OPP police services, and/or appoint administrators to take over municipal policing matters for specified periods of time.¹⁶ OCCOPS also adjudicates budget disputes between boards and municipal councils, and disputes over employee classification for the purposes of collective bargaining.¹⁷ Furthermore, OCCOPS reviews decisions on amalgamation of police services and termination of police officer employment related to reduction or abolition of municipal police services.¹⁸

A full-time Chair heads OCCOPS, assisted by a full-time Vice-Chair for police complaints and a full-time Vice-Chair for community outreach.¹⁹ Part-time OCCOPS members are appointed to allow OCCOPS to fulfill its adjudicative and decision-making duties. Cabinet appoints the Chair, Vice-Chairs and all other OCCOPS members.²⁰ An Adjudication and Compliance Bureau deals with OCCOPS' adjudicative roles and a Complaints Bureau handles review and administration of public complaints. In addition, OCCOPS has an Outreach and Community Bureau that deals with community relations and education.²¹ For fiscal year 2002-2003, its budget was slightly less than \$1.5 million.²²

¹⁶ *Ibid.*, ss. 22(1)(a), 23(1).

¹⁷ *Ibid.*, ss. 39(5), 116(1).

¹⁸ *Ibid.*, ss. 6(3), 40.

¹⁹ OCCOPS 2003, *supra* note 8 at 8.

²⁰ PSA, ss. 21(2)-(3).

²¹ OCCOPS 2003, *supra* note 8 at 8.

²² *Ibid.* at 10.

Municipal Police Services Boards

Police services boards fulfill a major civilian oversight role throughout Ontario and are dealt with in Part III of the PSA. Every municipality maintaining a police service is required to maintain a board.²³ In smaller municipalities with populations of 25,000 people or less, these boards consist of the head of a municipal council (or other council member if the head of council opts not to sit on the board), a person appointed by municipal council who is neither a councillor nor a municipal employee, and one provincial appointee.²⁴ In municipalities with populations greater than 25,000 people, an extra councillor and provincial appointee are added to create five-member boards.²⁵ Subject to Cabinet approval, municipalities with populations over 300,000 may create seven-member boards, with two additional councillors and two additional provincial appointees.²⁶

Board responsibilities include the appointment of police officers, the establishment of objectives and priorities for the police service, the establishment of policies for effective management of the police service, and the hiring and evaluation of the police chief and deputy chiefs.²⁷

²³ PSA, s. 27(1).

²⁴ *Ibid.*, s. 27 (4).

²⁵ *Ibid.*, s. 27 (5).

²⁶ *Ibid.*, s. 27(9).

²⁷ *Ibid.*, ss. 31(1)(a)-(d).

In relation to police complaints, the PSA provides that boards are to establish guidelines for dealing with public complaints and may review the chief's administration of the complaints system.²⁸ Where a municipality contracts for OPP policing, the board's responsibilities related to complaints administration are more limited. These boards only review complaints administration as carried out by the local detachment commander and receive regular reports on the administration of the system.²⁹

The mandate of police services boards may be summarized as being one of oversight, general management and the setting of policy. The scope of responsibilities and powers is broad and includes giving orders and directions to the chief of police. However, boards are not to direct chiefs on specific operational decisions or with respect to the day-to-day operations of the police service.³⁰

Police Officers

A range of duties for police officers is set out in Part IV of the PSA. A police officer's duties include: preserving the peace, crime prevention, assisting victims, apprehending offenders, laying charges, executing warrants, completing training, and carrying out other lawful duties assigned by the chief of police.³¹ In addition

²⁸ *Ibid.*, ss. 31(1)(i)-(j).

²⁹ *Ibid.*, s. 10(9)(f).

³⁰ *Ibid.*, s. 31(4).

³¹ *Ibid.*, s. 42(1).

to these prescribed duties, the PSA provides that police officers have the common law duties and powers of constables.³²

Police chiefs have responsibilities beyond those of other police officers. These responsibilities include: overseeing the administration and operation of the police service, ensuring that police officers carry out their duties, administering discipline, ensuring that community-oriented police services are provided, and administering the complaints system.³³

Special Investigations Unit

The Special Investigations Unit (SIU) is an independent, civilian law enforcement agency and operates at arm's length from the Ministry of the Attorney General.³⁴ Established in 1990 and governed by Part VII of the PSA, the SIU's mandate is to investigate police incidents involving serious injury or death.³⁵ Where warranted, the Director of the SIU is empowered under the PSA with causing criminal charges to be laid against a police officer. Although the SIU reports to the Attorney General, investigations and decisions are independent of the Government and all police services. In 2002-2003, the SIU conducted 151 investigations which led to 4 charges. With 65 personnel, the SIU has an annual

³² *Ibid.*, s. 42(3). See generally Law Reform Commission of Canada, *Legal Status of the Police* by P.C. Stenning (Ottawa: Minister of Supply and Services Canada, 1982).

³³ PSA, ss. 41(1)(a)-(d).

³⁴ Ontario, Special Investigations Unit, *Annual Report 2002-2003* (Mississauga: Special Investigations Unit, 2003) at 2 [hereinafter SIU 2002-2003].

³⁵ PSA, s. 113(5).

budget of slightly over five million dollars.³⁶ The SIU has undergone two extensive reviews in the past seven years.³⁷

First Nations Policing in Ontario

Vast geographic areas of Ontario are policed neither by the OPP nor by municipal services, but by First Nations police services. The Treaty Three Police Service alone is responsible for administering approximately 142,000 square kilometers of territory.³⁸

First Nations police services are currently based upon the First Nations Policing Policy introduced in 1991. Tripartite agreements between First Nations, the federal Government and provincial/territorial governments allow for the delivery of policing services by independently administered First Nations police services.³⁹ As of 2003, tripartite agreements govern the Akwesasne Mohawk

³⁶ Ontario, Special Investigations Unit, 'FAQS', online: <<http://www.siu.on.ca/faqs.asp> > (last accessed: 14 October 2004); SIU 2002-2003, *supra* note 34 at 9, 24.

³⁷ See Ontario, *Consultation Report of the Honourable George W. Adams, Q.C. to the Attorney General and Solicitor General Concerning Police Cooperation with the Special Investigations Unit* by G.W. Adams (Toronto: Ministry of the Attorney General, 1998); G.W. Adams, *Review Report on the Special Investigations Unit Reforms prepared for the Attorney General of Ontario by the Honourable George W. Adams, Q.C.* (Toronto: Ministry of the Attorney General, 2003), online: Ministry of the Attorney General < <http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/adams/adamsreport.pdf> > (date modified: March 21, 2003).

³⁸ Public Safety and Emergency Preparedness Canada, Aboriginal Policing Directorate, 'Treaty Three—Canada's Newest First Nation Police Service', online: Public Safety and Emergency Preparedness Canada < http://www.psepc-sppcc.gc.ca/publications/abor_policing/Treaty_Three_e.asp > (last modified: 14 November 2003).

³⁹ Public Safety and Emergency Preparedness Canada, Aboriginal Policing Directorate, 'First Nations Policing Policy', online: Public Safety and Emergency Preparedness Canada < http://www.psepc-sppcc.gc.ca/abor_policing/fir_nat_policing_e.asp > (last modified: 23 September 2004).

Police Service, the Anishinabek Police Service, the Lac Seul Police Service, the Nishnawbe-Aski Police Service, the Six Nations Regional Police Service, the Treaty Three Police Service, the United Chiefs and Councils of Manitoulin Police Service, and the Wikwemikong Police Service.⁴⁰ In the absence of an agreement, policing on reserves is carried out by the OPP.⁴¹

First Nations police services vary greatly in terms of their policing mandates. For example, the Anishinabek Police Service serves 17 First Nations communities through its detachments located from the Thunder Bay area to Kettle Point, north of Sarnia. The Anishinabek Police Service serves a total population of about 9,000.⁴² In contrast, the Six Nations Police Service serves a population of 18,000 on a single reserve located less than 120 kilometres from downtown Toronto.⁴³

Apart from establishing First Nations police services and setting out the terms for their operations and funding, the tripartite agreements require that the police

⁴⁰ Public Safety and Emergency Preparedness Canada, Aboriginal Policing Directorate, 'First Nations Policing Services Across Canada', online: Public Safety and Emergency Preparedness Canada < http://www.psepc-sppcc.gc.ca/abor_policing/fir_nat_polic_serv_e.asp > (last modified: 11 November 2004).

⁴¹ First Nations Chiefs of Police Association, 'Setting the Context: The Policing of First Nations Communities (Module One)', online: First Nations Chiefs of Police Association <<http://www.fncpa.ca/Publications/Moduleone.doc>> (date accessed: 5 October 2004) at 11.

⁴² Anishinabek Police Service, 'Quick Facts', online: <<http://www.apscops.org/facts.html>> (date accessed: 23 October 2004); Anishinabek Police Service, 'Addresses & Phone Numbers', online: < <http://www.apscops.org/phone.html>> (date accessed: 13 December 2004).

⁴³ CBC, 'Roberta Jamieson: A Groundbreaker', online: CBC < http://www.cbc.ca/news/background/aboriginals/jamieson_profile.html > (date accessed: 2 December 2004).

services have in place a system for handling public complaints.⁴⁴ As First Nations constables are not included in the definition of “police officer” under the PSA, they are not subject to the PSA’s complaints process.⁴⁵ Complaints against First Nations constables must be pursued under the procedures that are implemented under the agreements.

⁴⁴ Public Safety and Emergency Preparedness Canada, Aboriginal Policing Directorate, ‘About the Aboriginal Policing Directorate’, online: Public Safety and Emergency Preparedness Canada

< http://www.psepc-sppcc.gc.ca/abor_policing/about_abor_pol_direct_e.asp > (last modified: 8 November 2004).

⁴⁵ PSA, s. 2.

3. Background and History

Prior to the 1960's, little attention was given to systems for handling public complaints regarding police.⁴⁶ An early study in the United States noted that many cities had systems for processing civilian complaints against the police, but that these systems were generally administered by police personnel.⁴⁷

During the 1960s and 1970s, North Americans became increasingly focused on issues related to civil liberties.⁴⁸ Not surprisingly, civilian oversight of police also became an issue of increased interest in both the United States and in Canada.⁴⁹ During the 1970s, there was very significant public interest in the police complaints system in Ontario.⁵⁰ By the middle of that decade, the complaints system has come to be seen as closed and secretive, and there were major concerns about the lack of documentation regarding the complaints process.⁵¹

⁴⁶ H. Beral and M. Sisk, 'The Administration of Complaints by Civilians Against the Police' (1963-64) 77 Harv L. Rev. 499 at 499. [hereinafter Beral and Sisk]

⁴⁷ *Ibid.* at 500.

⁴⁸ S. Watt, 'The Future of Civilian Oversight of Policing' (1991) 33 Can. J. Crim. 347 at 349.

⁴⁹ P.C. Weiler, "'Who Shall Watch the Watchmen?' Reflections on Some Recent Literature About the Police' (1968-69) 11 Crim L. Q. 420. See generally Beral and Sisk, *supra* note 46.

⁵⁰ Ontario, Police Complaints Commissioner, *Civilian Oversight of Police Conduct: A Position Paper* (Toronto: Police Complaints Commissioner, 1996) (Commissioner: G. Lapkin) at 4.

⁵¹ C.E. Lewis, S.B. Linden and J. Keene, 'Public Complaints Against Police in Metropolitan Toronto – The History and Operation of the Office of the Public Complaints Commissioner' (1986-87) 29 Crim L. Q. 115 at 117.

In 1974, following a series of controversial incidents, the late Arthur Maloney Q.C. was appointed to study the Toronto police complaints system.⁵² Between 1974 and 1979, several reviews of the police complaints system were conducted. The history of these reviews has been recorded in detail elsewhere and will not be repeated here.⁵³ However, their general conclusion was that a civilian component beyond what existed had to be injected into the police complaints procedure.

The complaints system did see some changes in 1978 when a new complaint-handling procedure was voluntarily adopted by many local Boards of the Commissioners of Police (the predecessors of today's police services boards).⁵⁴ Under this procedure, complaints against a police officer were investigated by the officer's own police service and the chief of police was responsible for deciding the disposition of the complaint. After the complaint was disposed of, a complainant could request a hearing before the local Board of Commissioners of Police, which had the power to recommend that the chief take further action.⁵⁵ If dissatisfied with the result of such a hearing, the complainant could then apply to

⁵² *Ibid.* at 117.

⁵³ *Ibid.* at 117-119. See also M.W. McMahon and R.V. Ericson, *Policing Reform: A Study of the Reform Process and Police Institution in Toronto* (Toronto: University of Toronto Centre of Criminology, 1984); See generally A. Maloney, *Report to the Metropolitan Toronto Board of Commissioners of Police* (Toronto: Metropolitan Toronto Review of Citizen-Police Complaint Procedure, 1975); Ontario, *Royal Commission into the Metropolitan Toronto Police* (Toronto: Queen's Printer, 1976) (Commissioner: D.R. Morand); W. Pitman, *Now Is Not Too Late: Report of the Metropolitan Toronto Task Force on Human Relations* (Toronto: Task Force on Human Relations, 1977); Cardinal G.E. Carter, *Report to the Civic Authorities of Metropolitan Toronto and its Citizens* (Toronto: Office of the Cardinal, 1979).

⁵⁴ Lewis, *supra* note 51 at 118.

⁵⁵ *Ibid.* at 118-119.

the Ontario Police Commission (now OCCOPS), which could then order an investigation if it considered the matter to be of sufficient importance.⁵⁶ Still, these new procedures were considered inadequate, particularly within Toronto.⁵⁷

In 1981, the provincial government responded to the dissatisfaction in Toronto by enacting the *Metropolitan Toronto Police Force Complaints Project Act, 1981*⁵⁸ which established a unique complaints system in Toronto on a trial basis.⁵⁹ Under the *Act*, the Toronto Chief of Police was required to set up a Public Complaints Investigation Bureau to receive, record, and investigate complaints and inquiries.⁶⁰ A civilian Public Complaints Commissioner would monitor and review the Bureau's investigations. The Commissioner also had independent investigative powers.⁶¹ A Public Complaints Board conducted hearings of matters referred to it by the Toronto Chief of Police or the Commissioner.⁶²

This experimental system, with minor alterations, was made permanent in 1984. Six years later, the "Toronto System" became a Province-wide system with the passage of the *Police Services Act, 1990*.⁶³ Under this legislation, all police services in the Province were required to establish Public Complaints Investigations Bureaus (PCIB's), although police services with fewer than 20

⁵⁶ *Ibid.* at 119.

⁵⁷ *Ibid.* at 119.

⁵⁸ S.O. 1981, c.43 [hereinafter *Toronto Complaints Project Act*].

⁵⁹ P. Ceysens, *Legal Aspects of Policing*, vol.2, looseleaf (Saltspring Island, BC: Earls court Legal Press, 1994) at 7-3.

⁶⁰ *Toronto Complaints Project Act*, s. 5.

⁶¹ *Ibid.*, ss. 14(1)(b)-(d), 14(2)-(3).

⁶² *Ibid.*, s. 4, 18(3).

⁶³ S.O. 1990, c.10 [hereinafter *PSA S.O.1990*].

officers had the option to use the PCIB of another police service.⁶⁴ The Public Complaints Commissioner was renamed the Police Complaints Commissioner (PCC) and was given province-wide authority.⁶⁵ The Public Complaints Board, which had been replaced by *ad hoc* boards of inquiry in 1984, evolved into the permanent Board of Inquiry in 1992.⁶⁶

Members of the public were able to make complaints, including third-party complaints, either to the PCIB, PCC, or at any police station, bureau, or detachment.⁶⁷ In exceptional circumstances, the Attorney General could direct the PCC to make a conduct complaint about an officer.⁶⁸ Investigations were generally handled by PCIB's, which were required to send out an initial interim investigation report within 30 days of receiving a complaint and further interim reports on a monthly basis.⁶⁹ Reports were to be forwarded to the PCC, complainant, and the police officer who was the subject of the complaint. The PCC could investigate a complaint for any reason following the release of a PCIB's first interim report or 30 days after the making of a complaint.⁷⁰

⁶⁴ *Ibid.*, ss. 76(1), 76(3).

⁶⁵ *Ibid.*, s. 99.

⁶⁶ Ontario, Board of Inquiry (*Police Services Act*), *Annual Report 1993 and 1994* (Toronto: Board of Inquiry, 1995) at 1.

⁶⁷ *PSA S.O.1990*, s. 80. Where the complainant was neither directly affected by nor witnessed an incident, the PCC was obliged to locate a first-party and inform that person that he or she was entitled to complain. If the person did not pursue a complaint, the third party complaint would not be dealt with.

⁶⁸ *Ibid.*, s. 78.

⁶⁹ *Ibid.*, ss. 87(2), 87(3).

⁷⁰ *Ibid.*, s. 88(1)(a). Under ss.88(1)(b)-(d) the PCC could take over an investigation if the complainant commenced a court action in relation to the complaint. Further, the PCC could take over investigations if it was thought that unreasonable delay or unusual circumstances required such action. Finally, the PCC could take over investigations upon request of the relevant chief. The PCC, not the PCIB, was also required to

Following PCIB or PCC investigations, final reports were presented to chiefs of police for disposition. Chiefs were entitled to dispose of matters in a number of ways: by taking no further action, admonishing an officer, holding a disciplinary hearing, ordering a Board of Inquiry hearing, or laying criminal charges.⁷¹ A decision on disposition was required within six months of receiving a final report and notice was to be given to the PCC, complainant, and officer.⁷² If a chief did not provide notice of a decision within six months, he or she would be deemed to have taken no further action.⁷³

Disciplinary hearings were held by chiefs to determine if an officer was guilty of misconduct. Misconduct included breaches of the code of conduct, which listed offences such as discreditable conduct, insubordination, neglect of duty, deceit, breach of confidence, and corrupt practice.⁷⁴ Penalties available in disciplinary hearings included dismissal, direction to resign, demotion, suspension, forfeiture of pay, and reprimand.⁷⁵ Appeals from disciplinary hearing decisions went either to a municipal police services board or to OCCOPS unless the hearing stemmed from a public complaint, in which case appeals went to the Board of Inquiry.⁷⁶

conduct investigations in relation to complaints concerning more than one force pursuant to s. 88(3).

⁷¹ *Ibid.*, s. 90(3).

⁷² *Ibid.*, ss. 90(7), 90(5).

⁷³ *Ibid.*, s. 90(8).

⁷⁴ *Ibid.*, s. 56(a); J.F. Hamilton *et al.*, *The 1996 Annotated Ontario Police Services Act* (Toronto: Carswell, 1995) at 159.

⁷⁵ *Ibid.*, ss. 61(1), 61(3), 97(1), 97(3).

⁷⁶ *Ibid.*, s. 66.

Upon the request of the complainant, the PCC could review a chief's decisions to admonish or take no further action.⁷⁷ If a public complaint led to a disciplinary hearing, the PCC could review the hearing decision upon the complainant's request.⁷⁸ Following these reviews, the PCC had the option of taking no further action or ordering a Board of Inquiry hearing to determine whether there was misconduct.⁷⁹

The Board of Inquiry was a permanent tribunal with members appointed by Cabinet. Members were recommended for appointment by the Attorney General, the Association of Municipalities of Ontario (AMO), the Police Association of Ontario (PAO), and the Ontario Association of Chiefs of Police (OACP). A hearing panel would be composed of a chair, who was required to be a lawyer recommended by the Attorney General, a member recommended by AMO, and a member recommended by either the PAO or OACP.⁸⁰ Board of Inquiry decisions could be appealed to the Divisional Court.⁸¹

Informal resolution was available under the Act.⁸² A complainant and officer could have a complaint resolved by the head of a PCIB on consent of the chief of police prior to a final report being issued, or on consent of the PCC after a final report was issued. Informal resolution was also available after the Board of

⁷⁷ *Ibid.*, ss. 91(1)-(2).

⁷⁸ *Ibid.*, s. 91(3).

⁷⁹ *Ibid.*, s. 91(6).

⁸⁰ *Ibid.*, s. 93.

⁸¹ *Ibid.*, s. 98(1).

⁸² *Ibid.*, s. 83.

Inquiry began hearing evidence if the Board of Inquiry consented.⁸³ The PCC had the power to continue a complaint if it considered that the informal resolution process was entered into through misunderstanding, threat, or improper pressure.⁸⁴ The PCC could also proceed with a complaint despite a withdrawal if it considered that the withdrawal occurred for any of those reasons.⁸⁵

The PCC operated throughout Ontario between 1991 and 1996, with regional offices in Toronto, Ottawa, Windsor, Mississauga, Peterborough, Sudbury and Thunder Bay. Although the PCC did have the ability to conduct complaint investigations, that power was used sparingly. In 1996, the PCC's last full year of operation, the PCC conducted only 24 investigations out of 3549 complaints filed with the police.⁸⁶ The PCC did, however, review a significantly larger number of decisions made by chiefs of police and the OPP Commissioner. In 1996, it carried out 423 such reviews.⁸⁷

Throughout the 1990's a variety of public reports commented on the police complaints system in the Province. The Task Force on Race Relations and Policing was constituted in 1989 and issued its first report in April of that year, noting a lack of standardization across the Province for handling police

⁸³ *Ibid.*, ss. 83(1)-(2).

⁸⁴ *Ibid.*, s. 83(5).

⁸⁵ *Ibid.*, s. 84(6).

⁸⁶ Ontario, Police Complaints Commissioner, *Annual Report 1996* (Toronto: Police Complaints Commissioner) at 34.

⁸⁷ *Ibid.* at 34.

complaints.⁸⁸ In its subsequent 1992 report, the Task Force acknowledged the legislative changes to the police complaints system, and warned that the success or failure of the new Province-wide PCC would be dependent on adequate resources.⁸⁹ In the same year, Stephen Lewis, in his *Report of the Advisor on Race Relations to the Premier of Ontario*, recommended that the PCC be empowered to perform initial investigations of all public complaints of racist conduct by police officers. Lewis also recommended that the PCC should be required to perform mandatory reviews of chiefs' dispositions of such cases.⁹⁰ In 1995, the *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System* recommended that OCCOPS receive additional funding for inquiries into police conduct.⁹¹ The Commission also noted that "a new institution for police accountability with a specifically remedial mission" might be required to look at systemic issues, rather than merely individual complaints.⁹²

In October 1996, Rod McLeod, Q.C., was asked to review civilian oversight of police in Ontario with the goal of advising the Attorney General and Solicitor General on ways to make the system simpler, more efficient, and more

⁸⁸ Ontario, *Report of The Race Relations And Policing Task Force* (Toronto: Race Relations and Policing Task Force, 1989) (Chair: Hon. C. Lewis) at 184.

⁸⁹ Ontario, *Report Of The Race Relations And Policing Task Force* (Toronto: Race Relations and Policing Task Force, 1992)(Chair: Hon. C. Lewis) at 129.

⁹⁰ Ontario, *Report of the Advisor on Race Relations to the Premier of Ontario* (Toronto: Advisor on Race Relations, 1992) (Advisor: Hon. S. Lewis).

⁹¹ Ontario, *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System* (Toronto: Queen's Printer for Ontario, 1995)(Co-chairs: Hon. D. Cole and M. Gittens) at 388.

⁹² *Ibid.* at 389.

effective.⁹³ McLeod recommended streamlining various civilian oversight agencies (OCCOPS, SIU, PCC, and Boards of Inquiry) into one body with two branches: adjudication and investigation. He recommended that complainants be able to file complaints at local police stations, separate professional standards offices, or at community resource locations, and also recommend informal resolution of complaints.⁹⁴

Shortly after the McLeod Report was released, the government of the day introduced Bill 105⁹⁵, which brought in the current system of dealing with civilian complaints. Following the changes instituted by Bill 105, police complaints remained an issue of serious debate. In August 2002, the City of Toronto's Auditor issued a performance audit of the handling of complaints by the Toronto Police Service. The audit spoke approvingly of the conduct and timeliness of public complaints investigations by the Toronto Police Service, but made many recommendations for potential improvements to the process.⁹⁶ The audit also indicated concerns about the overall framework that allowed police to investigate public complaints, stating, "The lack of an investigative process independent of

⁹³ R.M. McLeod, Q.C. *A Report And Recommendations On Amendments To The Police Services Act Respecting Civilian Oversight Of Police* (Toronto: Queen's Printer for Ontario, 1996) at Appendix E. The report was issued on November 21, 1996. The Terms of Reference of the McLeod Review were broader than those of the present review and many of the recommendations proposed in the McLeod Report are beyond the scope of the issues considered here.

⁹⁴ *Ibid.* at 40, 34.

⁹⁵ Bill 105, *supra* note 3.

⁹⁶ City of Toronto, Audit Services, *Performance Audit: The Public Complaints Process Toronto Police Service* by Jeffrey Griffiths (Toronto: Audit Services, City of Toronto: August 2002).

the police is regarded as a significant impediment in regard to public confidence in the system.”⁹⁷

In December 2003, the Ontario Human Rights Commission released an inquiry report entitled *Paying the Price: The Human Cost of Racial Profiling*.⁹⁸ The report discussed racial profiling in the context of policing and indicated a lack of confidence in police complaints mechanisms.⁹⁹ The report recommended a public consultation on police complaints to ensure the independence and effectiveness of the system.¹⁰⁰

⁹⁷ *Ibid.* at 29.

⁹⁸ Ontario Human Rights Commission, *Paying the Price: The Human Cost of Racial Profiling* (Toronto: OHRC, 2003).

⁹⁹ *Ibid.* at 71.

¹⁰⁰ *Ibid.* at 71.

4. The Current System

Part V of the PSA governs the handling of complaints about police. Members of the public are able to complain about the conduct of particular officers or the policies and services of a police service.¹⁰¹

Third-party complaints are not allowed under the legislation.¹⁰² Complaints may be hand-delivered or sent by mail or fax.¹⁰³ They must, however, be in writing and must be signed by the complainant.¹⁰⁴ Complaints may be made at police stations or detachments of the police service complained of or to OCCOPS. Complaints made to OCCOPS are forwarded to the chief of police of the police service to which the complaint relates for handling.¹⁰⁵

At any time before or during an investigation of the conduct of a police officer, the chief may resolve the complaint informally if the conduct does not appear to be of a serious nature and the police officer and complainant both consent to informal resolution.¹⁰⁶ Statements made during an attempt at informal resolution are not

¹⁰¹ PSA, s. 56 (1). Section 57(7) excludes the Solicitor General and OCCOPS members or employees from making complaints. It also prevents members of police forces and boards from making complaints related to their respective forces.

¹⁰² *Ibid.*, s. 57(1). Section 59(5) indicates that police chiefs "...shall not deal with any complaint made by a member of the public if he or she decides that the complainant was not directly affected by the policy, service or conduct that is the subject of the complaint."

¹⁰³ *Ibid.*, s. 57(2).

¹⁰⁴ *Ibid.*, s. 57(2).

¹⁰⁵ *Ibid.*, s. 57(5).

¹⁰⁶ *Ibid.*, s. 58(1).

admissible in a civil proceeding or at a subsequent PSA hearing except with the consent of the party who made the statement.¹⁰⁷

A chief may decide not to deal with a complaint that is frivolous or vexatious or made in bad faith.¹⁰⁸ A chief may also decide not to deal with a complaint made more than six months after the fact.¹⁰⁹ As previously noted, third party complaints are not allowed.¹¹⁰ Decisions not to deal with complaints on any of the foregoing grounds must be communicated to the complainant within 30 days, along with notice of the complainant's right to request a review by OCCOPS.¹¹¹

Generally, upon the receipt of a complaint, a chief of police is required to determine whether a complaint relates to policy, services, or conduct.¹¹² This characterization of the complaint must be given to the complainant who may ask OCCOPS to review it.¹¹³

Complaints regarding policy or service are treated differently from conduct complaints. Chiefs of police are responsible for reviewing policy and service complaints.¹¹⁴ As requested by police services boards, chiefs are required to submit written reports to their boards on every policy or service complaint,

¹⁰⁷ *Ibid.*, s. 58(3).

¹⁰⁸ *Ibid.*, s. 59(3).

¹⁰⁹ *Ibid.*, s. 59(4).

¹¹⁰ *Ibid.*, s. 59(5).

¹¹¹ *Ibid.*, s. 59(6).

¹¹² *Ibid.*, s. 59(1).

¹¹³ *Ibid.*, s. 59(2).

¹¹⁴ *Ibid.*, s. 61(1).

including its disposition.¹¹⁵ Chiefs are also required to notify a complainant of the disposition of the policy or service complaint and the complainant's right to request the police services board review that disposition.¹¹⁶ Reasons must be given if a chief has decided that no action is to be taken in regard to the complaint.¹¹⁷ If the chief has not notified the complainant of his or her disposition of the complaint within the time required, he or she is deemed to have taken no action in response to the complaint and to have so notified the complainant.¹¹⁸ Complaints about local OPP policies are dealt with in a similar way by local detachment commanders, while complaints about provincial OPP policies are made to the OPP Commissioner.¹¹⁹

Chiefs are responsible for ordering the investigation of conduct complaints.¹²⁰ In larger police services, professional standards branches will investigate the more serious complaints, while less serious complaints are assigned to unit commanders. Smaller services that do not have separate professional standards branches may have an officer specifically assigned to deal with complaints. In even smaller services, a senior officer may be assigned to investigate on an *ad hoc* basis. Chiefs, with the approval of their boards and on notice to OCCOPS, may also request that another police service carry out the investigation.¹²¹

¹¹⁵ *Ibid.*, s. 61(2).

¹¹⁶ *Ibid.*, s. 61(3).

¹¹⁷ *Ibid.*, s. 61(4).

¹¹⁸ *Ibid.*, s. 61(6).

¹¹⁹ *Ibid.*, ss. 62, 63.

¹²⁰ *Ibid.*, s. 64(1).

¹²¹ *Ibid.*, ss. 64(2)-(3).

Where it is determined after an investigation that a complaint cannot be substantiated, chiefs must notify the complainant and the officer of the finding, provide a copy of the written report, and provide notice that the complainant has 30 days to ask OCCOPS to review the finding.¹²² If a chief believes that an investigation reveals misconduct or unsatisfactory work performance¹²³, the PSA allows another opportunity for informal resolution provided that the matter was not of a serious nature and if the officer and complainant both consent to the informal process.¹²⁴

Where an informal resolution after an investigation has been attempted, but has failed, a chief may impose penalties ranging from forfeiture of three days' pay to direction to take part in a remedial program, without a hearing. A chief of police may note the penalty and the police officer's response in the police officer's employment record. However, such entries must be expunged within two years, provided that no new misconduct or unsatisfactory work performance notations are made during that time.¹²⁵ These penalties can only be imposed if the officer consents; otherwise, a chief is required to hold a hearing.

¹²² *Ibid.*, s. 64(6).

¹²³ P. Ceysens, S. Dunn and S. Childs, *Ontario Police Services Act, Fully Annotated, 2002-2003 Edition* (Salt Spring Island: Earls Court Legal Press, 2002) at 133 notes that unsatisfactory work performance was introduced with Bill 105 and "represents an effort to treat work performance issues in a manner more akin to the traditional workplace response to some issues."

¹²⁴ PSA, s. 64(11). Section 72(5) of the PSA indicates that complainants are able to request that OCCOPS review decisions that conduct was not serious.

¹²⁵ *Ibid.*, s. 64(16).

Where a hearing is held by a chief of police, the chief is responsible for appointing a prosecutor who may be a police officer, lawyer or an agent. Parties to a hearing are the prosecutor, the police officer who is the subject of the hearing, and the complainant. In addition to the rules laid out in the PSA governing the hearing, the *Statutory Powers and Procedures Act*¹²⁶ also applies.

Upon the conclusion of a hearing, penalties ranging from admonishment to dismissal can be issued if misconduct or unsatisfactory work performance is found on clear and convincing evidence.¹²⁷ Between those two extremes, chiefs have a range of options such as directing forfeiture of no more than 20 days off, a forfeiture of up to three days' pay, suspension up to 30 days, a demotion, or a resignation.¹²⁸ Forfeiture of pay may be satisfied by working without pay or by applying it to vacation, overtime, or sick leave credits.¹²⁹

Both police officers and complainants may appeal decisions issued in disciplinary hearings to OCCOPS, with a further appeal to the Divisional Court.¹³⁰ In contrast, there is no ability to appeal OCCOPS' review decisions.¹³¹ In 2003, OCCOPS heard 26 appeals from disciplinary decisions.¹³² However, in the same

¹²⁶ R.S.O. 1990, c. S.22 [hereinafter SPPA].

¹²⁷ PSA, ss. 68(1), 64(10).

¹²⁸ *Ibid.*, s. 68(1).

¹²⁹ *Ibid.*, s. 68(4).

¹³⁰ *Ibid.*, s. 71(1).

¹³¹ *Ibid.*, s. 72(12).

¹³² OCCOPS 2003, *supra* note 8 at 31.

year, it conducted 488 reviews of decisions by chiefs of police that were made at the earlier stages of the complaints process.¹³³

¹³³ *Ibid.* at 45.

5. Other Jurisdictions

A survey of other jurisdictions reveals the existence of a wide variety of systems for resolving public complaints about the police. A number of classification schemes for these systems are discussed in the academic literature.¹³⁴ One such classification divides complaints systems into four models.¹³⁵ The Investigative Model of complaints handling has an agency that investigates complaints and makes findings and recommendations to the police regarding discipline and policy. The Monitoring Model sees an agency reviewing police investigations of complaints and subsequently making findings and recommendations to the police regarding discipline and policy. Under the Appeal Model, an agency is responsible for hearing appeals after the police have investigated a complaint and imposed discipline. Finally, the Auditor Model has an agency reviewing police complaint procedures in an attempt to modify the system to make it more effective. Although this classification is based on American complaints systems, they can be readily applied to categorize systems outside of the United States as well.¹³⁶

¹³⁴ See Chapter 4 of C. Lewis, *Complaints Against Police: The Politics of Reform* (Sydney: Hawkins Press, 1999).

¹³⁵ S. Walker, *Police Accountability: The Role of Citizen Oversight* (Belmont: Wadsworth, 2001); J. Miller, 'Civilian Oversight of Policing: Lessons from the Literature' (Global Meeting on Civilian Oversight of Police, Vera Institute of Justice, Los Angeles, 5-8 May 2002), online: VERA Institute of Justice, <http://www.vera.org/publication_pdf/178_338.pdf> (date accessed: 7 December 2004) at 8.

¹³⁶ Miller, *supra* note 135 at 8.

Actual complaints systems, however, do not fit squarely into any particular classification. Many are hybrids that contain elements from various models, although they will often have features that make them predominantly one or the other. For example, the current Ontario system, with OCCOPS' role in hearing appeals stemming from police disciplinary hearings, has much in common with the appeal model. However, OCCOPS' additional roles in investigations and reviews also make Ontario's system show some passing resemblance to the investigative and monitoring models.

New York City's Civilian Complaint Review Board is a good example of an investigative model of complaints handling. Independent civilian investigators are assigned to investigate public complaints about New York City police officers. Following an investigation, the Board reviews the investigation and substantiated complaints are forwarded either with or without a discipline recommendation to the Police Commissioner who has the discretion to implement or ignore the recommendation. In 2003, the Board's role was expanded to include the prosecution of substantiated complaints.

The Commission for Public Complaints Against the Royal Canadian Mounted Police may be regarded as an example of the monitoring model. If a complainant is unsatisfied with the outcome of a complaint investigation conducted by the Royal Canadian Mounted Police, the Commission may be asked to review the investigation. Following the review, the Commission may make findings and

recommendations to which the police must respond. A final report is then generally prepared by the Commission in response to the police's response. This process is supplemented by additional powers given to the Commission to investigate a complaint or hold a public hearing.

The police complaints system in the City of Los Angeles contains a significant audit component making it a good example of the audit model. In Los Angeles, the police are responsible for the handling of public complaints, but an independent auditor in Los Angeles conducts regular audits of the process to ensure that the police are in compliance with the mandated procedures.

During the course of this review, I examined an array of different police complaints systems. Many of the systems that I examined were ones recommended to me in my meetings with the parties. Short summaries of some of these systems are set out in Appendix B. I did not use any special criteria for their inclusion in this report other than that I found these systems to contain some unique features and that they demonstrate the range of systems that are in place.

6. Summary of Submissions

The overwhelming consensus among the groups with whom I met was that police officers are no more likely to engage in misconduct than any other group of professionals. In fact, most praised the work of the men and women who are willing to protect and serve their communities. This is consistent with evidence that Canadians generally have a high regard for the police. Canadians have expressed very high levels of confidence in police in comparison to both other sectors of the justice system and to various other professions and occupations.¹³⁷ Nevertheless, there was widespread agreement from the submissions I received that the system for dealing with public complaints requires improvement, not only for the benefit of those who feel aggrieved, but for everyone involved in the system, including individual police officers. All parties agreed that a fair, effective and transparent complaints system was essential for maintaining the integrity of the policing profession. Rather than a debate as to whether there needs to be changes to the system, the vast majority of the meetings were discussions regarding the degree of change necessary and more specifically the types of changes needed.

There appear to be two main perspectives on the type of changes that should be made to the existing system. From one perspective, there is the fear that the

¹³⁷ Public Safety and Emergency Preparedness Canada, *Public Confidence in Criminal Justice: A Review of Recent Trends 2004-05* (Ottawa: Public Safety and Emergency Preparedness Canada, 2004), online: Public Safety and Emergency Preparedness Canada < http://www.psepc-sppcc.gc.ca/publications/corrections/pdf/200405-2_e.pdf > (last modified: November 19, 2004) at 10-11, 19.

system is not working to effectively resolve complaints and is, in itself, a cause for mistrust of the police. Many said that this mistrust has led to unwillingness by some members of the community to contact or cooperate with the police even in situations where serious crimes have been committed. A fair, effective and transparent complaints system could be a step toward improving confidence and trust in the police. They suggest that this can only come from implementing a fully independent civilian complaints system starting, from the reception of complaints to the final adjudication and appeal of disciplinary decisions. This view was expressed most forcefully by racialized groups that have historically suffered from discrimination.

The second perspective, shared by many police groups, is that the system needs improvement, but does not require replacing. In this view, the system is operating fairly well, but like any system, could be more finely tuned. The fear in this case was that the current system would be sacrificed solely for the sake of change. According to this view, while improvements could be made to many aspects of the current system, an entirely civilian complaints system would be too bureaucratic, inefficient and would effectively remove responsibility from police managers to manage their officers. Many police managers felt that there needed to be changes to the legislation to allow them to be more effective in managing their officers.

The following summary is an attempt to encapsulate the views and comments made during the course of this review. Although I summarize what I have heard under the headings of community groups, police chiefs, police services boards and police associations, this is solely a matter of convenience for the reader and myself. It should be stressed that not everyone within each category share exactly the same views. Some may in fact have more in common with those grouped under another heading. However, these generalizations are necessary to provide an overview of the concerns that were raised and to form a basis for my recommendations.

Community Groups

Community groups expressed significant frustration with the current system. They considered the current system to be too complex and many admitted that they did not understand the role of OCCOPS. There were criticisms of the Commission for failing to effectively provide the needed oversight within the complaints system.

While it was felt the system fails complainants in a large number of areas, it was often noted that the system is inherently difficult to navigate. The police have made few attempts to make the complaints system user-friendly, and I was told that only the most educated and determined complainant would be able to successfully find their way through the process. Even those complainants who possess these characteristics told me they were surprised by the obstacles they

encountered. Many said that their experiences with the system have left them frustrated and angry. I have heard that most people have given up on the system and have instead sought redress through the civil court system or the Ontario Human Rights Commission.

Community groups submitted that a legitimate complaints system cannot be based on a process where a complaint about a police officer must be filed with the police. Not only are police stations intimidating, but I frequently heard that those who have wished to make a complaint have sometimes been discouraged by the police in doing so. Some complainants said that they were threatened with reprisals, and others reported that the police had warned them that they could be charged with public mischief if their complaint was determined to be unfounded. In a similar vein, some complainants stated that they became the subject of the investigation following the filing of a complaint. I was also told that other systemic barriers to the filing of complaints include requirements for written and signed complaints, the prohibition against third party complaints, the unnecessary characterization of complaints as policy or conduct complaints and the six-month limitation period in which to file a complaint.

The writing requirement, it was argued, discourages those who do not have the requisite writing or comprehension skills for making complaints. It is also a barrier for those who are not capable of communicating in English or French.

The prohibition against third-party complaints was raised as a significant problem. Although some acknowledged that it may not be appropriate for just anyone to file a complaint (for example, there were some doubts as to whether someone who read a newspaper report alleging police misconduct should be allowed to file a complaint), it was widely recognized that the right to complain should not be limited to those who are directly affected by the actions complained of. Most community groups proposed that any witness of police misconduct should be allowed to file a complaint. Others argued that advocacy groups should also be able to file a complaint especially in situations where the person or persons who are directly affected are unwilling or unable because of physical, mental, or other circumstances to file a complaint on their own behalf and where there appear to be systemic problems regarding policing practices. Still others argued that anyone should be able to file a complaint and it should be up to the persons receiving the complaint to decide on whether to act upon it.

Many expressed frustration regarding the need to characterize a complaint as one of policy or conduct. Many complainants are unable to make this distinction, and it was said that many complaints may be characterized as both conduct and policy and that this distinction should be eliminated. It was pointed out that complainants are interested in a resolution of their complaint and that the handling of the complaint should proceed with that in mind.

The current six-month limitation period to file a complaint was also the subject of criticism. Many thought that such a limitation period, commencing from when the facts on which the complaint is based occurred, was unfair to those who have been charged. Some lawyers who have acted for these complainants have stated that they would prefer a longer limitation period or that the limitation period commence running only from the time outstanding criminal charges have been disposed of so that potential reprisals for laying a complaint (such as the laying of additional charges) are avoided. Others argued that there should be no limitation period at all, noting that complaints to many professional bodies are not time-limited. Although there is discretion in the current legislation for chiefs to waive the limitation period, it was suggested this is rarely, if ever, done.

In addition to the barriers to access the system, most community groups said that the investigation of a complaint by the same police service as the subject of the complaint raises significant concerns over the legitimacy and integrity of the investigation. Many felt that investigators within the same police service cannot be objective in the investigation of civilian complaints and that a police culture of protecting fellow officers eliminates any capacity to carry out thorough investigations. Even where the investigations are rigorously conducted and are fair, the perception of taint and unfairness will always exist.

The same criticisms were also laid against the hearings process. As hearings of misconduct are administered by the police service, it was felt that the process could not be fair and could not be perceived to be fair.

The solution to these problems, proposed by many community groups, was the implementation of a civilian-based process. A number proposed that the investigators and adjudicators of public complaints should not be police officers or former police officers, although they may be trained by retired police officers. They also emphasized that these investigations are not criminal investigations and that police officers should not be the only group capable of conducting such investigations. Others stated that the most capable investigators for these cases are in fact police officers and what is necessary are safeguards to ensure that they conduct their investigations fairly. Some suggested the use of police officers seconded to a civilian body that would be responsible for the overall conduct of investigations. Others suggested the use of retired police officers in combination with civilian investigators, and still others suggested the Special Investigations Unit. Similar proposals were made about adjudicators, although there were some groups who thought that the adjudication system did not need any changes. Some felt that adjudication should be handled by the courts or by a panel consisting of appointees from the community, police managers and police associations.

Many groups offered detailed suggestions on the investigation and adjudication of complaints in addition to recommendations on who should be empowered to handle them. For example, they suggested that all officers should be required to cooperate with investigators and answer questions. Officer notes and other evidence should be secured immediately and the investigation should conclude in a timely manner. Furthermore, the standard of proof to be utilized at hearings should be the civil standard and it was inappropriate to use any other standard. Full disclosure of the investigative file should be provided to the complainant to allow complainants to be able to make informed decisions regarding appeals. Hearing decisions should be easily accessible to the general public, and the identities of parties should be published unless there is a legitimate reason for non-publication (e.g. names of sexual assault victims should not be published). Although appeals may continue to be heard by OCCOPS, OCCOPS needs to provide reasons for all of its decisions.

While there was significant concern regarding the specific aspects of the formal investigation and hearings process, almost everyone agreed that many complaints are of a nature that should be handled informally and quickly, and that this could often take place prior to any investigation. This could be a mediative process where it is understood that discussions are taking place without prejudice. However, this informal process should have the involvement of an independent body to ensure that no undue pressure to settle the matter was exerted and that records are kept.

Most community groups suggested that any new civilian complaints body should be able to perform annual audits of the complaints system to ensure that the system is operating appropriately and to make recommendations for changes where appropriate. It should also be responsible for broader five-year reviews of the system. Some groups further suggested that the new body should also be responsible for the investigation of complaints against all employees of a police service, such as special constables, and not just police officers. Many civilian employees of police services are special constables, appointed under the PSA to perform designated duties. Special constables working for police services undertake duties such as court security, prisoner escort, and technical support. Other special constables are appointed to work with specialized agencies such as university and transit “police”. Along similar lines, many groups were concerned with the regulation of private security guards. In addition, it was suggested that the new civilian body be given powers to set policing standards so that issues such as the identification of officers are addressed. Almost all community groups indicated that the new complaints body needs to be adequately resourced to undertake its new functions and have a proper complement of trained staff so that it can achieve its objectives.

Chiefs of Police and Senior Officers

Chiefs of police and senior officers are critical to the successful operation of the current complaints process. On the whole, most chiefs and senior officers indicated that the system is now working well to resolve complaints in a fair manner. Many chiefs of police and senior officers are concerned about the public's perception that the complaints system is not working and the impact this has on the general perception of the police. They wanted to add some perspective to the number of complaints they receive and noted that there are literally millions of contacts between civilians and police officers resulting in only a few thousand complaints each year. Many of these complaints, they argue, are resolved to the satisfaction of the complainant. However, they recognized that improvements could be made to the current system, but their views on what changes should be made varied significantly. Their suggestions were also very broad, ranging from potential changes to the handling of public complaints to specific substantive changes to the code of conduct and the creation of positive duties on the part of police officers to report misconduct.¹³⁸

Generally, this group emphasized that any changes should not result in a lengthy, expensive and overly bureaucratic process. Complaints need to be dealt with efficiently and they felt that allowing third-party complaints might risk

¹³⁸ Given the large number of recommendations that I have been provided by this group, I have decided to discuss only what are, in my opinion, the most important recommendations. I am of the opinion that my mandate would be exceeded if I were to engage in a review of the code of conduct and in the consideration of additional duties for police officers.

overwhelming the system with complaints that should not be pursued. Some had similar reservations over any extension of the limitation period. They also stressed the importance of the need for chiefs to retain their powers to discipline their officers. As the complaints process is tied to the internal disciplinary process, they argued that any changes to the complaints system should continue to respect their role as the managers of the police service.

Like community groups, this group did not see OCCOPS as effective in its role of administering oversight. As a key oversight body, it has not played a large enough role in educating the public on the complaints system. OCCOPS has also rarely used its powers to conduct investigations or order a police service to investigate a complaint. In addition, chiefs and senior officers were sometimes frustrated by the lack of reasons given in support of some of OCCOPS' review decisions. This lack of explanation in support of its decisions, it was argued, only fosters dissatisfaction with the system. They noted too that OCCOPS frequently reverses disciplinary penalties handed down by hearing officers – often lowering penalties.

It was suggested that the work of OCCOPS be examined closely to determine what precisely is needed in terms of changes to that organization to improve oversight before making any drastic changes to the current system. Caution should be exercised before there is a decision to revert back to the former system. It was pointed out that while the former system was perceived to be

independent, it in fact was not. The police in most cases still investigated themselves. The monitoring of investigations by the PCC only created a large amount of paperwork that slowed the process down, which in turn led to public dissatisfaction.

Police chiefs and senior officers explained the process of dealing with public complaints within their individual organizations. While the Act requires that a complaint be in writing and signed, they explained that as long as these minimum standards are met they would accept the complaint. I was told that complaints written on a napkin have been received and acted upon. At least one police service acknowledged that it may be difficult for many complainants to file their complaint at the police station and is considering opening a storefront office to receive complaints. Another police service suggested that a complainant should be permitted to file a complaint at any police service and not necessarily the police service complained of.

In smaller services, senior officers normally handle complaints. Larger police services have professional standards units that are staffed with individuals who deal with serious public complaints. Less serious complaints, in these larger police services, are handled directly at the divisional level by unit commanders. I note that there was some disagreement within the policing community as to whether this division of complaint handling responsibility is appropriate.

The use of informal resolution was strongly supported by police chiefs and senior officers. Apart from steering complainants away from a lengthy formal process, it was felt that an informal process was more responsive to the interests of both the police and the complainant, resulting in more satisfying results. I was told that precautions are taken by the police to have complainants consent in writing to resolving their complaints informally before they proceed in this fashion. Chiefs of police have argued that a third party should not be involved in the informal resolution process as this may cause the police to see the system as adversarial.

Where the formal process is engaged, it was explained that there are internal timelines set by the police service regarding investigations. Experienced senior officers who are very familiar with the police service are responsible for conducting the investigations of the more serious complaints and these investigations are conducted very efficiently. Some submitted that independent investigators or investigating officers from another police service would not be familiar with the intricate operations of individual police services to conduct their investigations as quickly and effectively. Once an investigation is concluded, investigative reports are provided to the complainant.

Where hearings are conducted, many of those with whom I spoke stated that the public interest is best served by the use of well-trained police adjudicators. Introducing a panel of adjudicators to conduct hearings was considered unnecessary and costly. Small police services would have the most difficulty

with such a change as they currently have trouble affording the services of even just a single adjudicator. Currently, only the Toronto Police Service and the OPP have full-time adjudicators. It was noted that hearings are open to the public and hearing decisions may be appealed to OCCOPS and that this provides significant public accountability. Some agreed that publication of hearing decisions would improve transparency.

Significant comments were received regarding when a hearing should take place. The current test for holding a hearing is whether there exists an “air of reality to the evidence” and was considered to be too low a threshold. This is of particular concern when one considers that the standard for finding misconduct or unsatisfactory work performance is “clear and convincing evidence”. It was argued that the low threshold for holding a hearing, as contrasted with the much higher standard that rests on the prosecution, has led to many unnecessary hearings that have not found misconduct or unsatisfactory work performance. These hearings have had a significant and negative impact on both police and public perception of the fairness of the system and on police budgets. It was suggested that hearings should only be held where the chief has reasonable grounds to believe serious misconduct has occurred.

Chiefs of police have also suggested that hearings should be reserved for only serious misconduct cases. A chief of police should be allowed to deal with minor issues through a summary discipline process without the need of a formal

hearing. Resolution of disputes in relation to the outcome of minor issues could be dealt with through the grievance process. Also, chiefs of police have argued for timelines to be set in the PSA in relation to the hearing and appeal process, with statutory consequences for not adhering to those timelines.

Some chiefs of police and senior officers have argued that the range of penalties against an officer who has been found guilty of misconduct is currently too limited. Additional penalties should be available, including restitution and loss of pay that cannot be applied to sick leave credits. Some police chiefs and senior officers were also concerned about the lack of ability to suspend officers without pay. By being forced to continue to pay officers who have been suspended pending the final outcome of the disciplinary process – a process that may take years as it winds its way through various avenues of appeal – a police service cannot add to its complement of officers. It was suggested that this compromises public safety and it was recommended that police chiefs should be permitted to suspend officers without pay, at least after a finding of misconduct by an adjudicator.

Some chiefs and senior officers also indicated that many complainants have launched civil lawsuits and filed human rights complaints with the Ontario Human Rights Commission, in addition to filing police complaints against officers. This was perceived to be vexatious in many instances and they requested that there be legislation to control such proceedings. They also wanted legislation to

prevent persons from filing frequent vexatious complaints as they were seen to be using up scarce resources.

Other matters that chiefs and senior officers were concerned about included the current number of opportunities for review during the processing of a complaint and the ability of an officer to avoid discipline by resigning and finding employment with another police service. It was suggested that any review should only be available after a final decision has been made regarding the complaint. It was also suggested that disciplinary proceedings should continue against an officer if that officer has chosen to find employment with another police service. Furthermore, an officer who has been dismissed from a police service in Ontario for discipline reasons should be prohibited from re-applying to another police service within a five-year period.

Police Associations

Police associations outside Toronto were concerned that the complaints system would be changed simply in response to recent events associated with Toronto and emphasized that any new system should be able to operate effectively and efficiently across the Province. They were particularly concerned that a system would be designed with Toronto in mind and then forced upon other police services in the Province. However, all police associations recognized that the system could be improved. Most did not suggest that radical changes were needed, although some police groups were of the view that greater

independence was necessary in cases involving serious complaints or those complaints involving domestic violence.

Police associations agreed with the view that a less formal process that involves mediation would improve the process. They stressed that minor complaints should almost always be dealt with informally and if there were to be disciplinary action taken for minor complaints, this action should be remedial in nature and not punitive.

Another area that they felt needed change was the standard that was applied for the ordering of hearings. They considered that the “air of reality” test sets too low a standard and should be changed so that hearings were not initiated in cases where there is not enough evidence to support a finding of misconduct. Police associations were opposed to any review of penalties.

The majority of police associations were sceptical of the need for independent investigators and thought that they may not be worth the cost. They pointed out that professional standards units in police services are already of high quality.

The police associations were also concerned about allowing third-party complaints. Their view was that formally allowing third-party complaints would open the door to a flood of frivolous and vexatious complaints. It was suggested that serious third-party complaints that are brought to the attention of a police

chief will be investigated, as chiefs have the responsibility for discipline and control of the police service.

Police Services Boards

Police services boards had a broad range of comments regarding the current system and provided me with many proposals for change and cautions against change. These comments reflect the various concerns and suggestions that have already been discussed above. There were also some very original recommendations that were made. One such recommendation dealt with the array of proceedings that may arise from a single incident involving the police such as police complaints, human rights and civil proceedings. It was suggested that these proceedings could be combined into one proceeding to effectively and efficiently resolve the underlying matters. Another recommendation dealt with the use of different standards of proof at hearings (either clear and convincing evidence or balance of probabilities) depending on the seriousness of the alleged misconduct.

Board members also provided me with comments regarding their role and responsibilities over the complaints system. Many board members emphasized that it would be unwise to burden the board with a significant role in the handling of complaints as most board members are essentially volunteers. Board members also noted that the composition of boards across the Province is not uniform. There are many smaller boards across the Province and resources vary

significantly from board to board. This has to be kept in mind when considering whether boards should have additional responsibilities dealing with complaints. However, I did hear from some board members who asked for an expanded role. Some felt frustrated by the lack of information regarding specific complaints coming to the attention of the board and felt that this information was necessary for them to carry out their general responsibilities related to the complaints system.

Many board members noted that they would like to see better training made available to them so that they are able to effectively carry out their mandate. Many told me that they are often faced with difficult issues that they feel ill-equipped to handle. One such issue was the often-difficult distinction between policy matters, which fall within the responsibility of the board, and operational matters, which fall within the responsibility of the chief of police.

Aboriginal Communities

I met with a host of Aboriginal groups from several different Aboriginal communities regarding the complaints system. I also met with many urban Aboriginal groups. Although many of these groups shared the same concerns that I have already listed in the Community Groups section, I have set out a distinct section to discuss their concerns given the long and difficult relationship that Aboriginal people have had, and continue to have, with government authorities and police and because of their unique status in society.

Access to the system was one of the concerns that was most heavily emphasized. It was stressed that many Aboriginal persons, particularly those from Northern Ontario do not have an understanding of the current systems in place and that many do not speak English. Information and services should be made available in a number of Aboriginal languages.

I was also informed that many Aboriginal persons choose leaders from their community as their first source for information and assistance when they have a problem. Despite this, there appear to be systemic barriers to the recognition of this role of community leaders. It was suggested that a community leader should be accepted as the agent of a complainant if the complainant has asked for this assistance, and should be kept apprised of developments in an ongoing investigation. A recommendation was also made that formal lines of communication should be opened between police services and leaders of Aboriginal communities.

In my conversations with Aboriginal groups, I heard a range of views regarding the appropriateness of having the complaints system extended to include First Nations constables. Interest regarding this issue varied significantly from one community to another. For some, oversight of First Nations police services was viewed to be a matter solely for the First Nations community to administer. However, there were others who argued that such oversight would be welcomed

and would enhance the accountability and the professionalism of a First Nations police service.

7. Recommendations

In the development of my recommendations, I kept in mind and was guided by the principles identified in the terms of reference. The terms of reference clearly stated these principles as follows:

- the police are ultimately accountable to civilian authority;
- the public complaints system must be and must be seen to be fair, effective and transparent;
- any model of resolving public complaints about police should have the confidence of the public and the respect of the police; and
- the Province's responsibility for ensuring police accountability in matters of public safety and public trust must be preserved.

It was clear from the submissions I received that almost everyone supported these principles and that these principles should form the cornerstone for my recommendations. The debate was chiefly over how well these principles are reflected in the current system and whether changes are necessary so that these principles may be better reflected.

While some members of the policing community expressed frustration that the police appear to be unfairly targeted for yet another review, most recognized that in a time when accountability systems across our society are being reviewed, it is inevitable that one of the most important components of our criminal justice system will also be subjected to review and scrutiny. The regular review of accountability systems should be expected as standards continue to evolve.

The trend across all jurisdictions is for more robust forms of civilian oversight of the police. This fact should cause neither surprise nor concern given the role of the police in modern society, the work of the police, the power that the police wield and the potential for abuse of that power. In my review of complaints systems in other jurisdictions, it became clear that no one system stands out as a model upon which all others should be based. Complaints systems appear to have been implemented based on the historical relationship between the police and the community. This presents a significant challenge to the creation of a system in a Province as large and diverse as Ontario, with police services that have over 5000 and some that have fewer than ten officers. In crafting my recommendations, I have accorded considerable weight to the history of civilian oversight in Ontario and the submissions that were made to me.

Implicit in the principles crafted by the government to guide me in the preparation of my recommendations is the rationale for the establishment of complaints systems in the first place. The first and most obvious reason is that a properly administered system for complaints assists the police service in correcting problems that exist within the organization. In many cases, the problems can be addressed through remedial measures such as education and training instead of punitive measures. The second is that effective complaints systems help in preserving community confidence and trust in the police. While relatively few of us may ever see the need to file a complaint regarding the police, common wisdom recognizes that the bad experiences of only a few are sufficient to

undermine the general respect for an entire institution. Where policing is concerned, confidence and trust in the police is critical to effective policing, which in turn is vital to preserving public safety.

Many of the discussions during my consultation were centred on the requirement for independence of the oversight system. To some groups, confidence in the system can only be achieved when the receipt, investigation and adjudication of complaints is administered completely by civilians. Although this was something that many community groups have argued for, and a view that is shared by some members of the policing community, others felt that confidence in the system could be achieved by increased civilian involvement in the system.

While independence is critical to foster trust and respect for the system, I am not convinced that a system totally removed from the police is in the interests of the community or the police in Ontario. However, I am of the view that significant systemic changes, which include civilian oversight and monitoring of the complaints process, need to be made to improve confidence in how complaints regarding the police are handled.

Across Ontario, there are community representatives and police services that are working together to increase the level of trust and confidence in the operation of the current complaints system. That trust and confidence is being built in some communities, despite a complaints framework that is, in my view, flawed. This

speaks volumes for the initiative and determination of some police services and community representatives. This type of cooperation needs to be encouraged across the Province. Capacity for civilian oversight and management of the public complaints system no doubt needs to be increased, but this should not release the police from doing their professional duty of monitoring, controlling and punishing misconduct, and improving services and policies within their organizations. In regard to the latter, I would be remiss if I did not note the work that has been conducted to date by the Kingston Police Service to promote bias-free policing.¹³⁹

I have gained considerable appreciation for the intimate connection between public complaints and the disciplinary process. Part V of the PSA combines the process used for public complaints in relation to the action and service delivery of the police with the internal work performance and disciplinary process utilized by the chief of police to maintain discipline within the police service and address issues of work performance by members of the service. Much of this is managerially sound and logical; however, the system as it exists today requires a new model of civilian participation and oversight.

The following recommendations should be seen as a response to some of the fundamental problems underlying the current legislation, with the goal of improving parts of the system so that it operates more effectively. In preparing

¹³⁹ Kingston Police Service, Kingston Police Data Collection Project: A Preliminary Report to the Kingston Police Services Board (Kingston: Kingston Police Service, 2005).

my recommendations, I have decided not to set out an extensive list of detailed recommendations, and I have not addressed every issue that was identified in the submissions that I received. Instead, I have focused on what I believe are the necessary and key reforms to the system. They should be seen as my views on the general direction to which change should be headed.

I also want to emphasize that the mandate is to review the public complaints system. Given the linkage between public complaints and the internal discipline process, it is difficult to delineate where the public complaints system commences and where it ends. There are certain areas where I would be exceeding my terms of reference if I were to make recommendations. Because of that, I have purposely omitted any recommendations regarding the code of conduct despite many requests that I recommend its modernization. I also do not discuss summary discipline nor the proposal to combine police complaints hearings with civil court and human rights proceedings. However, there are other areas where I did not have such reservations about the scope of my mandate.

Access

I have heard a great deal from community groups and individual complainants regarding the current difficulties in filing a complaint. Underlying some of these difficulties is the lack of understanding of how the system operates and where to find information about the system. Public education on the complaints system has been virtually non-existent for many years. Recently there have been

significant serious efforts on the part of OCCOPS to engage in community outreach. Outreach and public education are critical to fostering understanding and public confidence, and the lack of efforts in this area has no doubt been partly responsible for the current problems. An example of how outreach can make a profound impact is in the Windsor Police Service's experience of developing a small pamphlet on police practices. This pamphlet contains information, in general terms, on issues such as a citizen's rights when stopped by police and when searches are permitted. It also contains information on how to file a complaint about the police. The development of the pamphlet involved the police service, the police association, the police services board and a host of local community groups. Not only did their work produce an important tool for public education, but the process itself helped to promote trust and understanding amongst the parties. More of this type of work is to be encouraged. Despite the success of the Windsor initiative, the existing system places almost all the burden on local entities to build relationships and operate the complaints machinery. In many communities, these efforts have either not been made, are difficult to organize, or have not met with as much success. It is essential to the success of any new public complaints system that an extensive public education program be put in place so the citizens of Ontario are informed about how the system operates and can be accessed. Community outreach groups, schools and organizations such as the Ontario Justice Education Network (OJEN) need to become involved. Community legal clinics may also have a role in this area.

I have no doubt that many complainants may be discouraged from filing a complaint at the police station. Although complainants may file a complaint by sending a complaint to the police or OCCOPS by mail or fax, I believe that many complainants are simply unable to effectively draft a complaint without assistance. As a result, many complainants are likely to prefer to file a complaint in person. Yet filing a complaint about the police is inherently different from filing a complaint against a department store. There is an understandable reluctance to file complaints regarding those in authority by going directly to the authority. This is especially true if the perception is that the filing of a public complaint with the police will turn into an investigation of the person making the complaint, rather than the complaint itself. Other avenues for filing a complaint are necessary.

I also heard from, and strongly agree with, those who suggest that other systemic barriers currently exist that impede the filing of complaints. As such, legitimate complaints may not even have a chance of being investigated and corrective action cannot be taken. A key concern about the current system is the limitation period. This limitation period simply does not recognize the reality that there are times when it is inappropriate for a potential complainant to file a complaint within six months from the time of the events upon which the complaint is based. While I recognize that there is discretion conferred upon chiefs of police to extend the limitation period, this decision should not be made by members of the

organization being complained about. In cases where complaints stem out of the laying of criminal charges, the limitation period should not begin to run until those charges reach their ultimate resolution.

The current system does not allow third-party complaints. While there was considerable debate as to whether third-party complaints should be allowed, it is obvious to me that the current rule needs to be changed. I also consider it significant that some chiefs of police have advised that despite the Act, they will, quite rightly, consider third-party complaints as part of their duty to manage the police service. I believe that the system should not bar outright third-party complaints. Additionally, only defined members of the public are allowed to make complaints.

In terms of ensuring access to the complaints system, it is vitally important that members of the public are able to identify officers. Identification is of particular concern in the context of public demonstrations where officers may be unrecognizable due to protective gear worn. Provincial standards should be set by the Government to ensure that all officers are readily identifiable by way of a sufficiently large name patch on their uniforms.

I am keenly aware that expanding access may open the door to mischief and abuse of the system. It is possible that groundless complaints could tax the resources of the system to the degree that the effectiveness of the system itself

is threatened. The current system attempts to control this problem through some of the mechanisms that I have referred to above, and by allowing chiefs of police to decide not to deal with complaints at the outset if they are considered to be frivolous, vexatious or made in bad faith.¹⁴⁰

Removing the current systemic barriers to the reception of complaints needs to be balanced by conferring greater discretion on the recipient of complaints to determine whether a complaint should be pursued. There will be cases where the evidence to support a complaint is so tenuous that resources should not be expended to pursue them. Also, there will be cases where the “complaint” is really not one that is suitable for the complaints system to resolve. For example, a dispute as to whether a traffic ticket has been wrongly issued is a matter for the courts. While the current system allows a chief of police’s decisions to not pursue a complaint to be reviewable by OCCOPS, such a review is time intensive and inimical to the efficient resolution of complaints.

Facilitating access should mean the reception of all complaints, but it also requires that judicious screening of complaints be made as early as possible to protect the integrity of the system. It should include providing the necessary assistance to complainants to articulate their complaint. Potential complainants should be given an explanation of what the complaints system can and cannot do

¹⁴⁰ I should note that these three terms were viewed with considerable distaste by many community groups and by many police and were seen by some to be evidence of police hostility towards complainants. Whatever merits there may be for their use in the legislative context, their use should be strongly discouraged except for those rare situations where they may be appropriate.

for them so that reasonable expectations are maintained. All complainants must be treated in a manner that allows them to be able to come to an informed understanding of how their complaint was dealt with. In my view, access needs to be managed by an independent body.

While overall management of access to the system should lie with an independent body, the police should not stop dealing with the public regarding their concerns. Police officers should still have a role in providing education on the complaints system and working with people who have complaints, such as directing them to the proper resources or attempting to resolve their concerns informally where appropriate. Furthermore, the police will have to continue to deal with public concerns that are not subject to the complaints system. Both the independent body and the police will need to work together to ensure that the system operates effectively and efficiently.

Proper leadership of this independent body will be critical to the new system's success. The head of the new body will in addition to the management skills required for the position require an understanding of policing and the diversity and needs of Ontarians and legal training and experience in dispute resolution. Although sitting judges have served with great distinction in the past, the evolving view is that judges should refrain from participating in public bodies that are not historically or legislatively mandated.

Recommendation 1:

An independent civilian body should be created to administer the public complaints system in Ontario. The body should not be related to OCCOPS. A civilian who has not been a police officer should lead this new organization. Civilian administrators should be responsible for the administration of the complaints system for each region of the Province.¹⁴¹ The new body should produce an annual public report for the Government and should also hold an annual public meeting.

Recommendation 2:

The Government should appoint community and police representatives to an advisory group for each region. The groups would meet with the head of the new body to discuss systemic concerns, but would not direct the new body.

Recommendation 3:

The new body:

- **will engage in educating the public about the complaints system;**
- **will be responsible for the intake of complaints in as many forms as possible including complaints from agents (e.g. lawyers and community groups) of complainants;**
- **will provide appropriate access to the system recognizing the linguistic, cultural and geographic diversity of the Province;**
- **will provide appropriate assistance to complainants in the filing of a complaint;**
- **will review complaints to determine whether they should be pursued further and screen out those that do not reveal a reasonable basis for the complaint, those that may be more suitably addressed through another process or those that should otherwise not be subject to further action; and**
- **will review complaints to determine whether the complaint is in regard to policy, service, conduct or any combination thereof.**

¹⁴¹ As an example, the Province could be divided into five separate regions: a Northwestern Region, a Northeastern Region, a Southwestern Region, a Southeastern Region, and a Central Region (consisting of Durham, York, Peel, and Toronto).

Recommendation 4:

Individual police services must also participate in educating the public regarding the complaints system, continue to deal with public concerns that are not subject to the complaints system and provide necessary assistance to people who have complaints.

The police should still have the ability to listen to concerns on an informal basis where individuals genuinely do not wish to lodge formal complaints. A written acknowledgement indicating that he or she was informed of the complaint process should be obtained from such individuals prior to engaging in informal discussions.

Recommendation 5:

Each police service should designate a senior officer to act as a liaison to the new body. The responsibilities of this senior officer should include facilitating communication between the police service and the new body.

Recommendation 6:

Any person should be permitted to file a complaint. Third party complaints should be supported by cogent evidence.

Recommendation 7:

The limitation period for the filing of complaints should remain at six months running from the time of the events upon which the complaint is based. However, if the complainant was charged and the complaint relates to the circumstances upon which the complainant was charged, the six-month limitation period should run from the time when the charges were finally disposed of. The new body should have broad discretion to extend the limitation period in cases where the complainant is a minor or is a person incapable of bringing forward the complaint and in cases where it is of the opinion that it is in the public interest.

Recommendation 8:

Provincial standards should be set by the Government to ensure that all officers are readily identifiable by way of a sufficiently large name patch on their uniforms.

Recommendation 9:

Subject to the independent body's right to intervene and subject to the powers of the independent body described in Recommendation 24, complaints regarding policy or service should continue to be handled in the current manner. However, the chief of police should provide a final written report regarding all such complaints to the complainant, to the police services board and to the new body.

Recommendation 10:

In any final disposition of a complaint, sufficient information must be provided to the complainant to allow the complainant to arrive at an informed understanding of how the complaint was handled.

Recommendation 11:

It must be clear that any person who makes a complaint or is responsible for the handling of a complaint must not be harassed, intimidated or retaliated against for making or handling that complaint.

Any police officer who seeks to undermine the efficient and effective operation of the complaints system should be deemed to have engaged in misconduct.

Informal Resolution

Most groups told me that in the vast majority of complaints only an explanation is sought from the police service or officer complained of. There was a great deal of interest from all parties that these complaints should be dealt with informally

and expeditiously. While the police claim that they are able to resolve many of these complaints informally, the lack of any real oversight of this process gives rise to concerns, either actual or perceived, regarding pressure exerted against the complainant to accept a certain resolution.

My discussions with the parties suggest that, despite the interest in informal resolution and an interest in expanding the process to cases beyond those which may call for an explanation, there was uncertainty regarding the operation of the process and its application. This doubt is understandable because the legislation provides little guidance on the informal resolution process. Apart from providing informal resolution as an option for resolving non-serious complaints and stating that statements made in an attempt at informal resolution are inadmissible in a future civil proceeding or at a PSA hearing, the Act is otherwise silent.

As a result, my discussions with the parties dealt with the kinds of complaints that may be suitable for informal resolution and the potential consequences on a police officer's record of an informal resolution. Many community groups and most police associations agreed that informal resolution should be available for the majority of complaints except for the most serious cases, and that the results of an informal resolution should not form part of a police officer's record. Chiefs of police, however, were concerned about police officers who might want to take advantage of an informal resolution process simply to avoid the harsher penalties available in a formal process. They also felt that if the results of an informal

resolution were not recorded in a police officer's record, it would be extremely difficult for the police service to verify the success of this process and to identify patterns of misconduct.

In my view, the informal resolution process is an opportunity not only for everyone to engage in a potentially more efficient and satisfactory process, but it allows for creative processes to be developed locally with the police and the community to deal with complaints. Informal resolution should be an alternative means of complaint resolution with an emphasis on educating both the complainant and the officer that is the subject of the complaint and correcting the behaviour of the officer if necessary. Some of the possible outcomes of an informal resolution process could include an agreement by an officer to undergo counselling, treatment, training or to participate in a certain program or activity. Given the non-punitive nature of the potential consequences that may flow from the informal process, I do not believe that records of such consequences would attract the stigma of punitive measures. As a result, I do not believe that there should be real concern regarding the retention of records. However, it should be clear that records are kept for the purposes of assessing the process' success and to identify trends, so that preventative steps may, if necessary, be taken.

Recommendation 12:

Upon a review of the complaint, the new body should determine whether it might be suitably resolved through informal mediative type resolution. Considerations to take into account in deciding whether a complaint may

be suitable for informal resolution should include the gravity of the allegation, the effect of the alleged conduct on the complainant, and the public interest.

Informal resolution should be contingent upon the agreement of the complainant and the police officer involved. However, the views of the chief of police regarding the appropriateness of informal resolution are to be taken into consideration when deciding whether the process is to be engaged.

Informal mediative resolution may be agreed upon at any time, but must be approved by the new body.

Informal mediative resolution should be organized by the new body and conducted by a neutral. Parties to the informal resolution will be the complainant, the officer complained of and a representative of police management. Discussions should take place in confidence and should be without prejudice. The results of the informal resolution shall not form part of a police officer's discipline record. However, statistical records should be kept by the police service and the new body regarding the details of the complaint and the resolution.

Where an informal resolution is deemed unsuitable by the new body, has been rejected, or has failed, the new body may refer the complaint for investigation.

Statements made in informal mediative resolution should not be admissible in any subsequent civil proceedings or PSA hearing except with the consent of the person who made them.¹⁴²

Investigation

A considerable amount of time was spent on a discussion of who should be responsible for the investigation of a complaint. Many reports have documented the debate on whether police officers should be allowed to conduct an investigation of a complaint. There has also been a great deal of debate regarding the competence of various classes of investigators and the perception

¹⁴² The provisions of the current act in relation to statements made in informal resolution should be maintained.

of conflict where police officers investigate other police officers. There is much merit in the view that civilians should conduct these investigations, but I am not convinced that it is necessary to recommend a system where the presumption is that all investigations are to be conducted by independent civilian investigators. The decision as to who shall conduct the investigation should be determined by the new body having regard to, among other things, the nature of the complaint, the circumstances surrounding the complaint, the public interest, the size of the police services, and the rank of the officer complained of.

Where the police do conduct the investigation, there should be steps taken to ensure that conflicts of interest are avoided. In larger police services, this should be relatively straightforward. Very small police services may have difficulty avoiding conflicts such that the relatively few complaints received by these police services would either have to be investigated by someone outside the police service or be investigated by the police service with rigorous monitoring.

Recommendation 13:

The new body will examine and consider the nature of the complaint, the circumstances surrounding the complaint, the public interest, the size of the police service, the rank of officer and any other relevant factors to determine whether the complaint is to be investigated by the new body, the police service affected or by another police service.

Recommendation 14:

If investigated by the police service affected or by another police service, the police officers assigned to investigate should not have any connection to the incident and be removed from the persons involved in the incident.

Recommendation 15:

The new body must be given powers and resources to enable it to properly investigate a complaint as well as the authority to oversee a complaint investigated by the police and reassign the investigation of a complaint at any stage of the process.

Recommendation 16:

The new body should be staffed with highly skilled investigators. These investigators shall not be police officers, but may be former police officers. However, a former police officer shall not conduct investigations related to any police service with which the investigator was formerly employed.

Not more than 50% of the investigative staff of the new body should be former police officers.

Hearings and Discipline

The current legislation provides an opportunity for informal resolution following an investigation, but it does not allow a chief of police to unilaterally impose discipline following an investigation where the chief believes that there has been misconduct or unsatisfactory work performance. This clearly limits a chief of police's powers - powers that are typically available to other employers. However, a chief of police is permitted to hold a hearing and appoint a police officer (or a legal counsel or an agent) to prosecute. The hearings process appears to be a compromise that is designed to balance the interests of police

officers, who may want to have a hearing before any discipline is imposed, and the interests of chiefs of police for a streamlined and efficient discipline process.

I received a number of comments about the complaints process following an investigation. I believe that everyone supports informal resolution even after an investigation has occurred, subject to the appropriate level of oversight.

There were some concerns regarding the appropriateness of OCCOPS' involvement in the review of investigations and a chief of police's decisions, given OCCOPS' role in appeals. Indeed, concerns over OCCOPS' many conflicting roles have been identified not only in my consultation, but also in a number of court decisions.¹⁴³ It is my view that OCCOPS should not be involved in the review of a chief of police's decisions following an investigation. This responsibility should lie with an independent body that does not have a role in an appeal of a subsequent hearing decision.

There was also considerable debate at the meetings regarding when a hearing should be conducted. Some chiefs of police have argued for the use of a "reasonable and probable grounds" test. They pointed out that given the relatively high standard of proof of "clear and convincing evidence" used at hearings, a low threshold for the ordering of hearings results in disproportionately few findings of misconduct or unsatisfactory work performance. This issue was

¹⁴³ See *Ontario (Civilian Commission on Police Services) v. Browne* (2001), 56 O.R. (3d) 673 (C.A.); *Gardner v. Ontario (Civilian Commission on Police Services)*, [2004] O.J. No. 2968 (C.A.) [hereinafter *Gardner*].

examined by the Ontario Court of Appeal in *Canadian Civil Liberties Association v. Ontario (Civilian Commission on Police Services)*.¹⁴⁴ In that case, the Court of Appeal rejected the argument that the “reasonable and probable grounds” standard should be used to determine whether a hearing should be ordered following an investigation. The Court of Appeal stated that that the “reasonable and probable grounds” standard was too close to the “clear and convincing evidence” standard used at a hearing. Its use would confuse the chief of police’s screening function and the role of a hearing officer in determining misconduct or unsatisfactory work performance. However, I am of the view that a “reasonable grounds” test should be used to determine whether a hearing is held. While the application of the “air of reality” test appears to have resulted in more hearings, these hearings have often yielded findings that the complaint was not substantiated which has led to feelings of frustration by all involved. Given my recommendations for greater oversight of the process, in the assessment and assignment of complaint investigations, I believe it would not be unreasonable to set a higher threshold for ordering a hearing. Furthermore, I believe that if the review of a decision not to order a hearing is transparent, there will be greater understanding and acceptance of the system.

The standard of proof used at a hearing was also discussed at length. I heard various arguments that the standard of proof should be changed and arguments that it remain the same. There is no doubt that the standard of proof is of some benefit to police officers. Police officers, by the very nature of their employment,

¹⁴⁴ (2002), 61 O.R. (3d) 649 [hereinafter *Canadian Civil Liberties Association*].

often find themselves in positions of conflict. As a result, complaints are not infrequently filed against them. A finding of misconduct or unsatisfactory work performance based on a “clear and convincing evidence” standard ensures that discipline is not administered without significant proof. On the other hand, it is troubling to many groups with whom I met that a police officer could be found in a civil proceeding to have engaged in misconduct (and a police service ordered to pay significant damages) while the complaint against the officer has been found to be unsubstantiated in a PSA hearing in relation to the same incident. Whatever merits there are to the argument that a higher standard of proof is necessary for serious allegations of misconduct, it was argued that this should not extend to other allegations of misconduct.

The “clear and convincing evidence” standard has been accepted to mean “weighty, cogent and reliable evidence upon which a trier of fact, acting with care and caution, can come to the fair and reasonable conclusion that the officer is guilty of misconduct.”¹⁴⁵ The Ontario Court of Appeal has commented that the standard is “slightly higher” than the “balance of probabilities” standard.¹⁴⁶ The “clear and convincing evidence” standard does not appear to be used in any other province except Manitoba.

In my view, the standard of proof used at a hearing should not be compared with the standard of proof used in a civil proceeding. These are different types of

¹⁴⁵ *Ibid.* at 664.

¹⁴⁶ *Ibid.*

proceedings and one could argue that a different standard of proof should apply for PSA hearings. While the argument for a standard of proof that fluctuates with the alleged seriousness of the misconduct may be attractive, I believe that this really masks the underlying need for a revision of the substantive offences in the code of conduct. A review of the substantive provisions of the code of conduct is beyond the scope of my mandate, but I agree with many submissions that the code of conduct may need to be reviewed and updated. That being said, I am of the view that the “clear and convincing evidence” standard should not be replaced with a “balance of probabilities” standard. The “clear and convincing evidence” standard is not a standard that is referred to in Ontario statutes other than in the PSA, but it has been accepted as the relevant standard in the misconduct hearings of many professional bodies.¹⁴⁷

I also heard submissions advocating an independent hearings process where the matter has arisen from a public complaint. This would include fully independent prosecutions and fully independent adjudication. I appreciate the demands for greater independence in the hearings process. Indeed, there is much merit to the arguments in support of independence. Conflicts of interest need to be avoided. It would be inappropriate for hearings to be staffed entirely by members of the police service who interact with each other on a daily basis. This problem is especially acute in small police services where outside prosecutors and hearing officers would be necessary. This is already addressed in the current

¹⁴⁷ R. Steinecke, *A Complete Guide To The Regulated Health Professions Act*, looseleaf (Aurora, ON: Canada Law Book Inc., 2003) at paras. 6.1170-6.1210.

legislation by allowing chiefs of police to appoint prosecutors and hearing officers from outside the police service.

I have been very impressed by the work of the dedicated police adjudicators in this Province. However, I am of the view that the role would receive far greater public acceptance if it were performed by persons who are not in the employ of the police services. Special skill and experience is essential to ensure judicious decisions, and those who can best fulfill the mandate will have a background and experience in law enforcement. Such a group is probably not immediately available. I recommend that the Government develop a cadre of adjudicators with experience who can be trained in decision-making and the conduct of hearings, to be on call to preside at the adjudicative stage of public complaints. Until this group is identified and trained, the existing adjudication process should continue. There also needs to be a requirement to inform the public of the hearings process and the hearing decisions. Hearing decisions are currently made available to police officers, and there does not appear to be any reason why the decisions should not also be made available to the public.

Finally, I was provided with suggestions for potential penalties that should be available to hearing officers upon a finding of misconduct. Where punitive measures are necessary, I believe that penalties need to be significant. On this issue, I note that police officers may elect to satisfy a forfeiture of pay penalty by applying it to sick leave credits. The efficacy of penalties that may be satisfied in

this manner is questioned by many. In addition, I believe that greater flexibility needs to be provided to hearing officers so that penalties could be combined. I am of the view that professional policing in Ontario demands that police officers who are facing discipline should not be able to avoid the disciplinary process by finding employment with another police service. As well, where a police officer has been dismissed or forced to resign, that police officer should be prohibited from working as a police officer in Ontario for an extensive period of time.

Recommendation 17:

The review of interlocutory decisions presently residing with OCCOPS should be transferred to the new body.

Review decisions should be made publicly accessible through an internet site.¹⁴⁸

Recommendation 18:

The informal resolution process following an investigation should allow a chief of police to impose any penalty available to a hearing officer at a hearing other than dismissal or demotion unless rejected by the officer complained of. Information concerning the matter, the officer's reply, if any, and the penalty should be provided to the complainant and the new body. This information should be placed on a central internet site.

¹⁴⁸ In all cases where recommendations are made indicating that information should be posted publicly, personal information should not be removed unless there are exceptional circumstances (e.g. where the complainant is a minor or the complainant is a victim complaining about the handling of a sexual assault investigation). If the complaint were also the subject of criminal proceedings, publication would be subject to any court issued publication order.

Recommendation 19:

Hearings should be held where there are reasonable grounds to form an opinion that there has been misconduct or unsatisfactory work performance and where the matter has not otherwise been resolved.

Recommendation 20:

The Government should develop a body of independent adjudicators to preside over PSA hearings in the Province.

Recommendation 21:

All hearing dates, hearing locations and hearing decisions must be made publicly accessible through a central internet site.

Recommendation 22:

A police officer should not be permitted to satisfy a forfeiture of pay penalty by applying it to sick leave credits. Demotions, suspensions, and forfeitures of pay should be combinable.

Investigations and disciplinary proceedings should continue against an officer if the officer chooses to find employment with another police service. Any subsequent penalty should be transferred to the other police service.

An officer who has been dismissed or resigns following a direction that the officer be dismissed should be prohibited from re-applying to another police service for a significant period.

Appeal

OCCOPS currently acts as an appellate body in addition to carrying out its many other functions at earlier stages of the complaints process. In some cases, OCCOPS' many roles have, not surprisingly, led to difficulties. For example, the

Divisional Court, in *Gardner*,¹⁴⁹ recently found that an OCCOPS panel hearing a matter had been tainted by its earlier participation in the investigation, giving rise to a reasonable apprehension of bias. While that case dealt with OCCOPS' investigative and adjudicative roles instead of its appellate function, the case demonstrates the difficulties OCCOPS faces when it is involved in multiple stages of the complaints process. While OCCOPS may use operational policies to avoid placing itself in situations like the one in the *Gardner* case, it is my view that as far as complaints are concerned, OCCOPS should focus primarily on its appeal role.

Where an appeal is launched under the current legislation, I believe that there are occasions where the penalty imposed by a hearing officer should be effective despite an appeal having been launched. Under the *Statutory Powers Procedures Act*¹⁵⁰, appeals of disciplinary hearing rulings generally act as a stay on the imposition of a penalty. Despite this, the tribunal, court or other appellate body can order otherwise. Police services are currently able to ask that penalties be imposed after adjudication, but prior to an appeal, where the circumstances warrant such a request.¹⁵¹

¹⁴⁹ *Supra* note 143.

¹⁵⁰ SPPA, s. 25(1).

¹⁵¹ *Ibid.*, s. 25(1)(b).

Recommendation 23:

The appeal procedure should remain unchanged. Appeals from a hearing should continue to go to OCCOPS and if necessary a further appeal may be made to the Divisional Court.

An appeal decision by OCCOPS must be supported with reasons. These reasons should be placed on a central internet site.

Audits, Research and Inquiries

Audits allow the public to know how a system is performing. This is an invaluable tool that should be applied to the complaints system. Indeed, audits and policing are not foreign to each other. In Los Angeles, independent audits of the public complaints system are a key feature of oversight of the Los Angeles Police Department. The City of Toronto Auditor has conducted a number of audits of the Toronto Police Service involving not only the complaints system, but also its practices for investigating sexual assaults.

I also expect that audits will assist the new body in its role of handling complaints, and will identify problem areas in the complaints system that require corrective action.

Furthermore, the new body will be uniquely positioned to identify trends in complaints which may warrant either inquiry or research into policing practices or policy. A power of inquiry may be another tool that could prove useful on the rare occasions that such a power is necessary.

Recommendation 24:

Police services boards should be required to order bi-annual independent audits of complaints handling within their respective police services and make their audits available to the public, subject to the direction of the new body for more or less frequent audits. Audits should be prepared to a standard to be set by the new body.

The new body should order independent audits of the complaints system from time to time.

The new body should have the authority to issue guidelines and set public complaints administration standards for particular police services.

The new body should have a power of inquiry available to it to identify systemic problems that may underlie complaints and make recommendations to prevent their recurrence.

Aboriginal Policing

I referred to Aboriginal policing earlier in my report and I believe that the new body should give special consideration to the needs of Aboriginal communities in Ontario. The diversity of Aboriginal communities, their unique standing in Canadian society and the geographical remoteness of many of these communities require that special efforts be made to address complaints from Aboriginal communities regarding policing.

First Nations policing in much of Ontario is a relatively new endeavour and the issue of oversight for these police services is complex. Not only must the general considerations of oversight be addressed when dealing with First Nations police services, but other factors such as First Nations autonomy and the police service's constitution need to be considered. I note that there are many First

Nations communities that feel oversight of their police service should rest exclusively with that First Nation. However, some believe strongly that the legislation should be amended to allow First Nations police services to fall under the provincial complaints system.

Recommendation 25:

The new body should make special efforts at outreach to the Aboriginal communities in Ontario.

Recommendation 26:

The law should not preclude those First Nations that wish to have their police service fall under the provincial complaints system from being able to do so.

Resources

Almost all of the groups and individuals that made a submission spoke about the importance of properly resourcing the complaints system. Proper resourcing is essential to the success of any endeavour. In 1996, its last full year of operation, the Police Complaints Commission had an annual budget of \$4.1 million and the Board of Inquiry had a budget of \$0.6 million. OCCOPS had a budget of \$0.7 million. When the Police Complaints Commission and the Board of Inquiry were abolished, the OCCOPS budget was increased by about \$1 million. As a result, almost four million dollars or almost 70% of the financial resources that had been available up to then was withdrawn from the complaints system. According to

statistics from OCCOPS, complaints did fall between the years 1996 and 1998 from 3533 complaints to 2538. However, this only represented a 28% drop in complaints.

I have not provided an analysis regarding how much money would be required to implement my recommendations. While I understand that public resources are limited, funding allocated to these recommendations should be seen as an investment in public trust, respect and safety. The citizens of Ontario currently pay \$2.8 billion each year for public policing, excluding the costs of federal policing through the RCMP. Funding to adequately implement these recommendations would only represent a small fraction of that amount.

Recommendation 27:

Funding must be sufficient to ensure that the new independent body is able to operate in a manner that ensures public confidence in the police complaints system.

8. Conclusion

I wish to thank everyone who has taken the time to either meet with me or to prepare a written submission. Many of those with whom I met travelled significant distances for an opportunity to speak with me for only an hour. It was also obvious from my review of the submissions that much time, thought and energy was placed in the preparation of the comments and recommendations. This report could not have been prepared without their hard work.

I was asked to consult interested Ontarians and use my best judgment in formulating my recommendations regarding the police complaints system. That took me across Ontario and allowed me to meet with hundreds of people. When I undertook this review, I stated publicly that I did not have an expectation that I would make most people happy. I knew it would be difficult to recommend a system that would be workable not only for places like Kenora, Kincardine and Stirling, but also for cities like Thunder Bay, Ottawa, Toronto and Windsor. My goal was to provide the best opportunity I could for Ontarians to become engaged in a debate on a very significant aspect of police accountability so that I am allowed to prepare informed recommendations to improve the system Province-wide. I hope that those who are reviewing this report are able to agree that my efforts have allowed me to achieve at least this modest objective. I understand that for some groups, my recommendations will fall far short of their expectations for change. For other groups, my recommendations may appear to be over-reactive. Only the implementation and testing of the new system will

prove or disprove its worth. I wish to emphasize that the new system should be seen as a dynamic one. Flexibility is built into the system to allow it to evolve and respond to changing circumstances. The ultimate success of the system, however, will depend on the commitment of everyone in the system to make it a success.

Afterword

While my role was to examine the complaints system, I wish to make an observation regarding the opportunities the police have available to them to better communicate their services and to allow the public to express their satisfaction with these services. While it is understandable that people are generally reluctant to hear complaints about themselves, most police services have no readily available process for members of the public to convey their expressions of gratitude. I was only able to locate such a process on the web site of the Ottawa Police Service. I suspect that many in the police community are too modest to expect compliments for what they see as simply "doing their job." Policing has evolved to become a complicated affair, but at its heart, is still a provision of a public service based on human relationships. In a society that is evermore demanding and complex, we need to recognize and promote good work as much as we need to identify and discourage wrongful conduct.

Appendix A: Terms of Reference

The Hon. Patrick J. LeSage has been retained by the Ministry of the Attorney General to review the current system of dealing with public complaints regarding police conduct and to advise on the development of a model of resolving public complaints against the police, to ensure that the system is fair, effective and transparent.

Mr. LeSage, with the assistance of government officials, will consult interested parties to determine their views. Mr. LeSage will take into account the historical context of civilian oversight and policing in Ontario and any initiatives and reforms in other jurisdictions that may be of assistance. Mr. LeSage will provide his best advice and recommendations, taking into account the position of interested parties and any consensus amongst those parties on any of the issues. However, Mr. LeSage will not be bound by any consensus in the development of his advice and recommendations.

Mr. LeSage's advice and recommendations will reflect the following principles:

- the police are ultimately accountable to civilian authority;
- the public complaints system must be and must be seen to be fair, effective and transparent;
- any model of resolving public complaints about police should have the confidence of the public and the respect of the police; and
- the province's responsibility for ensuring police accountability in matters of public safety and public trust must be preserved.

Mr. LeSage's work will include a review of the system concerning the filing and investigation of complaints, adjudication, imposition of sanctions, and the disposition of appeals. The Attorney General may on occasion request that Mr. LeSage provide to him an update on the progress of the review.

Mr. LeSage will prepare a final report to the Attorney General summarizing the views that have been expressed and his recommendations and advice. This report will be in a form appropriate for release to the public, pursuant to the *Freedom of Information and Protection of Privacy Act*.

Appendix B: Survey of Police Complaints Systems

New York City

The Civilian Complaint Review Board (CCRB), consisting of 13 board members and approximately 115 investigative staff, handles public complaints about members of the New York Police Department (NYPD).¹ The CCRB's budget for 2004 was approximately \$10,200,000 (USD).² Although the CCRB has been in existence for decades, it only became an entirely civilian body with investigative powers in 1993.³

The CCRB investigates cases of excessive/unnecessary force, abuse of authority, discourtesy, and offensive language, while cases of corruption and neglect of duty are investigated by the NYPD.⁴ The CCRB only has jurisdiction over NYPD officers and cannot exercise jurisdiction over civilian employees. Unless criminal conduct is involved, NYPD personnel must be served with disciplinary charges resulting from CCRB investigations within 18 months of

¹ New York, Civilian Complaints Review Board, 'Frequently Asked Questions', online: Civilian Complaints Review Board < <http://www.nyc.gov/html/ccrb/html/faq.html#8> > (date accessed: 7 December 2004) [hereinafter CCRB FAQ].

² *Ibid.*

³ New York, Civilian Complaints Review Board, 'History of the CCRB', online: Civilian Complaints Review Board < <http://www.nyc.gov/html/ccrb/html/history.html> > (date accessed: 7 December 2004).

⁴ CCRB FAQ, *supra* note 1.

incidents, necessitating that complaints be filed as soon as possible after incidents arise.⁵ Third party complaints are allowed.⁶

CCRB staff investigate civilian complaints against the police. Following these investigations, files are given to the CCRB board, which votes on disposition of the matter.⁷ In 2003, the CCRB received 5,568 complaints.⁸ In that year, 9% of all allegations were substantiated by the CCRB.⁹ Substantiated complaints are forwarded, with or without a discipline recommendation, to the Police Commissioner who is then responsible for meting out discipline ranging from “instructions” in proper techniques up to formal administrative charges that may result in suspension or termination.¹⁰ In 2001, the Mayor and Police Commissioner attempted to give the CCRB power to prosecute its own substantiated cases rather than turning them over to the Police Commissioner for prosecution. Police unions sued to stop this move. In 2003 a New York State appellate court allowed the change.¹¹ In 1994, 32% of substantiated cases

⁵ New York, Civilian Complaints Review Board, ‘Who Can File a Complaint’, online: Civilian Complaints Review Board <<http://www.nyc.gov/html/ccrb/html/who.html>> (date accessed: 8 December 2004).

⁶ *Ibid.*

⁷ New York, Civilian Complaints Review Board, ‘The Investigative Process’, online: Civilian Complaints Review Board <<http://www.nyc.gov/html/ccrb/html/how.html>> (date accessed: 13 December 2004) [hereinafter CCRB Investigative Process].

⁸ New York, Civilian Complaints Review Board, ‘CCRB Performance’, online: Civilian Complaints Review Board <<http://www.nyc.gov/html/ccrb/html/about.html>> (date accessed: 13 December 2004).

⁹ CCRB Investigative Process, *supra* note 7.

¹⁰ New York, Civilian Complaints Review Board, ‘CCRB Substantiated Cases’, online: Civilian Complaints Review Board <<http://www.nyc.gov/html/ccrb/html/ccrbsub.html>> (date accessed: 13 December 2004).

¹¹ New York, Civilian Complaints Review Board, ‘New Developments’, online: Civilian Complaints Review Board < <http://www.nyc.gov/ccrb/html/news.html> > (date accessed: 13 December 2004).

referred to the Police Commissioner for discipline by the CCRB resulted in discipline; that figure had risen to 77% by 2001.¹²

It is worth noting that the CCRB operates an extensive mediation program. The CCRB retains neutral mediators and mediations take place on CCRB premises. The CCRB indicates that complaints related to injury or property damage will not be mediated. Additionally, the CCRB will not allow mediation for complaints stemming directly from arrests or when the officer has a significant complaints history.¹³

Manitoba

In operation since 1985, Manitoba's Law Enforcement Review Agency (LERA) is responsible for handling civilian complaints against municipal police in Manitoba. In Manitoba, public complaints can be made by submitting a signed written copy of the complaint to the LERA Commissioner, the chief of the police department concerned, or any member of the department concerned, within 30 days of an incident.¹⁴ The 30-day time limit on complaints can be extended to six months by the Commissioner.¹⁵ The Commissioner is also able to extend the filing date for complaints arising out of the course of police investigations or arrests so that

¹² New York, Civilian Complaints Review Board, 'Police Department Discipline', online: Civilian Complaints Review Board <<http://www.nyc.gov/html/ccrb/html/depdispln.html>> (date accessed: 13 December 2004).

¹³ New York, Civilian Complaints Review Board, 'Mediation', online: Civilian Complaints Review Board <<http://www.nyc.gov/html/ccrb/html/mediation.html>> (date accessed: 7 December 2004).

¹⁴ *Law Enforcement Review Act*, C.C.S.M. c.L75, s. 6(3).

¹⁵ *Ibid.*, s. 6(6).

a complaint can be made at the earlier of: (a) one year after incident or; (b) 30 days after the disposition of a charge.¹⁶ Provision is made for the taking of complaints by individuals unable to write.¹⁷ Third-party complaints are explicitly allowed under the Manitoba scheme.¹⁸

Following the receipt of a complaint, the LERA Commissioner is required to cause the complaint to be investigated.¹⁹ The Commissioner is able to utilize any resources and employ any persons deemed necessary to investigate a complaint.²⁰ A police department involved in the complaint cannot conduct the investigation for the Commissioner except at the written request of the complainant.²¹ In addition to holding the powers of a Commissioner under Part V of the *Manitoba Evidence Act*,²² the LERA Commissioner is entitled to receive from the appropriate chief of police all relevant documents, statements and materials, including officer notes or reports.²³ The LERA Commissioner also has the power to obtain a search warrant.²⁴

¹⁶ *Ibid.*, s. 6(7).

¹⁷ *Ibid.*, s. 6(5).

¹⁸ *Ibid.*, s. 6(2).

¹⁹ *Ibid.*, s. 12(1). P. Ceysens, *Legal Aspects of Policing*, vol. 2, looseleaf (Saltspring Island, BC: Earls Court Legal Press, 1994) at 7-59. Paul Ceysens notes: "Manitoba and Québec are the only provinces in Canada in which the complaint oversight body is responsible for investigating the complaint."

²⁰ *Law Enforcement Review Act*, s. 12(6).

²¹ *Ibid.*, ss. 12(7)-(8).

²² C.C.S.M. c.E150.

²³ *Law Enforcement Review Act*, ss. 12(1)-(2).

²⁴ *Ibid.*, s. 12(5).

Following an investigation, a complaint may be resolved by informal resolution, through an admission by an officer, or by a hearing in front of a provincial court judge.²⁵ With the consent of the complainant and the officer, a matter can be informally resolved through mediation under the LERA Commissioner's supervision.²⁶ If a successful informal resolution is achieved, the matter is concluded without discipline being imposed and without notation of the incident in an officer's personnel file.²⁷ An admission of a disciplinary default by an officer results in the LERA Commissioner recommending a penalty after consulting with the appropriate chief of police.²⁸ If the respondent officer disagrees with the penalty, the issue is resolved at a hearing in front of a provincial judge.²⁹

Penalties at a hearing can include dismissal, directed resignation, reduction in rank, suspension without loss of pay for up to 30 days, loss of pay for up to 10 days, loss of leave or days off for up to 10 days, a written reprimand, a verbal reprimand or an admonition.³⁰ Where a complainant wants legal assistance in a hearing, but is not eligible for legal aid, the LERA Commissioner can recommend that counsel be appointed by the relevant Minister of Justice to assist the complainant.³¹

²⁵ *Ibid.*, ss. 15(1), 16(1), 17(1), 26.

²⁶ *Ibid.*, s. 15(1).

²⁷ *Ibid.*, s. 15(3).

²⁸ *Ibid.*, ss. 16(1)-(2)

²⁹ *Ibid.*, s. 16(5)

³⁰ *Ibid.*, s. 30(1)

³¹ *Ibid.*, s. 24(8)

Commission for Public Complaints Against the Royal Canadian Mounted Police (CPC)

The Commission for Public Complaints Against the RCMP (CPC) was established by Parliament “to receive and review allegations of inappropriate conduct by RCMP members and to reinforce good police conduct.”³² The Commission is not part of the RCMP. The CPC does not mete out discipline, but rather it makes findings and recommendations. The Commission acknowledges that its “effectiveness therefore depends on its ability to formulate persuasive recommendations that the RCMP Commissioner will accept and implement.”³³

Members of the public with concerns about the on-duty conduct of sworn RCMP officers or other persons appointed or employed under the *RCMP Act* can complain to the CPC.³⁴ This includes third parties. The CPC Chair has the ability to initiate complaints independently where there are reasonable grounds to do so.³⁵ There is no time limit for filing a complaint. Upon contacting the CPC, informal resolution will be attempted with consent of both the complainant and the subject of the complaint.³⁶ The CPC has initiated an ADR process where CPC personnel act as facilitators in attempts to resolve disputes between complainants and RCMP personnel prior to the lodging of a formal complaint.

³² Canada, Commission for Public Complaints Against the RCMP, *Annual Report 2002-2003* (Ottawa: Minister of Public Works and Government Services, 2003) at 9 [hereinafter CPC 2002-2003].

³³ *Ibid.*, at 9.

³⁴ *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-10, s. 45.35(1).

³⁵ *Ibid.*, s. 45.37.

³⁶ *Ibid.*, s. 45.36(1).

The CPC's 2003-04 Annual Report indicates a very high level of successful resolution for cases routed through the informal resolution process.³⁷

If a complainant still wishes to lodge a formal complaint following an unsuccessful attempt at informal resolution, the CPC will forward the complaint to the RCMP for investigation, although the CPC may conduct its own investigation in certain circumstances³⁸. Following an investigation, the CPC forwards a summary of the investigation to the complainant, including the resolution. Complainants unsatisfied with the RCMP's handling of their complaint are entitled to request that the CPC review the complaint. If the CPC disagrees with the RCMP's handling of a complaint, an interim report is made and forwarded to the Commissioner of the RCMP and the Minister of Public Safety and Emergency Planning.³⁹ The RCMP Commissioner is then required to accept or reject this report and provide notice, including reasons if the Commissioner decides not to act on the recommendations, to the CPC and Minister, after which time a final report is released by the CPC.⁴⁰ The CPC may also decide to take further action such as holding a public hearing, investigating the matter itself, or asking the RCMP to investigate the matter further.⁴¹ The public hearing option has been used infrequently, with only 17 such hearings taking place since the CPC's

³⁷ Canada, Commission for Public Complaints Against the RCMP, *Annual Report 2003-2004* (Ottawa: Minister of Public Works and Government Services, 2004) at 16-17 [hereinafter CPC 2003-2004].

³⁸ *Royal Canadian Mounted Police Act*, ss. 45.36(4), 45.43(1).

³⁹ *Ibid.*, s. 45.42, 45.4, 45.42.

⁴⁰ *Ibid.*, s. 45.46.

⁴¹ *Ibid.*, s. 45.42(3).

inception in 1988 and none during 2003-04.⁴² Although it might be suspected that the RCMP public complaints process is ineffective because of its ability to make recommendations only, it has been reported that the RCMP agrees with the overwhelming majority of the Commission's recommendations.⁴³

British Columbia

The Office of the Police Complaint Commissioner is an independent agency that handles public complaints against municipal police forces in British Columbia. The Commissioner is appointed for a six year, non-renewable term by Cabinet, pursuant to a recommendation of the Legislative Assembly.⁴⁴ The Commissioner has a broad mandate to oversee complaints, with the authority to receive complaints, provide public education on the complaints process, conduct periodic complaints system reviews, and establish mediation procedures.⁴⁵ The Commission is required to report to the Legislative Assembly on an annual basis.⁴⁶

Complaints can be made against police departments, sworn police officers, chiefs of police or deputy chiefs of police. Complaints can be made to the Commission, chiefs of police, or a senior officer on duty.⁴⁷ In the case of complaints against chiefs, deputy chiefs or departments, complainants may also

⁴² CPC 2003-2004, *supra* note 37 at 16.

⁴³ *Ibid.* at 24.

⁴⁴ *Police Act*, R.S.B.C. 1996, c. 367, s. 47.

⁴⁵ *Ibid.*, ss. 50(1)-(2).

⁴⁶ *Ibid.*, s. 51.1.

⁴⁷ *Ibid.*, ss. 52(1)-(2).

make complaints to the chair of the appropriate police board.⁴⁸ Under section 52.1(1), complaints are to be processed as “public trust”, “internal discipline”, or “service and policy” complaints.⁴⁹ Public trust complaints are those that allege conduct that would, if proved, constitute a breach of the Code of Professional Conduct “...and that (a) causes or has the potential to cause physical or emotional harm or financial loss to any person, (b) violates any person's dignity, privacy or other rights recognized by law, or (c) is likely to undermine public confidence in the police.”⁵⁰ An internal discipline complaint is a complaint related to an officer's conduct that is not a public trust complaint.⁵¹ Service and policy complaints are those that relate to policies, procedures, standing orders, and supervision and management controls, among other things.⁵²

Although third-parties do have the right to lodge public trust complaints, they do not have the same rights as other complainants. However, they do have the right to be notified if the complaint results in disciplinary or criminal proceedings.⁵³ Public trust complaints made more than 12 months after an incident are subject to summary dismissal, although such decisions are subject to review by the Commission who may allow the complaint on public interest grounds.⁵⁴

⁴⁸ *Ibid.*, s. 46(1): “disciplinary authority”.

⁴⁹ *Ibid.*, s. 52.1(1)

⁵⁰ *Ibid.*, s. 46(1): “disciplinary default”, “public trust complaint”, “public trust default”.

⁵¹ *Ibid.*, s. 46(1): “internal discipline complaint”.

⁵² *Ibid.*, s. 46(1): “service and policy complaint”.

⁵³ *Ibid.*, s. 53.1(2).

⁵⁴ *Ibid.*, ss. 54(1), 54(6)(a)(ii).

Provision for informal resolution of complaints and summary dismissal of complaints is provided for under the British Columbia *Police Act*.⁵⁵ However, if neither option is acted on, the complaint will be sent for investigation. This investigation is usually carried out by the police force involved, although the Commissioner or the police department can refer it to another police department.⁵⁶ Following an investigation, the discipline authority determines whether or not to take disciplinary action, which can be in the form of a formal proceeding or a confidential conference.⁵⁷ If either the complainant or the subject of a discipline hearing are unhappy with the discipline imposed, they can request that the Commissioner order a public hearing. Retired judges conduct the public hearings and have the authority to impose any discipline available to a discipline authority.⁵⁸ Public hearings are rare events, with only two occurring in 2003.⁵⁹

United Kingdom (England and Wales)

Established pursuant to the *Police Reform Act, 2002*,⁶⁰ the Independent Police Complaints Commission (IPCC) has only been in existence since April 1, 2004 and has jurisdiction in England and Wales. Although the operations and policies

⁵⁵ *Ibid.*, ss. 54, 54.1.

⁵⁶ *Ibid.*, ss. 55, 55.1.

⁵⁷ Ceyssens, *supra* note 19 at 7-70. *Police Act, supra* note 44, s. 46(1): note that the definition, “discipline authority” has a shifting meaning depending on who the subject of complaint is.

⁵⁸ *Police Act, Ibid.*, ss. 60.1(2)(a), 61(6).

⁵⁹ British Columbia, Office of the Police Complaint Commissioner, *Annual Report 2003* (Victoria: Office of the Police Complaint Commissioner) at 14.

⁶⁰ (U.K.), c. 30.

of this new organization are still being developed, its overall structure and role are primarily defined in the *Police Reform Act, 2002* and the *Police (Complaints and Misconduct) Regulations*.⁶¹ The IPCC is established under Part II of the *Police Reform Act, 2002* and consists of a Chair, and at least 10 members appointed by the Secretary of State.⁶² The IPCC is responsible for overseeing investigations into police complaints and other alleged misconduct. Although police carry out most complaints investigations, the IPCC has its own team of investigators (mostly civilian) to investigate complaints independent of the police where necessary. The IPCC will conduct independent investigations in cases involving serious injury or death.⁶³ Various other serious offences will be referred, on a mandatory basis, to the IPCC for possible investigation. These offences include serious sexual offences, serious corruption, and criminal behavior or offences liable to lead to a disciplinary sanction related to discriminatory behaviour on the grounds of race, sex, religions or other status.⁶⁴

IPCC investigators have all the powers of police constables during investigations.⁶⁵ The IPCC can require the police to produce or give the IPCC access to any documents or material that it calls for.⁶⁶ It has a right of entry onto

⁶¹ *The Police (Complaints and Misconduct) Regulations 2004* (U.K.), S.I. 2004/643 [hereinafter *Complaints Regulation*].

⁶² *Police Reform Act, 2002*, s. 9(2).

⁶³ UK, Independent Police Complaints Commission, 'IPCC Investigations', online: Independent Police Complaints Commission: <
http://www.ipcc.gov.uk/index/about_ipcc/investigations.htm > (date accessed: 24 November 2004).

⁶⁴ *Complaints Regulation*, *supra* note 61, s. 2(2)(a).

⁶⁵ *Police Reform Act, 2002*, Sch. 3, s. 19(4).

⁶⁶ *Ibid.*, s. 17.

police premises.⁶⁷ Short of conducting independent investigations, the IPCC also has the power to manage or supervise complaints investigations.⁶⁸

After receiving a complaint, the IPCC or police authority determines if the complaint is suitable for 'local resolution'.⁶⁹ Local resolution is designed to bring complainants and the police together to resolve issues at an early stage, prior to a full investigation.⁷⁰ Local resolution is allowed provided that the conduct complained of would not justify bringing criminal or disciplinary proceedings.⁷¹ It is also permitted in more serious cases, subject to IPCC approval, where criminal proceedings would not be warranted or where criminal or disciplinary proceedings would not be practicable.⁷² Complainants may appeal to the IPCC about local resolution if they feel it was not properly carried out. In addition complainants can appeal to the IPCC if the local police carry out an investigation, but the complainant is dissatisfied with it.⁷³

Any individual directly affected by the incident, or who physically witnessed alleged misconduct may launch a complaint. Distressed friends/relatives of

⁶⁷ *Ibid.*, s.18.

⁶⁸ *Ibid.*, Sch. 3, s. 15(4).

⁶⁹ *Ibid.*, Sch. 3, s. 6(4).

⁷⁰ U.K., Independent Police Complaints Commission, *Making an appeal to the Independent Police Complaints Commission* (London: Independent Police Complaints Commission, 2004) at 1, online: Independent Police Complaints Commission <http://www.ipcc.gov.uk/local_resolution.pdf> (date accessed 15 December 2004).

⁷¹ *Police Reform Act, 2002*, Sch. 3, s. 6(3)(a).

⁷² *Ibid.*, Sch. 3, s.6(4).

⁷³ *Ibid.*, Sch. 3, s. 25.

alleged victims of misconduct may also complain.⁷⁴ While the IPCC envisions independent 'gateway organizations' being equipped to take complaints, complaints can also be made at any police station, to the IPCC, and to Members of Parliament. Generally there is a 12-month time limit for making complaints, although that period can be extended if there is a good reason for the delay or if injustice would result from disallowing the complaint.⁷⁵

In cases where investigations have been carried out, reports are made to police management who then decide on appropriate discipline. More serious cases go to hearings where appointed police officers decide the matter. Recent reforms now provide for an independent, non-police member to sit on these hearing panels.⁷⁶ Importantly, the IPCC can present a case on behalf of a complainant at police disciplinary hearings.⁷⁷

Northern Ireland

In Northern Ireland, complaints may be made to the Police Ombudsman by any member of the public or by a third party on behalf of someone else, so long as that person consents to the third party registering the complaint.⁷⁸ The

⁷⁴ U.K., Independent Police Complaints Commission, 'How To Make A Complaint Against The Police', Independent Police Complaints Commission website: < http://www.ipcc.gov.uk/index/making_complaint.htm > (last accessed: 13 December 2004).

⁷⁵ *Complaints Regulation*, *supra* note 61, 3(2)(a).

⁷⁶ U.K., Home Office, 'New Complaints and the IPCC', online: Home Office, < www.policereform.gov.uk/docs/newcomplaintsysipcc.html > (date accessed: 15 December 2004).

⁷⁷ *Ibid.*

⁷⁸ *Royal Ulster Constabulary (Complaints etc.) Regulations 2000* (U.K.), S.R. 2000/318, s. 4(2) [hereinafter *Royal Ulster*].

Ombudsman is capable of receiving complaints in person, by phone, fax, e-mail or through an online form and endeavors to reply to letters within four working days of receiving them.⁷⁹ Complaints may also be submitted directly to members of the police force, however, complaints received by the police are immediately forwarded to the Ombudsman.⁸⁰ Complaints that are anonymous, repetitious, vexatious, oppressive or an abuse of procedure will be discarded at the Ombudsman's discretion.

Complaints cannot be made in relation to: the direction and control of the police force by the Chief Constable, off duty conduct (unless the fact of being a member is relevant to the complaint), civilian employees, or against officers of the Ombudsman.⁸¹ Complaints must be filed within one year of the incident complained about, although exceptions can be made where new evidence comes to light, if its is believed a criminal offence was committed, or in grave or exceptional circumstances.⁸²

A complaint is suitable for informal resolution if the complaint is not serious and the complainant consents.⁸³ These complaints are referred to the "appropriate disciplinary authority", which may appoint a member of the police force to resolve

⁷⁹ Police Ombudsman for Northern Ireland, 'How To Complain', online: < <http://www.policeombudsman.org/howtocomplain.cfm> > (date accessed: 15 December 2004).

⁸⁰ *Police (Northern Ireland) Act 1998* (U.K.), c. 32, s. 52 (1)(b).

⁸¹ *Police (Northern Ireland) Act*, s. 52(4); *Royal Ulster*, *supra* note 78, s. 5.

⁸² *Royal Ulster Constabulary (Complaints etc.)* (U.K.), S.R. 2001/184, ss. 5, 6.

⁸³ *Police (Northern Ireland) Act*, s. 53.

the issue on its behalf.⁸⁴ If the appropriate disciplinary authority finds the issue impossible to resolve, the matter is referred back to the Ombudsman.⁸⁵

The Ombudsman investigates serious complaints and non-serious complaints where informal resolution either failed or was not consented to by the complainant. The Ombudsman also has residual discretion to investigate, or refer to the Chief Constable for investigation, any complaint that the Ombudsman thinks fit.⁸⁶

Where an investigation indicates a criminal offence has been committed, the Ombudsman must send a copy of the report to the Director of Public Prosecutions with a recommendation that the police officer be prosecuted. The Director of Public Prosecutions retains authority to decide whether or not the officer will be prosecuted.⁸⁷ Disciplinary proceedings will be considered where the Director does not initiate criminal proceedings, criminal proceedings have been concluded, or if there is no indication of a criminal offence and the matter is not suitable for mediation (or mediation is not consented to or has failed).⁸⁸

To initiate disciplinary proceedings the Ombudsman sends the appropriate disciplinary authority a memo recommending that disciplinary proceedings be

⁸⁴ *Ibid.*, s. 50(1).

⁸⁵ *Ibid.*, s. 53(6).

⁸⁶ *Ibid.*, s. 54.

⁸⁷ *Ibid.*, s. 58.

⁸⁸ *Ibid.*, s.59.

commenced.⁸⁹ If there is a hearing, the subject officer is entitled to representation and the case will be heard by three senior police officers appointed by the Chief Constable.⁹⁰ Allegations must be proved on a balance of probabilities and all decisions are based on a simple majority.⁹¹

If the Police Ombudsman and the Chief Constable disagree about whether the police officer should be brought before a misconduct hearing, the Ombudsman may direct the Chief Constable to bring disciplinary proceedings.⁹² In these cases, the hearing is conducted by a panel of three, consisting of a barrister or solicitor who is the chair, a member of the Royal Ulster Constabulary, and another member of the Constabulary who is not a serving police officer.⁹³

Disciplinary sanctions open to the Chief Constable include suspension, dismissal, required resignation, reduction in rank, reduction in pay, fine, reprimand or caution.⁹⁴ The Chief Constable then advises the Ombudsman of what action was taken. A complaints register is kept detailing the nature of the complaint, procedure followed and the outcome.⁹⁵

⁸⁹ *Ibid.*, s. 59(2).

⁹⁰ *The Royal Ulster Constabulary (Conduct Regulations)* (U.K.), S.R. 2000/315 at s. 18 [hereinafter *Royal Ulster 315*].

⁹¹ *Ibid.*, s. 23(4)(b).

⁹² *Police (Northern Ireland) Act*, s. 59(5).

⁹³ *Royal Ulster*, *supra* note 78, s. 28(1)(a).

⁹⁴ *Royal Ulster 315*, *supra* note 90, s. 31.

⁹⁵ *Royal Ulster*, *supra* note 78, s. 22.

Officers dismissed, ordered to resign may appeal within 21 days after receiving written notice of the decision.⁹⁶ Appeals are brought to an appeals tribunal consisting of three or four panel members appointed by the relevant police force. The panel will consist of one person from the police authority, one retired officer, one senior lawyer, and a person who was, in the last five years, a chief of police.⁹⁷

New South Wales

In the Australian state of New South Wales (NSW), two separate bodies deal with police complaints. The New South Wales Ombudsman (NSWO) is mandated to handle less serious (Category 2) complaints, while the New South Wales Police Integrity Commissioner (PIC) handles more serious (Category 1) police complaints including complaints relating to the administration of justice, serious crimes, bribery, drugs, interfering with investigations, and improperly investigating complaints against other police officers.⁹⁸ The PIC was established following the report of the Royal Commission into the NSW Police Service which concluded that the level of corruption within the NSW police had outstripped the capacity of internal affairs personnel and the existing complaints structure to address. The Royal Commission also concluded that the existing system was unable to adequately sort serious complaints from less serious ones, and

⁹⁶ *Royal Ulster Constabulary (Appeals) Regulations*, 2000, S.R. 2000/317 s. 5.

⁹⁷ *Ibid.*, s. 8.

⁹⁸ *Police Integrity Commission Act 1996 No. 28* (N.S.W.), ss. 67-75.; New South Wales, Police Integrity Commission, 'What type of complaints does the Commission investigate?', online: < <http://www.pic.nsw.gov.au/Complaints.asp> > (date accessed: 8 December 2004).

suggested a model of police investigation combined with external oversight for less serious allegations coupled with fully independent investigations for the most serious situations.⁹⁹

Under the current complaints system, any person may make a conduct complaint against a police officer and complaints can be made anonymously.¹⁰⁰ Complaints may be directed to the PIC, the NSWOC or the Police and must be in writing, although in exceptional circumstances, the NSWOC and the PIC will accept oral complaints.¹⁰¹ There are no express time limits for the filing of complaints although the PIC or NSWOC may consider the length of time that has passed since the alleged conduct occurred when deciding whether or not to launch an investigation.¹⁰²

Under the *New South Wales Police Act, 1990*, the less serious Category 2 complaints are investigated by the police, but are overseen by the NSWOC. At any time, PIC may also intervene in a Category 2 complaint and order that it be investigated by PIC as Category 1.¹⁰³ The police must keep the NSWOC informed of any decisions made with respect to a Category 2 complaint and the NSWOC has authority to monitor the progress of the investigation, including the right to

⁹⁹ New South Wales, *Royal Commission into the New South Wales Police Service: Final Report* (Sydney: The Government of the State of New South Wales, 1997) (Commissioner: The Hon. Justice JRT Wood).

¹⁰⁰ *Police Act 1990 No. 47* (N.S.W.), ss. 126 (1), 127 (6).

¹⁰¹ *Ibid.*, s. 127.

¹⁰² *Ibid.*, s. 141(1)(d).

¹⁰³ *Ibid.*, s. 168.

observe interviews conducted in the course of investigations.¹⁰⁴ More significantly, the NSW Ombudsman has broad power to conduct an independent investigation pursuant to the *Ombudsman Act, 1974*¹⁰⁵ at any time if the public interest necessitates it.¹⁰⁶

Both the police and the NSW Ombudsman may decline to investigate a matter if remedial action has or will be taken to resolve the matter, if the matter is deemed “frivolous, vexatious or not made in good faith”, if the subject-matter is trivial, if the conduct “occurred too long ago to justify investigation”, or if alternative redress is available.¹⁰⁷ Complaint investigations may also be declined if, “the complainant does not or could not have an interest, or a sufficient interest, in the conduct complained of”.¹⁰⁸ However, the NSW Ombudsman retains residual authority to veto a police decision not to investigate a complaint, and can order the police to conduct an investigation.¹⁰⁹

Following police investigations, the Police Commissioner must consult with the complainant if practicable and obtain a statement about the complainant’s satisfaction or dissatisfaction with any actions taken. This statement, along with a report of the investigation is provided to the NSW Ombudsman.¹¹⁰ If the NSW Ombudsman believes

¹⁰⁴ *Ibid.*, s. 146.

¹⁰⁵ *No. 68* (N.S.W.).

¹⁰⁶ *Police Act NSW*, s. 156.

¹⁰⁷ *Police Act NSW*, s. 141(1)(a)-(e).

¹⁰⁸ *Ibid.*, s. 141(1)(f).

¹⁰⁹ *Ibid.*, s. 139.

¹¹⁰ *Ibid.*, ss. 150(a), 150(c)(iii).

complaints were handled inappropriately, the NSWOC may make a report to the Police Minister and the NSW Parliament.

The NSWOC is also obliged to inspect NSW Police records annually and has the power to do so at any time to determine compliance with the complaint handling requirements set out in the Act. It should also be noted that the NSWOC is given statutory responsibility for providing the public with information about the police complaints process.¹¹¹

Los Angeles

In late 1999 widespread corruption in the Rampart Division of the Los Angeles Police Department (LAPD) came to light. Following this scandal, the United States Department of Justice (DOJ) investigated the matter and sued the LAPD alleging that it had engaged in unconstitutional patterns or practices. A provision of U.S. law allows for the DOJ to rely on the courts to compel the defendants to end such patterns and practices.¹¹² In 2001, the DOJ, the LAPD, the City of Los Angeles, and the Los Angeles Board of Police Commissioners entered into a voluntary court-approved agreement—known as a consent decree—requiring the LAPD to take a large number of steps to remedy the situation.¹¹³ A significant portion of the consent decree relates to the handling of complaints. Among its

¹¹¹ *Ibid.*, s. 161.

¹¹² 42 U.S.C. § 14141 (1994).

¹¹³ *United States of America v. City of Los Angeles et al.*, (2001) consent decree, Central Dist. California (U.S. Dist. Ct.) [hereinafter consent decree].

provisions are those that relate to the appointment of an independent monitor to oversee the implementation of the consent decree.

Currently misconduct complaints regarding the LAPD are made to the police. However, the independent Office of the Inspector General (OIG), in existence since 1996, reviews police handling of complaints and, in turn, reports to the Board of Police Commissioners.¹¹⁴ Conduct complaints can be made to any police station supervisor, to the Internal Affairs Group, or to the Office of the Inspector General, while policy and procedure complaints are made to police station supervisors. The consent decree specifically requires that third party complaints and anonymous complaints be allowed.¹¹⁵

After a complaint is lodged, either the Internal Affairs Group (IA) or an officer from a police division will investigate it. Investigations must be conducted in conformity with the provisions of the consent decree. The decree mandates that the IA investigate the most serious matters including unauthorized use of force and discrimination.¹¹⁶ Following investigation, complaints will be reviewed by police management to determine whether or not they are substantiated. If the complaint is substantiated and a penalty is recommended by a commanding officer, the case will be reviewed by the Deputy Chief of police. Subsequently, the case is reviewed by the IA and presented to the Chief of Police and to the

¹¹⁴ Los Angeles Office of the Inspector General, *Annual Report 2001*(Office of the Inspector General, 2002) at 3.

¹¹⁵ Consent decree, *supra* note 113 at para. 74.

¹¹⁶ *Ibid.*, at paras. 93-94.

accused officer. Penalties less severe than a 22-day suspension can be accepted by the police officer without a Board of Rights hearing.¹¹⁷ The imposition of more severe penalties requires that the case be directed to a Board of Rights hearing. Board of Rights hearings are made up of two sworn police officers and one civilian member.¹¹⁸ The Board of Rights decides guilt or innocence and, if a finding of guilty is made, recommends a penalty.¹¹⁹ The Chief of Police may accept or vary the recommended penalty. An appeal to the Superior Court is available from a finding.

While the LAPD complaints system continues to be primarily administered by the police, the OIG monitors the system and reports to the Board of Police Commissioners. The consent decree requires the Chief of Police to report to the OIG on a quarterly basis. These reports must include a summary of discipline imposed and details of variations between discipline imposed by the Board of Rights and final penalties imposed by the Chief. The reports must also explain why discipline was not imposed in cases where an officer plead guilty, a serious complaint was launched, or civil liability was found.¹²⁰ In reviewing the Chief's report, the OIG is required to analyze the appropriateness of the Chief's disciplinary actions.¹²¹

¹¹⁷ *Los Angeles Charter and Administrative Code* (1969 as amended), Art. X, s. 1070.

¹¹⁸ *Ibid.*, s. 1070(h).

¹¹⁹ *Ibid.*, s. 1070(n).

¹²⁰ Consent decree, *supra* note 113 at para. 88.

¹²¹ *Ibid.*, at para. 89.

The independent monitor's work consists of acquiring statistically valid samples of data related to the various requirements of the consent decree and reviewing associated documents to ensure compliance with the decree. The independent monitor has reported less than full compliance with the complaint handling requirements of the consent decree.¹²² In addition, "sting audits" where undercover police officers posed as complainants, went to police stations and attempted to register complaints, also suggest that proper complaint handling procedures are not always followed.¹²³

¹²² Independent Monitor for the Los Angeles Police Department, *Report for the Quarter Ending September 30, 2004* (Los Angeles: Kroll/Independent Monitor for the Los Angeles Police Department, 2004).

¹²³ *Ibid.*; M. Lait and S. Glover 'Overseer Faults LAPD on Citizen Complaints; Sting Operations found officers to be dismissive. The federal monitor calls the results 'shocking'' *Los Angeles Times* (29 August 2003) A1.

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Frances Sanderson, Nishnawbe Homes
Edward J. Sapiano
Mark Sault, Seven Generations Education Institute
Hart Schwartz, Ontario Human Rights Commission
Ian D. Scott
John Sewell, Toronto Police Accountability Coalition
Patrick Seymour, Wauzhushk Onigum First Nation
Eileen Shannon, St. Stephen's Community House
Daniel Shoom, Dundurn Community Legal Services
Howard Shulman, The 519 Anti-Violence Programme
Harvey Simon, Toronto Police Accountability Coalition
Joyce Simon, Alliance of Guyanese Canadian Organizations
David Simpson, Psychiatric Patient Advocate Office

Peter Sloly, Association of Black Law Enforcers
Mary Smiley, Ontario Association of Police Services Boards
Mary Alice Smith, Anishinaabe Peace and Justice Coalition
Paul Smith
Samantha Smyth, Dancers' Equal Rights Association
John Snow
Sri-Guggan Sri-Skanda-Rajah, Urban Alliance on Race Relations
Herman Stewart, Jamaican Canadian Association
Glenn Stannard, Windsor Police Service
Graham Stewart, John Howard Society of Canada
George Stoparczyk, Kingston Police Services Board
Gwen Strachan, Ontario Provincial Police
Naseer Syed, Canadian Muslim Lawyers' Association
Al Thompson, Windsor Police Association
George Tucker, Toronto Police Association
Neale Tweedy, Toronto Police Service
Bonnie Vermette, Ontario Native Women's Association
Mark Wainberg, Law Union of Ontario
Frank Walwyn, Canadian Black Lawyers Association
Tom Warner, Toronto Police Accountability Coalition
Tom Warren
Vince Westwick, Ottawa Police Service
Henry Wetalainen, Ontario Metis Aboriginal Association
Joanne Whitney, Kenora Detachment, Ontario Provincial Police
Anna Wilats, Toronto Police Accountability Coalition
Jane Wilcos, Toronto Police Service
Dave Wilson, Toronto Police Association
Cindy Winder, Civil Awareness Response Enquiry
Henry Wojak
Mandy Wojcik, Community and Legal Aid Services Programme
Vina Wolf
Morley S. Wolfe, Toronto Residents in Partnership
Alexi Wood, Canadian Civil Liberties Association
Cathy Woodbeck, Thunder Bay Multicultural Association
Dexter Woodroffe, Alliance of Guyanese Canadian Organizations
Doug Work
Kim Yeandle, Toronto Police Service
Alan Young, Osgoode Hall Law School
Dyanoosh Youssefi, Law Union of Ontario
Tanya L. Zakrison, St. Michael's Hospital
Luke Zych