TAB 1

Ontario

Human Rights Tribunal of Ontario

Application under Section 34 of the *Human Rights Code* (Form 1)

(Disponible en français)

www.hrto.ca

How to Apply to the Human Rights Tribunal of Ontario

Before you start:

1. Read the questions and answers below to find out if the Human Rights Tribunal of Ontario (the Tribunal) has the ability to deal with your Application.
2. Download and read the **Applicant's Guide** from the Tribunal's web site www.hrto.ca. If you need a paper copy or accessible format, contact us:

   Human Rights Tribunal of Ontario
   655 Bay Street, 14th floor
   Toronto, Ontario
   M7A 2A3

Phone:	416-326-1312	Toll-free:	1-866-598-0322
Fax:	416-326-2199	Toll-free:	1-866-355-6099
TTY:	416-326-2027	Toll-free:	1-866-607-1240
Email:	HRTO.Registrar@ontario.ca		
Website:	www.hrto.ca		

   The Tribunal has other guides and practice directions to help all parties to an Application understand the process Download copies from the Tribunal's website or contact us.
3. Complete each section of this Application form. As you fill out each section, refer to the instructions in the Applicant's Guide.

Getting help with your application

For free legal assistance with the application process, contact the **Human Rights Legal Support Centre.** Website: www.hrlsc.on.ca. Mail: 180 Dundas Street West, 8th floor, Toronto, ON M7A 0A1, Tel: 416-597-4900, Toll-free 1-866-625-5179, Fax: 416-597-4901, Toll-free 1-866-625-5180, TTY 416-597-4903, Toll-free 1-866-612-8627.

Questions About Filing an Application with the Tribunal

The following questions and answers are provided for general information. They should not be taken as legal advice or a determination of how the Tribunal will decide any particular application. For legal advice and assistance, contact the **Human Rights Legal Support Centre.**

Who can file an Application with the Tribunal?

You can file an Application if you believe you experienced discrimination or harassment in one of the five areas covered by the Ontario Human Rights Code (the Code). The Code lists a number of grounds for claiming discrimination and harassment. To find out if you have grounds for your complaint under the Code, read the Applicant's Guide.

What is the time limit for filing an Application?

You can file an Application up to one year after you experienced discrimination or harassment. If there was a series of events, you can file up to one year after the last event. In some cases, the Tribunal may extend this time.

Human Rights Tribunal of Ontario

Application under Section 34 of the Human Rights Code (Form 1)

The discrimination happened outside Ontario. Can I still apply?

In most cases, no. To find out about exceptions, contact the Human Rights Legal Support Centre.

My complaint is against a federal government department, agency, or a federally regulated business or service. Should I apply to the Tribunal?

No. Contact the Canadian Human Rights Commission. Web: http://www.chrc-ccdp.ca. Mail: 344 Slater Street, 8th Floor, Ottawa, Ontario K1A 1E1. Phone: (613) 995-1151. Toll-free: 1-888-214-1090. TTY: 1-888-643-3304. Fax: (613) 996-9661.

Should I use this form if I am applying because a previous human rights settlement has been breached?

No. If you settled a previous human rights application and the respondent did not comply with the settlement agreement, use the special application called **Application for Contravention of Settlement, Form 18.** For a paper copy, contact the Tribunal.

Can I file this Application if I am dealing with or have dealt with these facts or issues in another proceeding?

The Code has special rules depending on what the other proceeding is and at what stage the other proceeding is at. **Read the Applicant's Guide and get legal advice, if:**

1. You are currently involved in, or were previously involved in a civil court action based on the same facts and asked for a human rights remedy; **or**
2. You have ever filed a complaint with the Ontario Human Rights Commission based on the same subject matter; **or**
3. You are currently involved in, or were previously involved in another proceeding (for example, union grievance) based on the same facts.

How do I file an Application on behalf of another person?

To file an application on behalf of another person, you must complete and file this Application (Form 1) as well one other form:

- Form 4A if you are filing on behalf of a minor;
- Form 4B if you are filing on behalf of a mentally incompetent person; or
- Form 27 for all other situations where you are filing on behalf of someone else.

When completing this Application, you must check the box in Question 1 that indicates you are filing an Application on Behalf of Another Person. You must provide your name and contact information in Question 1.

The completed Form 4A, Form 4B or Form 27 can be attached to your Application or sent to the Tribunal separately by mail, fax or email. If sent separately, it must be sent within **five (5) days** following the filing of your Application.

For more information on applications on behalf of another person, please see the following Practice Directions:

- Practice Direction on filing application on behalf of another person under section 34(5) of the Code
- Practice Direction on Litigation Guardians before Social Justice Tribunals Ontario

Note: If you are a lawyer or other legal representative providing representation to the applicant, do not use the Form 4A, Form 4B or Form 27. Your details should be provided in section 3, "Representative Contact Information," of this Application (Form 1).

Learn more

To find out more about human rights in Ontario, visit www.ohrc.on.ca or phone 1-800-387-9080.

Human Rights Tribunal of Ontario

Application under Section 34 of the Human Rights Code (Form 1)

Instructions: Complete all parts of this form, using the Applicant's Guide for help. If your form is not complete, the Tribunal may return it to you. This will slow down the application process. At the end of this form, you will be required to read and agree to a declaration that the information in your Application is complete and accurate (if you are a lawyer or legal representative assisting an applicant with this Form 1, please see the **Practice Direction On Electronic Filing of Applications and Responses By Licensed Representatives**).

Contact Information for the Applicant

1. Personal Contact Information

☐ Check here if you are filing an Application on Behalf of Another Person. **Note:** you must *also* complete a Form 4A, Form 4B or Form 27, whichever is applicable, see Instructions above.

Please give us your personal contact information. This information will be shared with the respondent(s) and all correspondence from the Tribunal and the respondent(s) will go here. If you do not want the Tribunal to share this contact information, you should complete section 2, below, but you must still provide your personal contact information for the Tribunal's records.

*First Name	Middle Name	*Last Name
Kelly	Lynn	Donovan

Street #	Street Name	Apt/Suite
11	Daniel Place	

City/Town	Province	Postal Code	Email
Brantford	Ontario	N3R1K6	donovandih@gmail.com

Daytime Phone (e.g. 999-999-9999)	Cell Phone (e.g. 999-999-9999)	Fax (e.g. 999-999-9999)	TTY (e.g. 999-999-9999)
519-209-5721			

What is the best way to send information to you?
(If you check email, you are consenting to delivery of documents by email)

○ Mail ◉ Email ○ Fax

Human Rights Tribunal of Ontario

2. Alternative Contact Information

If you want the Tribunal and respondent(s) to contact you through another person, you must provide contact information for that person below. You should fill this section out if it will be difficult for the Tribunal to reach you at the address above or if you want the Tribunal to keep your contact information private. **If you complete this section, all of your correspondence will be sent to you in care of your Alternative Contact.**

First (or Given) Name	Middle Name	Last (or Family) Name

Street #	Street Name	Apt/Suite

City/Town	Province	Postal Code	Email
	Ontario		

Daytime Phone (i.e. 999-999-9999)	Cell Phone (i.e. 999-999-9999)	Fax (i.e. 999-999-9999)	TTY (i.e. 999-999-9999)

What is the best way to send information to you at your alternative contact? ○ Mail ○ Email ○ Fax
(If you check email, you are consenting to delivery of documents by email)

3. Representative Contact Information

Complete this section only if you are authorizing a lawyer or another Representative to act for you.

☐ **I authorize the named organization and/or person to represent me**

My representative is:

☐ Lawyer	LSUC#	
☐ Paralegal	LSUC#	
☐ Legal Support Centre		
☐ Other- please specify the Nature of Exemption from licensing requirements in the text below:		

Ontario

Human Rights Tribunal of Ontario

Nature of Exemption (e.g. family member, unpaid friend)

Please choose the type of Representative: ◉ A) Organizational Representative ○ B) Individual Representative

A) Organizational Representative

Full Name of Representative Organization
Waterloo Regional Police Service

Name of the Contact Person from the Organization

First (or Given) Name	Last (or Family) Name
Bryan	Larkin

Street #	Street Name	Apt/Suite
200	Maple Grove Road	

City/Town	Province	Postal Code	Email
Cambridge	Ontario	N3H5M1	bryan.larkin@wrps.on.ca

Daytime Phone (i.e. 999-999-9999)	Cell Phone (i.e. 999-999-9999)	Fax (i.e. 999-999-9999)	TTY (i.e. 999-999-9999)

What is the best way to send information to your representative?
(If you check email, you are consenting to delivery of documents by email) ○ Mail ○ Email ○ Fax

Contact Information for the Respondent(s)

4. Respondent Contact Information

Provide the name and contact information for any respondent against which you are filing this Application.

Please choose the type of respondent: ◉ A) Organization Respondent ○ B) Individual Respondent

Human Rights Tribunal of Ontario

A) Organization Respondent

Name the organization you believe discriminated against you. You should also indicate the contact person from the organization to whom correspondence can be addressed.

Full Name of Organization
Waterloo Regional Police Service

Name of the Contact Person from the Organization

First (or Given) Name	Last (or Family) Name	Title
Bryan	Larkin	Chief of Police

Street #	Street Name	Apt/Suite
200	Maple Grove Road	

City/Town	Province	Postal Code	Email
Cambridge	Ontario	N3H5M1	bryan.larkin@wrps.on.ca

Daytime Phone (i.e. 999-999-9999)	Cell Phone (i.e. 999-999-9999)	Fax (i.e. 999-999-9999)	TTY (i.e. 999-999-9999)
519-653-7700			

Are there any additional respondents? ○ Yes ◉ No

Grounds of Discrimination

5. Grounds Claimed

The Ontario Human Rights Code lists the following grounds of discrimination or harassment. Put an "X" in the box beside each ground that you believe applies to your Application. You can check more than one box.

- ☐ Race
- ☐ Colour
- ☐ Ancestry
- ☐ Place of Origin
- ☐ Citizenship
- ☐ Ethnic Origin
- ☐ Disability
- ☐ Creed
- ☒ Sex, Including Sexual Harassment and Pregnancy
- ☐ Sexual Solicitation or Advances
- ☐ Sexual Orientation

Ontario

Human Rights Tribunal of Ontario

- ☐ Gender Identity
- ☐ Gender Expression
- ☐ Family Status
- ☒ Marital Status
- ☐ Age
- ☐ Receipt of Public Assistance (Note: This ground applies only to claims about Housing)
- ☐ Record of Offences (Note: This ground applies only to claims about Employment)
- ☐ Association with a Person Identified by a Ground Listed Above
- ☐ Reprisal or Threat of Reprisal

Areas of Discrimination under the Code

6. Area of Alleged Discrimination

The Ontario *Human Rights Code* prohibits discrimination in five areas. Put an "X" in the box beside the area where you believe you have experienced discrimination (choose one). Read the Applicant's Guide for more information on each area.

- ◉ **Employment (Complete Form 1-A)**
- ○ **Housing (Complete Form 1-B)**
- ○ **Goods, Services and Facilities (Complete Form 1-C)**
- ○ **Contracts (Complete Form 1-D)**
- ○ **Membership in a Vocational Association (Complete Form 1-E)**

Does your Application involve discrimination in other areas? ○ Yes ◉ No

If "Yes", put an "X" in the box beside any other area where you believe you experienced discrimination:

☐ Employment ☐ Housing ☐ Goods, Services or Facilities ☐ Contracts ☐ Vocational Association

Facts that Support Your Application

7. Location and Date (see Applicant's Guide)

Please answer the following questions.

a) *Did these events happen in Ontario?	◉ Yes	○ No
b) In what city/town?	Cambridge	
c) *What was the date of the last event? (dd/mm/yyyy)	31/05/2016	
d) If you are applying more than one year from the last event, please explain why:		

8. What Happened

*In the space below, describe each event you believe was discriminatory.

For each event, be sure to say:

- **What** happened
- **Who** was involved
- **When** it happened (day, month, year)
- **Where** it happened

Be as complete and accurate as possible. Be sure to give details of every incident of discrimination you want to raise in the hearing.

On May 4, 2016, I presented a delegation to the Waterloo Regional Police Services Board on the topic of the police service's inconsistencies and lack of policy when investigation its own members. This meeting took place in the Police Services Board room at 200 Maple Grove Road in the City of Cambridge. I am a Constable with the Waterloo Regional Police Service. Before this day I was an exemplary officer, having won awards and been placed in the department's Training Branch after only serving for four and a half years. I presented this delegation because I believed there were serious issues of inconsistency during internal investigations, authorized by Chief Bryan Larkin. I researched avenues available to me, as a member of the police service, and the only legal chanel for me to voice my concerns and seek the help of the Board to order the service to create a policy and procedure on internal investigations was to present a delegation to the Board. I had researched service procedure and policy, the Police Services Act, and the Board By-Laws and did not locate anything from precluding me from making this delegation. I had requested time off to attend this meeting and been approved by my supervisor. During my delegation I did not disclose any information of which I have a duty to maintain in secrecy. The information presented was specific to four relevant issues. The information I presented was obtained outside of my work duties from the individual officers to whom the information pertains. I received permission from the individual officers to discuss their issues in my delegation. I was respectful to Board members and I was allowed to speak for the full ten minutes by the Board (the Board has the option to enter into a closed session if they believe the information is best kept from the public).

Following my presentation I was approached by a woman who identified herself as a reporter. The Chief's Executive Officer, Staff Sergeant Mike Haffner came up to me and stated "she's with the media, you can't talk to her." When this woman returned and began asking me questions I did not answer her questions, as I am precluded from doing so under service procedure and the PSA. The Chief's Executive Officer stood immediately beside me and stuck his head down into our conversation to hear what I was saying. There was an article in The Record (newspaper) covering my delegation in which I was misquoted and the article focused on the investigation of Sgt. Finucan, (this was one of four issues I mentioned in my delegation and the reporter had also covered this case originally). One of the four issues I discussed in my delegation involved a complaint of domestic violence being made by a female police officer and the complaint being dismissed. Another one of the four issues I discussed was a complaint of historical domestic violence being made by a female police officer and an arrest being made with little to no grounds for arrest. In this article, the Chief was quoted as saying "We take domestic violence very seriously and the complaint came from a policewoman." I was insulted by this comment because I felt that the Chief was insinuating that a female police officer is somehow more credible than a male police officer. I believe the Chief was stereotyping male police officers, that they are somehow dishonest versus female police officers. I do not believe the Chief of police should make any distinction of credibility based on gender, especially to local media.

The following day, (and every day since then), my work duties were restricted and I was restricted to working in the office only, as opposed to the training environment.

On May 9, 2016, I was called into the service's Professional Standards office at headquarters at 200 Maple Grove Road in

Cambridge, and met with my divisional Inspector (Inspector Thiel) and Acting Inspector Goodman. I was given a directive from the Chief to not appear before the Board without his permission and relegated to administrative duties (among other things). I was served a Notice of Investigation for six Police Services Act (PSA) charges regarding the lawful presentation of my delegation. Those charges included; Discreditable Conduct (x2), Neglect of Duty (x2), Breach of Confidence (x2). I had expected that I could be disciplined for the fact that the media were present, but only one of these charges had to do with the media. I was told by Inspector Thiel that all of the incidents I mentioned in my delegation would be reviewed independently. I asked Inspector Thiel for clarification as to which incidents would be reviewed and he confirmed it would be all of them (there were four major issues I specifically called attention to in my delegation). Inspector Thiel stated that the internal investigation into my conduct would largely weigh on the findings of the independent reviews. He stated if any of the information I presented turns out to be false, it would affect the investigation. I asked if the same is true if all of the information I presented turns out to be truthful would the service withdraw the charges and he stated that it would also affect the investigation. I believe that the Chief is upset that I brought a serious internal issue to the attention of the media and is using the PSA as a means of bullying and intimidating me. I did not sign the Directive forbidding me from appearing before the Board since I did not believe I could be prohibited from attending a meeting that shall be open to the public if I were not on duty and considered a member of the public. I was told by Inspector Thiel that the Chief can tell me to "whatever he wants." I was told by Inspector Thiel that I "had to sign" the directive. When I asked if I could have a lawyer present Acting Inspector Goodman stated that I did not have to sign. That evening, from home, I sent an email to the members of the Board to notify them of the internal investigation initiated due to my lawful attendance at the Board meeting. My delegation had focused on how the service treats its members and I felt I had a duty to report to the Board who is responsible for civilian oversight of the service and performance of the Chief.

On May 11, 2016, the Cambridge Times published an article regarding my delegation. The article featured exact wording from my delegation that I believe was given to them by the service (I did not disclose my delegation to the media). The article mentioned that I focused on four high profile cases, but the majority of the article focused once again on the case of Sgt. Finucan. The following is a quote from this article "the Chief assured the media following the meeting that the officer has a democratic right to vocalize her disapproval during the public session of the police board meeting." The article stated "Donovan, who referred to herself as a friend of Finucan, said she wanted to address the board on his behalf." I did state that I am friends with Sgt. Finucan, but not once did I ever stated I was addressing the board on his behalf. When I asked for Sgt. Finucan's permission to discuss some of the issues pertaining to his case he adamently advised against me presenting a delegation to the board. Sgt. Finucan stated his reasons for advising against my delegation was his knowledge of the service's tendency to punitively target members whose lawful actions question leadership decisions. Futher quotes from the Chief led me to believe that the angle this article was taking was determined by the Chief. The Chief is quoted as saying "Sometimes, when we're close to an issue we see it very differently than when we're not close to an issue." I took great offence to that comment because the Chief is insinuating that Sgt. Finucan and I are more than friends; based on the fact that I am a single female and he is male. I believe that if I were male or a married female, having presented the same delegation under the same circumstances, the Chief would never have made that statement. I believe the Chief was using my gender and marital status to discriminate against me and attempt to embarass me in local media and have my credibility called into question. The Chief was also quoted as saying "there are many mechanisms within the force and the union to call for change." After having extensively researched the mechanisms, or lack thereof, available to me to call for change, I believe the Chief's statement is deceitful and an attempt to have my conduct appear nefarious or vexatious when in fact my attendance at the Board meeting was lawful.

On May 18, 2016, the Training Branch held an event, because of Police Week, to put the Board members through Use of Force training. My directive stated I could not participate in the training of members yet I was excluded from training the Board members. My supervisor requested the attendance of a member from another location to attend headquarters and train in my place.

On May 31, 2016, I was escorted to Acting Inspector Goodman's office by Staff Sergeant Davis (my immediate supervisor). I was served a memorandum stating I am also under investigation for two additional PSA charges; Deceit and an additional count of Discreditable Conduct. I was also directed to not have any further contact directly or indirectly with members of the Police Services Board. The memorandum alleged that I was deceitful when I stated that had no personal interest in any of the four matters I brought to the Board's attention. I had stated in my delegation that I am friends with Sgt. Finucan and that is truthful. I can only conclude that once again the Chief has used the fact that I am a single female to make a connection between one of the male officers involved in one of the four issues I presented and my motivation to present my delegation. The charge of Deceit is a very serious offence, punishable by termination, and I am appauled that the Chief would consider that charge based solely on my marital status and gender. At that moment I verbally notified Acting Inspector Goodman and Staff Sergeant Davis that I would be filing a harassment complaint.

Ontario

Human Rights Tribunal of Ontario

On June 2, 2016, I submitted an internal Workplace Harassment form to my supervisor Sergeant Prine.

The issues I discussed in my delegation pertained to the handling of internal investigations and the need for consistent practices and policies to oversee how these investigations are completed. Up until May 9th I had never been the subject of an internal investigation. I have never discussed any of my concerns with another member of the service, whether inside or outside of a training environment. My job as a training officer would not have been impacted by my delegation in any way. I chose to present my delegation because of internal turmoil, stress and depression I was experiencing after witnessing the manner in which the service handles internal investigations. My delegation was directed at the Board and I have not and don't intend to disseminate the information with anyone at the service.

Since being relegated to administrative duties only I have continued to be a hard worker. I diligently worked on the branch statistics and was assigned to complete the inaugural Use of Force Report that was presented to the Police Services Board on June 1, 2016. The report I prepared was very well received and even covered on CTV News. I also began an audit of the branch's training material for Staff Sergeant Davis, and spent most of my days writing lesson plans to complement the learning material available. Aside from being prevented from training I am doing my best to remain a diligent and hard worker and an exemplary police officer.

The Effect on You

9. How the Events You Described Affected You

*Tell us how the events you described affected you. What was the effect (e.g. were there financial, social, emotional or mental health, or any other)?

My mental health began to be affected by the internal dealings of the service around August, 2015. It was around that time that I started to experience a moral injury due to the inconsistent and unexplained manner in which our service handled internal investigations. One of the issues I discussed in my delegation was regarding a report of domestic violence that I had made against a member. (I did not disclose any names in my delegation). I had been disappointed that the service did not continue with the investigation despite my allegations. As time passed I spoke to other members of the service, Sgt. Finucan and Jeremy Snyder, who were both currently facing criminal charges as a result of internal investigations. The information I learned from these two men corroborated the inconsistent manner in which the service handled internal investigations. All of the information I obtained about the issues was obtain off-duty and in no way violated the secrecy which I am bound by Oath to maintain. I advised both Snyder and Finucan that I planned to address the issue with the service somehow and they both gave me persmission to discuss details of their cases if it would assist.

In the fall of 2015 I became depressed. I could not sleep and frequently came to work after only have 2 or 3 hours of sleep. I did not have much of an appetite and I had difficulty eating regularly. I did not exercise as often because it caused me stress to be in the headquarters gym alonside some Sergeants, Staff Sergeants, Inspectors and Superintendents (whom I knew had been involved in some of the internal investigations). In February, 2016, I visited my Doctor and he prescribed medication for depression and anxiety. The medication helped me to sleep and eat better but I still experienced stress and anxiety every day that I attended work. I did not miss any work days during this time for a personal illness (I may have taken one family day for a sick child).

I carefully prepared my delegation for the May 4th meeting and leading up to that date continued to experience heightened anxiety and stress. The meeting itself was very stressful. Upon entering the Police Services Board room I was greeted by the Chief who purposefully shoot my hand and greeted me by name. When I was called to the table I sat between the Chief and Deputy Chief Chalk. During the time that I spoke the Chief's cellphone continued to chime and he left his seat twice to speak to Gary Melanson who was seated on the east side of the room. I found the Chief's conduct to be disruptive while I was speaking. Upon conclusion of my delegation I returned to my seat until the conclusion of the meeting. I continued to feel a tremendous amount of stress and anxiety but I now felt a sense of relief for having exposed some issues I felt were imperative to improve the morale within the service and to improve the level of trust betwen the membership and leadership. When the meeting adjourned I was approached by Board Director Philip Huck who shook my hand and thanked me for making my presentation. Acting Board Chair Rosemary Smith also shook my hand and thanked me for my presentation. I advised Smith that I did not have enough time to conclude what I had prepared and she advised that I could email my entire delegation to be included in the minutes. I felt even more relieved to know that the Board received my information positively and were thankful that I attended.

When the Chief's Executive Officer Staff Sergeant Mike Haffner stood beside me in the Police Services Board room on May 4, 2016, and stuck his head into my conversation with the media I felt intimidated by his behaviour.

I was embarassed to read the comments made by the Chief in The Record article dated May 4, 2016, regarding the level of credibility of a complainant weighing on their gender. I was hurt that the Chief had taken anything I had said in my delegation and turned it into a credibility issue based on the gender of the complainant. I felt that this was an attempt by the Chief at deflecting the focus away from service policy and onto me more personally.

On May 9, 2016, when I was served with the Directive and Notice of Investigation by Inspector Thiel and Acting Inspector Goodman I experienced an overwhelming amount of stress and anxiety and I could not prevent myself from becoming emotional. I felt that the conduct of two officers were tyrannical and oppressive and using the PSA and authorities of the Chief to bully and intimidate me. When Inspector Thiel stated that the Chief can direct me to do "whatever he wants" I felt intimidated and bullied. When Inspector Thiel told me I had to sign the document and then Acting Inspector Goodman stated I did not have to sign (after I asked to have a lawyer present), I felt lied to by Inspector Thiel. I had to involve a lawyer, due to the nature of the PSA investigation, and I cannot afford to pay a lawyer. I am a single mother of three children and I own my own home in Brantford, Ontario. I do not receive support payments from my children's father. I will have to borrow money to have a lawyer represent me in a PSA proceeding. That night at home I had a difficult time dealing with my stress. I could not bring myself to be involved with my children, which is very unlike me. Due to my level of anxiety I only slept for 3 hours that evening.

On May 11, 2016, when the article was published to the Cambridge Times website I felt embarassed and upset that the Chief had publicly stated that I was not objective in my reasoning for my delegation due to being too "close" to "an issue." I felt discriminated against because I am a single female. I felt alienated and criticized by the Chief. It caused me a tremendous amount of stress to know that the service had taken a personal angle to attempt to deflect the attention away from the issues I presented in my delegation surrounding internal policies. I became fearful that the service would turn the investigation into something that would violate my personal life and could involve my children and my status in my community in Brantford. I was also confused that the Chief was quoted as saying I had a "democratic right" to make my delegation, knowing that he had authorized the directive and six PSA charges following my appearance. I felt the Chief was being deceitful to the media and therefore the public. The article also stated that the Chief respects Donovan for coming forward with her opinions about the force's handling of internal investigations." I feel this statement is manipulative because once again he has portrayed to the media that he has acknowledged my actions were lawful and democratic while continuing to take punitive and legal action against me. I continued to feel highly stressed and anxious.

On May 18, 2016, when I was excluded from the training event for the Board members this made me feel segregated and alienated. I felt as though I was burdening Cst. Zuliani for having to attend headquarters and work in place of me. I had been looking forward to the opportunity to show the Board members my abilities as a training officer and I was directed to spend the entire day in the office. I felt dismissed and I experienced tremendous anxiety that day. When the members of the Training Branch returned to the office and discussed the highlights from the day's event I felt excluded, saddened and demoralized.

On May 31, 2016, when I was served notice of the additional charges I was extremely upset. I felt an overwhelming amount of stress and anxiety. Not only had the service used my gender and marital status to embarass me in the media but new charges were now being investigated as a result of the allegation by the Chief that I somehow have a personal interest in having the 4 issues I raised in my delegation reviewed. I believe the only reason new charges were added was to include the clause that I be prohibited from contacting the Board members directly or indirectly (which was not stated on my original directive, and there is no lawful ability for the Chief to add that clause without additional charges). I believe the Chief did not want me to contact Board members for fear I would advise them of further tyrannical and oppressive conduct within the service leadership. Since the charge of Deceit is a very serious offence and can lead to termination I was very stressed and scared at the potential of losing my income. I am the sole provider in my household and my children live with me half of the time. The thought of being unemployed as a result of doing something lawful and within my rights left me feeling more disillusioned, disheartened and mistreated by the Chief, who has publicly stated I was within my rights and he respects me. In the days that followed I have been extremely stressed and depressed over the fact that I could be terminated from my employment.

Since being ordered to not participate in the training of any sworn members I have been relegated to the office in the basement of headquarters. This has made me feel dismissed, segregated, alienated, depressed and demoralized. Other

officers are treating me like I did something wrong and rumours have spread through the department that I am under criminal investigation. When officers attend the office and ask me why I am in the office I have a difficult time making up excuses because I do not want to discuss the issue at work. When I see members of the senior leadership team in the hallways I continue to be pleasant and respectful. Some members of the senior leadership team are now treating me differently for having come forward with my delegation. I have maintained a very high level of professionalism despite the treatment I am receiving from senior leadership at the service. I am experiencing the following mental health issues; anxiety, stress and depression. I am currently taking medication for depression and anxiety. I have not received a bill from my lawyer.

According to Inspector Thiel and Acting Inspector Goodman, the investigation into the PSA charges will not begin until a review by a Staff Sergeant at York Regional Police into the Sgt. Finucan case concludes. I understand that this review could take months before my investigation even begins.

The Remedy

10. The Remedy You are Asking For (see Applicant's Guide)

Put an "X" in the box beside each type of remedy you are asking the Tribunal to order. Explain why you are asking for this remedy in the space below.

☒ Monetary Compensation	Enter the Total Amount $201,751.12

Explain below how you calculated this amount:

$2,000.00 is what I estimate I owe my lawyer for the work he has done to date.
$10,000.00 is what I feel is the monetary value of the hurt and embarassment the Chief has caused me with the discriminatory comments he has made in the media.
$189,751.12 is two-times my salary. The Chief has shown his desire to terminate my employment for being honest and acting lawfully. I have a responsibility to my children to ensure I can continue to support them if I am terminated until I can update my education and seek alternative employment.

☐ Non-Monetary Remedy-Explain below:

☐ Remedy for Future Compliance (Public Interest Remedy)-Explain below:

Human Rights Tribunal of Ontario

Mediation

11. Choosing Mediation to Resolve Your Application

Mediation is one of the ways the Tribunal tries to resolve disputes. It is a less formal process than a hearing. Mediation can only happen if both parties agree to it. A Tribunal Member will be assigned to mediate your Application. The Member will meet with you to talk about your Application. The Member will also meet with the respondent(s) and will try to work out a solution that both sides can accept. If Mediation does not settle all the issues, a hearing will still take place and a different Member will be assigned to hear the case. Mediation is confidential.

Do you agree to try mediation? ☒ Yes

Other Legal Proceedings

12. Civil Court Action (see Applicant's Guide)

Note: If you answer "Yes" to any of these questions, you must send a copy of the statement of claim that started the court action.

*a) Has there been a court action based on the same facts as this Application?	○ Yes (Answer 12b)	◉ No (Go to 13)

13. Complaint Filed with the Ontario Human Rights Commission (see Applicant's Guide)

Note: If you answer "Yes", you must attach a copy of the complaint.

*Have you ever filed a complaint with the Commission based on the same facts as this Application?	○ Yes	◉ No

14. Other Proceeding - In Progress (see Applicant's Guide)

Note: If you answer "Yes" to question "14a" you must attach a copy of the document that started the other proceeding.

*a) Are the facts of this Application part of another proceeding that is still in progress?	◉ Yes (Answer 14b)	○ No (Go to 15)

b) Describe the other proceeding:

☐ A union grievance	Name of Union:	

Ontario

Human Rights Tribunal of Ontario

☐ A claim before another board, tribunal or agency	Name of board, tribunal, or agency:	
☒ Other	Explain what the other proceeding is:	An internal Workplace Harassment and/or Discrimination Complaint Form filed with the Waterloo Regional Police Service on June 2, 2016.

*c) Are you asking the Tribunal to defer (postpone) your Application until the other proceeding is completed?	○ Yes	◉ No

15. Other Proceeding - Completed (see Applicant's Guide)

Note: If you answer is "Yes" to question "15a" you must attach a copy of the document that started the other proceeding and a copy of the decision from the other proceeding.

*a) Were the facts of this Application part of some other proceeding that is now completed?	○ Yes (Answer Question 15b)	◉ No (Go to 16)

b) Describe the other proceeding:

☐ A union grievance	Name of Union:	
☐ A claim before another board, tribunal or agency	Name of board, tribunal, or agency:	
☐ Other	Explain what the other proceeding is:	

Ontario

Human Rights Tribunal of Ontario

c) Explain why you believe the other proceeding did not appropriately deal with the substance of this Application.

Documents that Support this Application

16. Important Documents You Have

If you have documents that are important to your Application, list them here. List only the most important. Indicate whether the document is privileged. See the Applicant's Guide.
Note: You are not required to send copies of these documents at this time. However, if you decide to attach copies of the documents you list below to your Application they will be sent to the other parties to the Application along with your Application.

Document Name	Why It Is Important to My Application

Add more Documents

17. Important Documents the Respondent(s) Have

If you believe the respondent(s) have documents that you do not have that are important to your Application, list them here. List only the most important.

Document Name	Why It Is Important To My Application	Name of Respondent Who Has It
Any and all surveillance documents, audio and video recordings, digital recordings, photographs, licence plate enquiries for BABJ834	These items show that the service is abusing its resources to support their efforts to discipline me and change the focus to my personal life.	Chief Bryan Larkin and any and all employees under his direction

Add more Documents

Ontario

Human Rights Tribunal of Ontario

18. Important Documents Another Person or Organization Has

If you believe another person or organization has documents that you do not have that are important your Application, list them here. List only the most important.

Document Name	Why It is Important to my Application	Name of Person or Organization who has It
Any and all notes, and interviews pertaining the Police Services Board meeting on May 4, 2016, and articles printed on same.	These will assist in determining if the Chief provided the discriminatory comments to the reporter	Liz Monteiro, The Record Lisa Rutledge, Cambridge Times

Add more Documents

Confidential List of Witnesses

19. Witnesses

Please list the witnesses that you intend to rely on in the hearing. **Note:** The Tribunal will not send this list to the respondent(s). (see Applicant's Guide)

Name of Witness	Why This Witness Is Important To My Application

Add more Witnesses

Other Important Information

20. Other Important Information the Tribunal Should Know

Is there any other important information you would like to share with the Tribunal?

This is my first time completing this form and I did not seek legal advice to assist me. Should there be errors or omissions they are done in error and will be corrected forthwith once I am advised.

Human Rights Tribunal of Ontario

Checklist of Required Documents

22. Other Documents from Questions 12 to 15

Confirm whether you are sending the Tribunal any of the following documents:

- ☐ A copy of a statement of claim (from Question 12)
- ☐ A copy of a complaint filed with the Ontario Human Rights Commission (from Question 13)
- ☒ A copy of a document that started another proceeding based on these facts (from Question 14 or 15)
- ☐ A copy of a decision from another proceeding based on these facts (from Question 15)

Human Rights Tribunal of Ontario

Application to the Human Rights Tribunal of Ontario
Area of Discrimination: Employment (Form 1-A)

Note: Complete this form if you believe you were harassed or discriminated against in the area of employment.

PART I

Questions About the Respondent(s)

A1. Put an "X" in the box beside each point that describes the respondent(s) in your case. Check all that apply.

- ☐ The respondent is the employer at a place where I wanted to work
- ☒ The respondent is my current employer
- ☐ The respondent is my former employer
- ☐ The respondent is an employment agency
- ☐ The respondent is a union or employee association
- ☒ The respondent is a supervisor, manager, or boss
- ☐ The respondent is another employee
- ☐ Other- Please describe the respondent(s):

Questions About the Job

Please answer these questions.

A2. What was the position or job where you felt there was discrimination?

Police Training Constable, Waterloo Regional Police

A3. What were the requirements (essential job duties) of the position?

Conduct, plan and analyze Use of Force training to all members of the service.

Ontario

Human Rights Tribunal of Ontario

A4. Was it a volunteer position?	○ Yes	◉ No
A5. Were you employed in this position?	○ Yes	◉ No (Go to A6)
a) If you answered "Yes" to question A5, how long were you in the position? Please give the dates you started and finished.	From: (dd/mm/yyyy)	To: (dd/mm/yyyy)
b) If you answered answer "Yes" to question A5, what was the pay for the position? $		○ Hourly ○ Monthly ○ Weekly ◉ Yearly
A6. Are you working now?	◉ Yes	○ No (Go to A7)
a) If you answered "Yes" to question A6, what is your current pay?	$ 94,875.56	○ Hourly ○ Monthly ○ Weekly ◉ Yearly

Questions About Your Union

A7. Were you a member of a union or other occupational or professional association responsible for collective bargaining at the time of the alleged discrimination?

◉ Yes (Fill out details bellow) ○ No (Go to A8)

If you answered "Yes", the Tribunal will send them notice of this Application.

Full Name of Organization

Waterloo Regional Police Association

Name of Contact Person from the Organization

First (or Given) Name	Last (or Family) Name
Tim	Reparon

Street #	Street Name	Unit/Suite Number
1128	Rife Road	

City/Town	Province	Postal Code	Email
Cambridge	Ontario	N1R5S3	treparon@wrpa.org

Human Rights Tribunal of Ontario

Daytime Phone (i.e. 999-999-9999)	Cell Phone (i.e. 999-999-9999)	Fax (i.e. 999-999-9999)	TTY (i.e. 999-999-9999)
519-622-0771	519-577-5321		

Questions About What Happened

Alleged Discrimination Before Hiring

A8 Put an "X" in the box beside each point that describes how you believe you were discriminated against.

I experienced discrimination:

- ☐ As a result of in a job ad
- ☐ In an application form
- ☐ In a job interview
- ☐ In drug and alcohol testing before hiring
- ☐ In other kinds of pre-employment testing
- ☐ In a hiring decision
- ☐ Other- please explain:

Alleged Discrimination During Employment

A9. Put an "X" in the box beside each point that describes how you believe you were discriminated against.

I experienced discrimination:

- ☐ In my rate of pay, overtime, hours of work, or holiday
- ☐ In being denied a promotion
- ☐ In scheduling
- ☒ In discipline (such as suspensions or warning)
- ☐ In being fired
- ☒ In comments, displays, jokes, harassment, or a poisoned work environment
- ☐ In sexual harassment or solicitation or advances
- ☐ In being denied a workplace opportunity (such as a training opportunity) Please describe:
- ☐ In being denied employment benefits, including time off for medical or other reasons. Please describe:

Ontario

Human Rights Tribunal of Ontario

☐ In drug testing or alcohol testing

☐ In being denied necessary accommodation or modified work in the workplace

☒ Other- please explain:

Comments made to public media

Workplace Policies or Practices

A10. Is your Application about a workplace policy? (for example, absenteeism accommodation or holiday policy)	○ Yes	○ No

a) If you answered "Yes" to A10, what is the policy? (Attach a copy if available)

Questions About Complaining to Your Employer

Complete this section only if you complained to someone in authority about the alleged harassment or discrimination.

A11. To whom did you complain?

Sgt. George Prine, Staff Sergeant Jen Davis, Acting Inspector Goodman

A12. Was there an investigation?	◉ Yes	○ No (Go to Part II)

a) If you answered "Yes" to A12, what was the outcome of the investigation?

Ongoing

PART II

Human Rights Tribunal of Ontario

The following Part asks you to answer how you believe you were harassed or discriminated against based on grounds you identified. If you believe that you were discriminated against or harassed based on more than one ground, fill out all the sections that apply.

Questions About Employment Discrimination on the Grounds of Sex, Pregnancy, Gender Identity or Gender Expression

Complete this section only if you believe that you have been discriminated against on the grounds of sex, pregnancy, gender identity or gender expression

A24. Is your Application about discrimination on the ground of pregnancy?	○ Yes	○ No

A25. Explain why you believe you were discriminated against based on your sex, pregnancy, gender identity.

A26. Please identify your sex or describe your gender identity or gender expression.

Question About Workplace Sexual Harassment

Complete this section only if you believe that you have been subjected to sexual harassment in the workplace.

A29. Tell us what happened.

Questions About Employment Discrimination on the Grounds of Family or Marital Status

Complete this section only if you believe that you have been discriminated against on the grounds of family or marital status.

Human Rights Tribunal of Ontario

A32. Explain why you believe you were discriminated against based on your family or marital status.

The Chief has made statements about me in the media being close to a male officer whom I alleged was a friend. The Chief has attempted to explain my behaviour in the media by insinuating I am more than friends with the person whose investigation I discussed in my delegation. The Chief has attempted to put my credibility and motivation into question by referencing my personal life only to deflect the focus away from the issues I raised in my delegation regarding the lack of service policy on internal investigations.

A33. Please describe your family or marital status.

I am a single mother. I have been a single mother since 2009. I began my employment with the Waterloo Regional Police Service in 2010.

Declaration and Signature

23. Declaration and Signature

Instructions: Do not sign your Application until you are sure that you understand what you are declaring here.

Declaration:

To the best of my knowledge, the information in my Application is complete and accurate.

I understand that information about my Application can become public at a hearing, in a written decision, or in other ways determined by Tribunal policies.

I understand that the Tribunal must provide a copy of my Application to the Ontario Human Rights Commission on request.

I understand that the Tribunal may be required to release information requested under the Freedom of Information and Protection of Privacy Act (FIPPA).

***Signature Date (dd/mm/yyyy)**

03/06/2016

☒ *Please check this box if you are filing your Application electronically. This represents your signature. You must fill out the date, above.

Accommodation Required

If you require accommodation of Code-related needs please contact the Registrar at:
Email: HRTO.Registrar@ontario.ca
Phone: 416-326-1519 Toll-free: 1-866-598-0322
Fax: 416-326-2199 Toll-free: 1-866-355-6099
TTY: 416-326-2027 Toll-free: 1-866-607-1240

Ontario

Human Rights Tribunal of Ontario

Note: Only file your Application once. If the Tribunal receives your application more than once, it will only accept the first Application Form received.

Submit to Prod (GDC) | Print Form

Jevremovic, Nadia (MAG)

From:	hrto_form_applicant@hrto.ca
Sent:	June-03-16 3:58 PM
To:	JUS-G-MAG-HRTO-Efile
Subject:	Ref Id: 2016-06-03-15-57-527271. HRTO Smart Form Submission.
Attachments:	2016-06-03-15-57-527271.txt

HRTO Smart Form Submission. - Kelly Donovan

Jevremovic, Nadia (MAG)

From:	Kelly Donovan <donovandih@gmail.com>
Sent:	June-04-16 11:43 AM
To:	HRTO-Registrar (MAG)
Subject:	Re: Reference # 2016-06-03-15-57-527271
Attachments:	complaint.docx

In response to Question 22 in Form 1 and Form 1A, the attached is the narrative for my Internal Workplace Harassment Complaint filed on June 2, 2016. I do not have an electronic copy of the internal form that accompanied this narrative. Please advise if this is required.

As well, I have noted some errors on the form, and respectfully ask to have the opportunity to amend the form when possible. Thank you,
Kelly Donovan

The following is a chronology of events leading up to the harassing conduct that began on May 5, 2016.

Throughout January and February, 2015, I was helping a friend improve her results on the shuttle run so that she could obtain her Applicant Testing Service certificate and apply to become a Constable with the Waterloo Regional Police Service. I made these arrangements through Shelley Howes. On one of the occasions while her and I were in the gymnasium at Headquarters running the shuttle run she confided in me that she had had a 2-year relationship with a member of the service who is married and she had ended the relationship in November, 2014.

On March 21, 2015, I saw this friend in a social setting. She stated to me that the member was continuing to contact her and make concerning comments about being parked in front of her daughter's school. She stated there had been an incident at a Doctor's office in Waterloo involving the member finding her there (although this was a specialist appointment and the first time she had attended this office), parking outside of the building in a marked police cruiser and telling her he was watching her. She also stated that the member had broken into her bedroom window in the past and she had since installed locks on the windows of her main floor in her home to prevent him from doing that again. She showed me text messages the member had sent her on February 13, 2015, and February 18, 2015, after she had stated she did not want him to contact her. I observed the messages to be sent from phone number 5196355516. I observed my name in one of the text messages, so I knew this member knew who I was; I did not know who he was at this time. I encouraged her to make a report to police since his behaviour was concerning and he was continuing to contact her and follow her after she had ended the relationship. I spoke to my friend about the pattern of domestic violence. She believed his behavior would stop.

On March 24, 2015, at 10:47 p.m. my friend began texting me screen shots of messages from the member, sent from 5194980740, which she stated was the member's "work cell phone." She sent me a series of screen shots back to back showing the repeated communication by the member. I did not observe any replies from my friend. The member sent 20 text messages from 10:42 p.m. until 11:53 p.m. indicating he wanted to see her, wanted to sleep at her house and would be parked in the lot across from her house. My friend was at work and voluntarily stayed beyond her shift because she did not want to go home. I once again encouraged her to report the behaviour to police and offered to meet her at South Division. She did not want to make a report. My friend was worried her dog would urinate in her house because she wouldn't be able to walk him when she got home due to the member being outside of her home. Eventually she stated she was heading home and had made arrangements with Chris RAE (a WRPS auxiliary member) to be at her house to confront the member if he came to her door. At 12:15 a.m. she messaged me to say she was now safely inside her home. At 12:18 a.m. she messaged me to say that the member was now flashing his high beams at her house. She stated she was going to sleep in her attic that night. At 12:30 a.m. I wrote a statement of what had happened and saved it on my laptop at home. At 1:01 a.m. and 1:02 a.m. I sent the entire group of screen shots of text messages to my work email so that they would be stored on a work computer as evidence. Following this, I struggled with what had happened and whether or not the member would return to her house and if he did what would happen. I believed it was clear the member was not going to leave her alone due to his repeated communication and contact from November, 2014, to March 24, 2015.

On April 6, 2015, after dealing with a significant amount of internal turmoil between my duty to report a criminal offence and respecting my friend's wishes of not involving the police I made a report to Sgt. NEILL and asked for his advice. I was apprehensive about making a complaint against another member of the service and how this could reflect on my reputation among my peers. I reported to Sgt. NEILL that

I had screen shots of text messages that had been sent to me by the victim and that I had sent them to my work email to be stored on a work computer until requested by the investigators. I reported to Sgt. NEILL that I had prepared a detailed written statement for investigators. Sgt. NEILL made notes of my initial conversation with him and advised he would make some inquiries.

On April 7, 2015, Sgt. NEILL advised me that our Domestic Violence Unit would be investigating. A few days later I received a call from Sgt. MARK stating that he had spoken to my friend who refused to cooperate with the investigation. I, once again, advised that I had the text messages that were sent from a Service cell phone to corroborate the hearsay evidence and they were stored on a Service computer. I learned that no further investigation would take place without a cooperative victim, in contradiction of the service's Domestic Violence procedure. (This was issue #1 in my delegation to the Board – details to follow).

In the months that followed I experienced a significant moral dilemma over this issue. I believed that criminal grounds existed for a charge, or at least a proper investigation due to the easily acquired corroborated evidence, and I could not explain why the threshold to charge a member was different than what I had learned from the Service regarding investigations involving members of the public.

I reached out to Sgt. Finucan after not having spoken to him for approximately 4 months to check on his wellbeing due to his suspension and criminal investigation. It quickly became evident to me that Sgt. Finucan was under a tremendous amount of stress due to his criminal case and I tried to be a supportive friend to him. On numerous occasions Sgt. Finucan shared details of his criminal case with me and how he felt he had been arrested when there were no grounds for charges. I continued to be a supportive friend and I was not critical of either his or the actions of the investigators, because at that time I did not know the facts.

As time went on, Sgt. Finucan shared documents and emails with me regarding his case and allowed me to evaluate the merits of the case for myself. What I learned from all of the documents that were disclosed by the investigators, provided to me by the person authorized to possess them, was that Sgt. Finucan was initially arrested with very minimal real evidence and primarily on statements by the victims that would later prove to be dishonest. I compared the information I learned about Sgt. Finucan's case to my report in April, 2015, and I became internally conflicted. The evidence that existed in the report I made in April, 2015, far outweighed what was available to investigators at the time Sgt. Finucan was arrested. I had a very difficult time rationalizing, on behalf of my police service, why there would be such a discrepancy. (This was issue #2 in my delegation to the Board).

Sgt. Finucan stated his reasons for contacting the female victim after not having any contact with her for a period of 15 months was that he had read some concerning Blackberry messages between her male partner and another female, sent in the summer of 2014. Sgt. Finucan stated that the male had made threats of violence towards patrons at a bar while he allegedly was working a paid duty, admitted to impaired driving and threatened to shoot colleagues at North Division. I was obviously very surprised and concerned with what Sgt. Finucan had said. I knew this male had been a police officer with our service at that time and according to Sgt. Finucan the female who received these messages had stated she made a report to the service. When I questioned Sgt. Finucan on the exact content of the messages he emailed them to me so that I could read them for myself. I read a series of messages wherein it appears the two parties had a flirtatious relationship, making reference to seeing each other and completing family court documents for the male. Sgt. Finucan's statements were corroborated in the content of these 3 conversations. I read messages such as the male wanting to "spray bullets" into the

lunchroom at North Division. The context in which these statements were made was extremely concerning and could not be taken in any manner which would possibly mitigate them. I knew that this male had resigned from employment in the summer of 2014, under questionable circumstances, but I was not aware of a criminal, or otherwise, case against this male. (This was issue #3 in my delegation to the Board).

Sgt. Finucan advised that these were the messages he had emailed to the female victim in December, 2014, and it was that contact that prompted his arrest. Sgt. Finucan advised that during his initial interview with investigators he had asked the two investigators if they had read these messages and they confirmed that they had. I had read in the guilty plea synopsis that Sgt. Finucan had allowed me to read that the prosecutor and investigators had knowledge of the 3 emails Sgt. Finucan had sent to the female victim in December, 2014. I was confident that investigators had reviewed the content of these messages and I could not understand why the actions of the male victim were not investigated, but rather Sgt. Finucan was arrested and charged.

I learned that Sgt. Finucan's investigators, Sgt. Jung and Sgt. Gwen Sim, had interviewed Sgt. John Arscott and had disclosed to Sgt. Arscott that Sgt. Finucan and I had dated in the summer of 2014. I had not disclosed to anyone at the service that I had dated Sgt. Finucan for a short time because I did not want it to affect my career or reputation. I did not give permission for Sgt. Jung to disclose the details of my personal life to Sgt. Arscott, or anyone else. I could not understand why Sgt. Jung and Sgt. Sim would include me in his investigation by questioning a witness about my short relationship with Sgt. Finucan without speaking to me. It caused me a great deal of anxiety to know that two Domestic Violence Unit Sergeants were discussing my personal life with other members of the service.

In the fall of 2015 I began to experience moral injury and suffered the effects of mental illness. I was becoming very distrustful of my employer after everything I was learning about the manner in which the service investigates its members. Although I had never been subjected to an internal investigation it bothered me tremendously to know what the service is capable of doing to experienced and successful members. I had difficulty trusting anyone at work and my day to day operations around headquarters became stressful. I experienced a high level of anxiety each day that I spent at work in the Headquarters building. I started to have trouble sleeping due to my elevated anxiety. I shared with members of the training branch on multiple occasions that I was having trouble sleeping and I did not know why.

I frequently overheard conversations being had on training days by more experienced officers about the distrust that exists within the Service between the senior leadership and the members. I attended association meetings and heard several conversations and presentations about how disillusioned other members are with the state of the relationship between the service and the members. I started to realize that my feelings and stress were not in isolation.

I had a brief conversation with Jeremy Snyder in the fall of 2015. Snyder advised me to perform internet searches to read the outcome of his 2012 charges of sexual assault laid by the service. Snyder also stated he had asked for an independent review of his investigation and had not received a response. Snyder advised me he had filed a civil law suit against the service for negligent investigation. Snyder stated he had recently been charged criminally again on domestic related charges that stem from an argument he had with his wife over their finances. Snyder stated he had entered into a form of bankruptcy after his last criminal trial and this has caused a tremendous amount of stress in his life with his wife and new child. Snyder stated he had read his disclosure information and learned that his wife would not provide investigators a statement; she had initially made statements to Snyder's

estranged wife who then made the report to the Service. I once again was conflicted because the reasons I had been provided for the Service not continuing an investigation on my report in April, 2015, was that the victim was not cooperative. I felt as though my report of criminal activity by a member had been ignored by the service and not investigated properly, with due diligence. And yet the service pursued other investigations against members with great vigor. I could only assume due to personality conflicts. (This was issue #4 in my delegation to the Board).

I later conducted internet searches from home and found several articles about Snyder being acquitted of the sexual assault charge wherein Justice Kim Carpenter-Gunn repeatedly questioned the credibility and motive of his accuser and therefore investigators. The Justice said numerous aspects of the accuser's story created doubt. I also read that Snyder's lawyer was quoted as saying "there seems to be lacking any reasonable assessment of the merits of the allegations in our system of justice." Snyder's lawyer was also quoted in this article as saying "it is very troubling that allegations of sexual assault can lead to criminal charges that hinge really on words of an accuser." This statement reminded me of Sgt. Finucan's case and how the facts relied upon by the investigators to charge Sgt. Finucan with Criminal Harassment were based solely on the words on his accusers and no real evidence.

In February, 2016, I visited my doctor and was put on medication to deal with the physiological effects of this stress.

On April 8, 2016, I attended court in support of Sgt. Finucan. What I had observed in court on April 8, 2016, was in direct conflict with what I believed it meant to be trusted to enforce laws, be impartial and trustworthy. I began to internally question the motivation of my Service and I started to lose trust in my supervision.

In the weeks that followed I made inquiries outside of my employment to attempt to understand how some cases against members are pursued without the strength of evidence and others are not pursued, even when evidence exists and cooperation of a motivated victim does not. It appears that the decision to conduct an investigation against a member is selective in nature.

I have never, and will never discuss my personal feelings about this issue or any other issue with a member of the service inside of any training environment. I am a person of extremely high integrity and I choose every day to fulfill my duties at the highest level of excellence. Recently I have experienced emotional and psychological struggles with losing trust in senior officers within the service and witnessing the unethical conduct by senior officers. Despite my internal struggles I have not allowed my performance to waiver.

I conducted research outside of my work duties into what options are available to a member of a police service who has a complaint about policies and members of their service. I learned that although the Office of the Independent Police Review Director deals with complaints into the conduct of police officers and policies of the service I am precluded from making a complaint since I am not a member of the public. I learned that the Ontario Civilian Police Commission would investigate the conduct or the performance of duties of a police officer or a member of a board at the request of a board. I learned that the service procedure on Public Complaints and Chief's Complaints does not allow me to make a public or local complaint; I cannot be considered a complainant (as per the Public Complaints and Chief's Complaints procedure, section N. 1. Chief's Complaints).

I concluded that since the Police Service Board was responsible for my appointment as a constable and is the civilian oversight for the service and can initiate an investigation by the Commission, my only legal route to have the issues I raised investigated independently and objectively was through the Board.

I determined that there is nothing in Service Procedure or Orders that prohibits me from presenting a delegation to the Board and there is no clause in the Police Services Board By-Law 07-03 precluding a member of the police service from presenting a delegation. I ensured that I was approved to be on leave for May 4th and I provided the Board notice in writing of my intention to present a delegation. My name and subject of my delegation were printed in the agenda which was published online on April 29, 2016. At no time between April 29 and May 4, 2016, did any member of the service speak to me regarding my intention to present a delegation.

On May 4, 2016, I attended a meeting of the Police Services Board to present a delegation. Upon entering the meeting room Chief Larkin purposefully shook my hand and greeted me by name. I took my seat and waited quietly until I was called upon by the Acting Chair. I sat at the head of the table to read my delegation. At the start of my delegation I addressed the Board members, the Chief and the Deputies. I outlined my concerns with the manner in which the service handled the 4 issues outlined above, and the lack of consistency and policy regarding internal investigations. During the time that I spoke the Chief left his seat twice which was disruptive to me and his cellphone was not set to silent and repeatedly sounded during my delegation. I was given a one minute warning by the Acting Chair and then I was told to conclude as my ten minutes had expired. I returned to my seat and watched the remainder of the meeting. The content of my delegation did not include any information I obtained in the course of my duties. During my time in the Board meeting I did not act disorderly and I was respectful to the members of the Board.

I am aware that at any point during a Police Services Board meeting the Board may choose to close the meeting to the public if the Board is of the opinion that matters may be disclosed of such a nature, having regard to the circumstances, that the desirability of avoiding their disclosure in the public interest outweighs the desirability of adhering to the principle that proceedings be open to the public (PSA, Section 34(4)). The Board did not choose to close the meeting to the public at any time while I spoke; the Board adhered to the principle that proceedings be open to the public. None of the information presented in my delegation pertained to my duties as a use of force instructor in any way and my work performance over the past 13 months (when I started to lose trust in the service) has not been negatively affected.

Upon the conclusion of the Board meeting Director Philip Huck came up to me and shook my hand. Huck thanked me for making my presentation. Acting Chair Rosemary Smith also shook my hand and thanked me for attending. A woman who identified herself as from "The Record" approached me and asked to speak to me. Up until that moment I did not know that anyone representing a news media was in attendance at the meeting. S/Sgt. Mike Haffner approached me and stated "she's with the media, you can't talk to her." When this woman returned to me and stated she was with the media I advised her "I cannot make a statement to you. You know I am prohibited from doing so." S/Sgt. Haffner stood beside me leaning his head down into where this conversation took place. This behaviour made me feel intimidated and was witnessed by Tim Reparon of the Waterloo Regional Police Association. The woman from The Record continued to ask me questions. I do not recall what she asked me; I was not listening. I continued to repeat that I cannot make a comment. The Record published an article to their website that evening in which parts of my delegation were misstated. The author focused her article on the investigation involving Sgt. Finucan. I later learned that this was the

same reporter who had covered Sgt. Finucan's case for The Record on April 8, 2016. I was insulted to read the comments made by Chief Larkin. The Chief was quoted as saying "We take domestic violence very seriously and the complaint came from a policewoman." To insinuate that the complaint was more valid because it came from a policewoman is discriminatory. The Chief's statement also contradicts how the service handled the complaint I made in April, 2015, as I am a policewoman and my complaint was dismissed.

The following day I returned to work and was detailed to work on the Use of Force spreadsheet in the office, as opposed to train officers for in-service training.

On Monday, May 9, 2016, I attended the range as per usual for Immediate Rapid Deployment (IRD) training. At approximately 7:50 a.m. I was holding the door open for course attendees when a female officer approached the door. I did not know the identity of the female and I greeted her by saying "good morning." As the female entered the door I saw her name on her vest that she was carrying, "K. MILLER," (the complainant in Sgt. Finucan's investigation). Shortly after Cst. Matthews approached Cst. Miller to tell her she was not required to attend training on this date. Cst. Miller stated "Mike Haffner texted me and told me to be here." Her statement concerned me because it did not make sense that the Executive Officer for the Chief would be sending text messages to a Constable who is attending a training day. There is no professional explanation as to why the Executive Officer would be involved in a Return to Work matter. Further, I find it very concerning that the complainant against Sgt. Finucan has a direct relationship with the office of the Chief of Police. I began to suspect that, for whatever reason, S/Sgt. Haffner had contacted Cst. Miller regarding my delegation. A few minutes later Cst. Miller left and we began our IRD training. At approximately 9 a.m. S/Sgt. Davis approached me at the door to the range where I was stationed and stated I was to leave the training environment immediately and return to the training office. S/Sgt. Davis did not tell me why I could not participate in training, only that she had been directed to have me return to the office. I spent the rest of the morning at my desk.

At approximately 2:30 p.m. Inspector Thiel attended the training office and stated he needed to meet with me. I followed him to Acting Inspector Goodman's office and was escorted into a meeting room within Professional Standards. Inspector Thiel and Acting Inspector Goodman presented me with a document titled "Directive." I was told to read the Directive. The Directive prohibited me from attending another Police Services Board meeting without the permission of the Chief, and I had to provide notice that I would not be presenting a delegation on July 6, 2016. The Directive was ordering me to comply with the investigation that would follow regarding the issues I raised in my delegation. The Directive also prohibited me from training members and I was relegated to administrative duties. I asked how I can be directed to not attend a meeting that is open to the public if it were to be a day off for me and I am off duty. I was told by Inspector Thiel that the "Chief can direct me to do whatever he wants." I did not understand how the service could take punitive action against me by restricting my work duties when an investigation had not yet begun and there had been no finding of wrong doing. I was told I needed to sign the Directive by Inspector Thiel. I asked to speak to a member of the Association.

I was also provided with a "Notice of Investigation" detailing 6 Police Services Act charges I was alleged to have committed. I spoke on the telephone to a member of the Association from Acting Inspector Goodman's office and returned to the meeting room. I signed the "Notice of Investigation" to acknowledge receipt of the document. I refused to sign the Directive and the signature line did not state it was an acknowledgement of receipt and I did not want to agree to the terms of the document. Inspector Thiel became upset and stated I "had to sign." I then asked to have a lawyer

present prior to signing the document. Acting Inspector Goodman then stated that I did not have to sign the document and he would handwrite comments onto the form as to why I would sign. I told him I did not want to sign because I did not feel I could be prohibited from attending a public meeting while I am off-duty and acting as a member of the public. I watched as Acting Inspector Goodman attempted to paraphrase what I had said; what was written on the form was not entirely what I had said and I was beginning to feel emotional and after 2 attempts I did not want to continue to try to correct the wording on the form.

Inspector Thiel advised that independent investigations would take place into all of the issues I raised in my delegation. I was satisfied to hear this since my intended result by presenting my delegation to the Board was to have independent oversight of service issues. I asked Inspector Thiel for clarification as to which issues were being investigated and Inspector Thiel stated that all of the issues I raised would be investigated. I specifically asked Inspector Thiel if the report I made in April, 2015, (Issue #1) would be reviewed and the Blackberry messages allegedly written by Alec McGillivary (Issue # 3) would be reviewed and he stated "yes." I was upset with Inspector Thiel and Acting Inspector Goodman for serving me with documents relating to charges for exercising my rights as a delegation to the Board. I advised both men that I had done nothing wrong; I lawfully addressed the Police Services Board who allowed me to speak for the full 10 minutes in a public session. I read through the charges the service was alleging I had committed and out of the 6 charges for which I was under investigation only 1 made any sense; the fact that the media had been in attendance, over which I had no control. I knew that the actions taken by Acting Inspector Goodman, Inspector Thiel and Chief Larkin went well beyond a personality conflict or occasional disagreement. Prohibiting my attendance from another Board meeting, removing me from my workplace and initiating an investigation into 6 Police Service Act charges for lawfully presenting a delegation to the Board regarding the misconduct of other officers at the Service extends well beyond the Service's management rights. If I were a member of the public making a complaint it would be an offence for anyone at the Service to harass, coerce or intimidate me as in Section 79(1) of the Police Services Act.

I returned to the office and had a brief conversation with S/Sgt. Davis. I was overwhelmed with stress and anxiety and had difficulty talking to S/Sgt. Davis. I advised S/Sgt. Davis of the details of my Directive and I questioned why I would be relegated to administrative duties as a result of presenting a delegation according to Police Services Board By-Laws. S/Sgt. Davis could not provide me with an explanation. She advised I was to work out of our other training location in Northwest Waterloo the following day and drive my personal vehicle from home since K. Miller was attending for training and I was not to be in the building. This directive displaced me from my normal work building and office and added to my stress level and anxiety.

That night I sent a follow-up email to the members of the Police Services Board to notify them of the actions taken by the service since my appearance at the Board meeting. The Board is responsible for establishing policies for the effective management of the police force and monitor the performance of the chief of police. And, once again, I was aware that there were no Procedures, Laws or Orders prohibiting me from contacting the members of the Board. My email was truthful and respectful. I felt I had a duty to report the vexatious conduct.

On May 10, 2016, I reported for duty to WRESTRC. I spent the day working on a power point presentation and drove Cst. KRIGNER to the Ontario Police College where I ran through the PREP test with her to help her pass and complete her Basic Constable training.

On May 11, 2016, I returned to headquarters for my mandatory Road to Mental Readiness training and spent the afternoon working in the office. On this date, the Cambridge Times published an article to their website regarding my delegation. This article featured exact quotes from my delegation which were either provided to the media by the service or from the Board; I did not provide the media with a copy of my delegation. This article stated that Chief Larkin "assured the media following the meeting that [the officer] has a democratic right to vocalize her disapproval during the public session of the police board meeting." The article accurately stated that my delegation pointed to several high-profile cases although the article centered around the dialogue pertaining to Sgt. Finucan's case. The article stated "Donovan, who referred to herself as a friend of Finucan, said she wanted to address the board on his behalf." I did in fact refer to Sgt. Finucan as a friend, that is what he is. I did not ever state that I wanted to address the board on his behalf. At this moment I cannot prove that this information was provided to the reporter from the Chief, although comments made by the Chief are similar in nature and focus entirely on the issues I raised regarding the Sgt. Finucan investigation. The Chief was quoted as saying "Sometimes, when we're close to an issue we see it very differently than when we're not close to an issue." I took great offence to that comment because I believe Chief Larkin is insinuating that Sgt. Finucan and I are more than friends; merely because I am female and he is male. I felt that if I were male Chief Larkin would never have made these statements and used my gender as an explanation for my behavior. I was embarrassed to read Chief Larkin's comments in public media. I felt discriminated against and harassed. Chief Larkin was also cited as saying that "there are many mechanisms within the force and the union to call for change." After having extensively researched the mechanisms, or lack thereof, available to me to call for change, I believe the Chief's statement is deceitful and an attempt to have my conduct appear nefarious or vexatious when in fact my attendance at the Board meeting was lawful.

On May 12, 2016, I worked on the Use of Force spreadsheet all day in the office while the other trainers conducted in-service training. I was isolated and segregated from the rest of my branch and felt demoralized.

On May 16, 2016, I assisted my team members with setting up the range for IRD training and returned to the office for the remainder of the day. I remained professional and worked diligently to complete the Use of Force spreadsheet in order to compile statistics related to Use of Force by sworn members of the service.

On May 17, 2016, I was assigned to complete the first ever periodic Use of Force Report for the Police Services Board by S/Sgt. Davis. On this date, the other Use of Force trainers conducted in-service training. I overheard the other trainers discuss the schedule for May 18th when the Police Services Board members attend the training branch for simulated Use of Force training. I assisted Cst. OLSON prepare Use of Force option belts for Police Services Board members.

On May 18, 2016, I continued to assist in preparing Use of Force option belts for Police Services Board members. At approximately 9 a.m. Administrative Command Commander Penny Smiley attended the training office to discuss her excitement about the Use of Force training the Board members were about to experience. As she left the office Commander Smiley stated "have a good day, Kelly." This comment felt very hurtful and made me feel alienated since I wanted to be included in the Use of Force training of the Board members and Commander Smiley was well aware that I was not allowed to participate in the training of the Board members, although my Directive only stated I could not train members of the service. There were no sworn members of the service participating in the training on this date. I learned that Cst. Zuliani had been re-assigned to the Use of Force Training Branch for the day to assist

with the program for the Board members, as there were not enough trainers available. I spent the day in the training office working on the Use of Force Report for the Board. I felt shunned and excluded by my supervisors, Inspector Thiel and Commander Smiley. As I am very passionate about my role training officers for Use of Force, being relegated to the confines of the office during the training of the Board members left me feeling very demoralized and depressed. When the other members of the branch returned to the office and discussed the highlights of the training I felt hurt and had a very hard time not becoming emotional because I had been excluded. I felt alienated and dismissed.

On May 19, 2016, I continued to work diligently in the office preparing the Use of Force Report for the Board. Sgt. Prine advised me that I was to stay away from the training environment completely on Tuesday May 24th because Cst. Rhea Spitzig would be in attendance. I did not understand this directive. I have only ever had positive and professional dealings with Cst. Spitzig when she acted as Breath Technician on impaired cases of mine. I later became aware that Cst. Spitzig had been interviewed as part of the investigation against Sgt. Finucan. Once again, for whatever reason, I was being alienated due to my delegation.

On May 24, 2016, I spent the entire day in the training office reviewing revisions of Inspector Thiel to the Use of Force Report for the Board. I emailed the completed Report to Inspector Thiel and Deputy Chief Chalk. The members of the training branch conducted in-service training all day. I did not take a lunch and I worked straight through until 5 p.m.

On May 25, 2016, I spent the morning working on the Use of Force spreadsheet and participated in the Torch Run. In the afternoon I began to write the lesson plan for the Cellblock Supervisor Training Course. I felt isolated and segregated from the members of the training branch and the service.

On May 26, 2016, I continued to work on the Cellblock Supervisor Training Course, preparing the syllabus, power point presentations and lesson plans. The members of the training branch conducted in-service training all day with limited staff.

On May 27, 2016, I used the Police Services Board Report I had prepared and I tweaked the report for the members of the training branch; as an update to how we are performing. I emailed this training report to S/Sgt. Davis. The other members of the branch conducted IRD training short-staffed. I was isolated and segregated from the members of the training branch and service.

On May 30, 2016, I arrived in the office to find Training Branch Cst. Rowley alone. He stated that Cst. Gerber was off work due to an injury and Cst. Matthews had a medical appointment. This would have meant that Cst. Rowley would be conducting IRD training alone; which is not only unsafe but against OPC and provincial use of force guidelines. I called S/Sgt. Davis and left a voicemail about assisting Cst. Rowley in some fashion at the range with IRD training. S/Sgt. Davis returned my call and stated I was to remain in the office all day. Cst. Zuliani was once again re-assigned to our team for the day, and the two of them conducted IRD training; which is unsafe and against OPC and provincial use of force guidelines. I worked on the Cellblock Supervisor Training Course all morning at my desk. Inspector Thiel stopped by the office to thank me for my work on the Use of Force Report for the Police Services Board. When Cst. Rowley and Cst. Zuliani returned to the office there was obvious animosity in the office. I know how difficult it is to run the IRD program with only a few trainers and Cst. Rowley had been left to run the program on his own as Cst. Zuliani is not familiar with the training program. I was upset because I was more than willing to assist Cst. Rowley but I am being prohibited from assisting and

he was therefore burdened. I again felt isolated and segregated from the other members of the service.

May 31, 2016, I stayed in the office working on the Cellblock Supervisor Training Course while the other trainers conducted in-service training. Cst. Gerber was still off with an injury and our team was short-staffed. At 2 p.m. S/Sgt. Davis approached me and advised that she was to escort me to Acting Inspector Goodman's office for an appointment. When we sat down in Acting Inspector Goodman's office he served me with a memorandum indicating I am under investigation for 2 additional Police Services Act charges for sending an email to Board members on May 9, 2016. I was also ordered to have no further contact directly or indirectly with any members of the Waterloo Regional Police Services Board, unless through or with the permission of the Chief. The service believes I was deceitful in my email to Board members on May 9, 2016, for stating I had "no personal interest in any of the matters that I brought to the Board's attention" and my conduct was discreditable. I was also advised that S/Sgt. Anderson from York Regional Police Service will be in contact with me regarding the investigation into Sgt. Finucan's case.

I questioned Acting Inspector Goodman on why the independent review will only include the case involving Sgt. Finucan as I had been told by Inspector Thiel on May 9th that all of the issues I raised in my delegation would be investigated. I had raised 4 important incidents of inconsistent investigation by members into the conduct of other members and I had been told by Inspector Thiel on May 9, 2016, that all of the issues were being reviewed. Acting Inspector Goodman stated the "criminal" matter is being handled separately from my internal investigation. Acting Inspector Goodman did not understand my question and I reworded my question. I reminded Acting Inspector Goodman that Inspector Thiel had assured me that the service would be reviewing all of the issues I raised in my delegation. Acting Inspector Goodman reiterated that only the Sgt. Finucan case was being reviewed; which is not what I had been assured by Inspector Thiel. I felt that Inspector Thiel had been deceitful. I once again felt discriminatory harassment because Acting Inspector Goodman, Inspector Thiel and Chief Larkin were charging me with deceit, which is a very serious allegation (punishable with termination), claiming I do in fact have a personal interest in having all 4 of the issues I raised with the Board reviewed. It does not make me deceitful to have stated that Sgt. Finucan was a friend and I have no personal interest in what comes of a review of his investigation, or the other 3 serious investigative concerns I raised in my delegation. Acting Inspector Goodman, Inspector Thiel and Chief Larkin were treating this investigation quite differently simply because I am female.

As a result of these additional charges now being added to my investigation I believed Acting Inspector Goodman, Inspector Thiel and Chief Larkin were attempting to deflect the focus from the inconsistent investigations against members of the service to questions relating to my personal life. I am a single mother to 3 children and I own my own home in Brantford, Ontario. My personal life had nothing to do with my internal turmoil, stress, anxiety or depression that led me to confronting the Police Services Board with my delegation. I did so in the interest of truth and regaining pride in being employed by the Service.

I verbally notified Acting Inspector Goodman and S/Sgt. Davis that I was filing a harassment complaint and a written document would follow. The fact that the service would add additional charges to the internal investigation into my conduct as a result of sending an email to the board to further expose the tyrannical and oppressive conduct of the Chief caused me to experience an immense amount of stress and anxiety. I believe much more strongly now that Acting Inspector Goodman, Inspector Thiel and

Chief Larkin are continuing with this rampant, vexatious investigation solely to harass me and cause me stress and financial burden.

I met with S/Sgt. Davis separately following the meeting to attempt to collect myself. I then returned to my desk.

I overheard Cst. Kienitz of the Training Branch tell Cst. Rowley that Commander Penny Smiley had sent an email to the trainers to thank them for conducting the Use of Force training for the Police Services Board members on May 11th. This made me feel hurt because I had been excluded from training the Board members and I felt that this email was another way to isolate me from my colleagues and alienate me.

Service procedure states that the service supports the right of every member to be free of any type of harassment and discrimination in the workplace. The conduct of Acting Inspector Goodman, Inspector Thiel and S/Sgt. Haffner on behalf of Chief Larkin is oppressive and tyrannical, a means of intimidating and bullying me and resembles an abuse of power. The conduct of Sgt. Jung and Sgt. G. Sim was derogatory and unwelcome. The conduct of Cst. Miller and Cst. Spitzig has been unwelcome, dismissive and has disrupted and interfered with my workplace. The conduct of Acting Inspector Goodman, Inspector Thiel and Chief Larkin is vexatious and known to be unwelcome.

The above is current to June 1, 2016, 17:00.

Signed,

Cst. Kelly Donovan #1298

TAB 2

≡

Fit4Duty
The Ethical Standard

ABOUT US

(519) 209-5721

Fit·4·Du·ty™ /fit·fôr·d(y)oōdē/ adj

a state of ethical and moral integrity

which enables the employee to perform the essential tasks
of his or her work in a manner which does NOT threaten
the ethical or moral integrity of anyone else

Are your People Fit4Duty?

Our goal

To improve The Ethical Standard of all workplaces in Canada and ensure that both employees and employers remain Fit4Duty.

What is The Ethical Standard

To meet The Ethical Standard workplaces must:

1. have clear expectations and consistent policies.
2. have trusted channels for any person to do the right thing.
3. never require any person to ignore their conscience or alter their moral compass.
4. reward, not punish, ethical conduct.
5. treat employees like humans, not numbers.

How to meet or exceed The Ethical Standard:

OUR SERVICES

Kelly Donovan's Book on Canadian Policing

PURCHASE HERE

Subscribe to our mailing list

* indicates required

Email Address *

519-209-5721 kelly@fit4duty.ca Copyright © 2017 Fit4Duty - The Ethical Standard - All Rights Reserved.

Downloads

Links

Mentoring

Book

"You cannot escape the responsibility of tomorrow by evading it today." - Abraham Lincoln

About Us

Click here to buy Kelly's book on policing.

In the Media

LINKS PAGE

Fit4Duty

Vision

That all workplaces, whether corporate or government, meet The Ethical Standard.

Mission

To ensure no person ever has to sacrifice their integrity to maintain or further their employment, and those committing wrongdoings are impartially investigated.

Objective

1. We will use surveys to gauge and monitor the climate of workplaces.
2. We will assist in developing and evaluating policy to ensure that all members of the organization will be heard and understood.
3. We will train employees and management to ensure that expectations are known, respected and followed by all members of the organization.
4. We will speak to community agencies, employees, and management to encourage ethical decision making.
5. We will provide employees with an anonymous means of reporting internal issues, those issues will be investigated independently and employers will receive reports.

Check Out Our Events

EVENTS PAGE

Subscribe to our mailing list

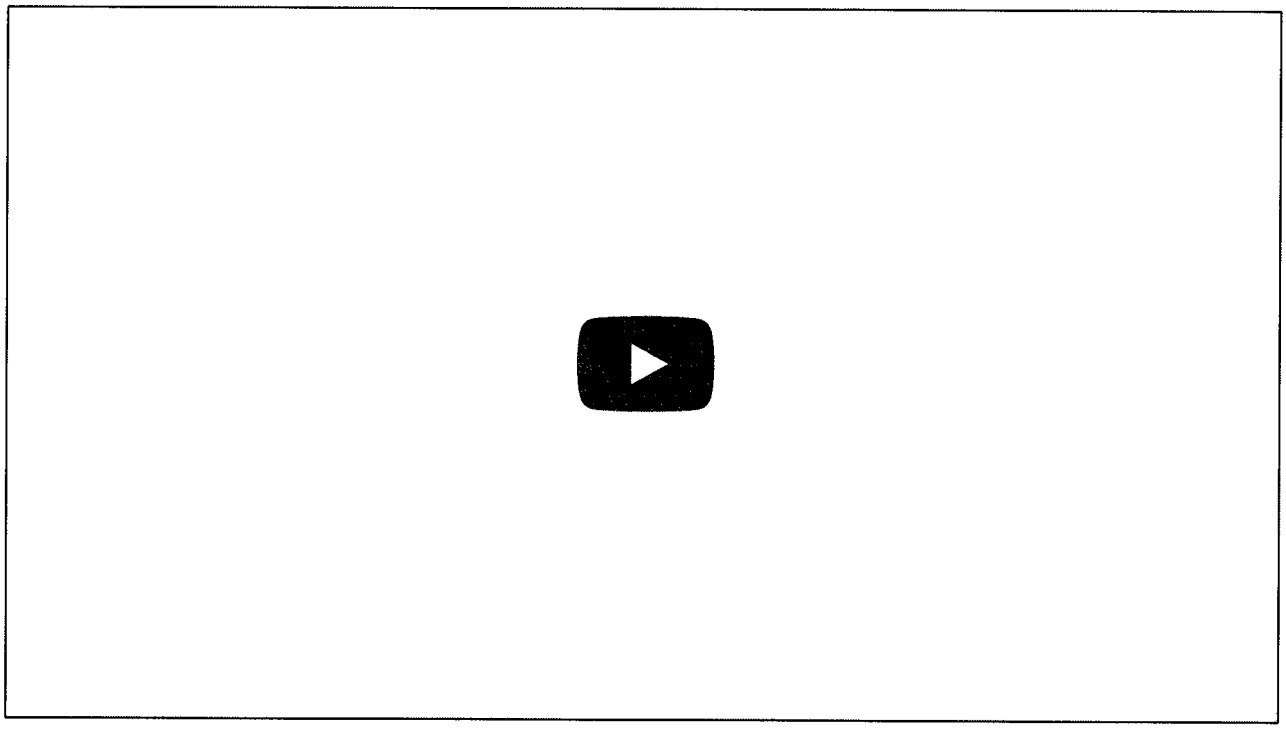
* indicates required

Email Address *

Subscribe

Kelly Donovan at Queen's Park

THE
ETHICAL
STANDARD
FIT4DUTY.CA



519-209-5721 kelly@fit4duty.ca Copyright © 2017 Fit4Duty - The Ethical Standard - All Rights Reserved.

Downloads

Links

Mentoring

Book

Services

Training

Training for Employees, Management and Board Members

Speaking Engagements

Policy

Review or development of policy to ensure your organization is meeting The Ethical Standard

Workplace Investigations

Experienced investigators conducting impartial and independent investigations

Individual Consulting Services

Are you an employee in need of help with workplace issues?

Employer Consulting Services

Are you an employer who suspects poor morale or systemic issues building up?

GET HELP NOW

519-209-5721 kelly@fit4duty.ca Copyright © 2017 Fit4Duty - The Ethical Standard - All Rights Reserved.

Downloads

Links

Mentoring

Book

NEW! Police Services Board Training

Role of Police Services Board

Fit4Duty provides extensive training on the history of police oversight and the role of the police services board to ensure a relationship with the public that gives reality to the historic tradition that the police are the public and that the public are the police, (as stated in Sir Robert Peel's Policing Principle #7, 1829).

Management Training

Ethical Leadership

Understand corruption risks and challenges and importance of accountability and transparency

Influence

Accepting power of influence and mitigating risks associated with leadership status

Workplace Management of Legalized Cannabis

Is your workplace ready?

Workplace Training Programs

Diversity 101

This course puts the current issues front and centre and ensures that every participant leaves with a better level of understanding, empathy and compassion. NEW! Fit4Duty brings you the screening of the award winning "In Jesus' Name - Shattering the Silence of St. Anne's Residential School" a documentary exposing the crimes committed against Indigenous children in Ontario from 1932 to 1976.

PTSD and Accommodation Challenges

This course helps participants better understand the breadth of challenges faced by those diagnosed with PTSD and how accommodating those diagnosed with the disorder will be unconventional, but necessary.

Workplace Harassment

Everything from understanding how who we are will influence our success in handling complaints, to ensuring satisfaction in the complaints process to prevent systemic

519-209-5721 kelly@fit4duty.ca Copyright © 2017 Fit4Duty - The Ethical Standard - All Rights Reserved.

Downloads

Links

Mentoring

Book

Our Speakers

Kelly Donovan

Fit4Duty Founder & President

FIND OUT MORE

Could you be our next speaker?

If you believe you share the same passion as Fit4Duty, please use the link below and Contact Us today.

CONTACT US

BACK TO SERVICES

519-209-5721 kelly@fit4duty.ca Copyright © 2017 Fit4Duty - The Ethical Standard - All Rights Reserved.

Downloads

Links

Mentoring

Book

Kelly Donovan

Her Story

Fit4Duty Founder & President, Kelly Donovan, had been a police officer for 5 years when she witnessed corruption within her police service when conducting internal investigations. In May, 2016, Kelly addressed her Police Services Board since they are the oversight body responsible for the effective management of the police service.

The issues Kelly addressed were not objectively or impartially investigated and she became the subject of the very corrupt internal investigation process she had originally addressed.

Her Movement

Kelly is using her experience in policing as an example for legislators of why we need to change; change who is in power, change how much power we give police chiefs, and change legislation to improve accountability, transparency and ethics.

Kelly sent her report to 201 individual politicians in Ontario, (provincial and federal). Not one of those politicians proactively contacted Kelly to meet with her regarding the issues.

Kelly has met with Laurie Scott, PC MPP, Michael Harris, PC MPP, and Hon. Marie-France Lalonde's Senior Policy Advisor.

Repeated requests to meet with Hon. Yasir Naqvi have gone unanswered. Daiene Vernile, Liberal MPP refused to meet with Kelly.

Kelly has made presentations to the following police services boards:

- Waterloo Regional Police Services Board
- Ottawa Police Services Board
- Durham Regional Police Services Board

London Police Service Board denied Kelly the opportunity to address them.

Kelly addressed the Standing Committee on Justice Policy about bill 175, (to replace the Police Services Act), on February 22nd and again on March 1st. Those videos are on the Fit4Duty YouTube page, and are at the bottom of this page.

MEDIA LINKS

Kelly's Book

Kelly's first book about internal corruption within Canadian police services was published in October, 2017, and is available for purchase using the link below.

She is working on her second book which will detail the mental toll of staying true to one's morals in a corrupt atmosphere.

Want to own your own copy?

BUY NOW

Her Speaking

Kelly has spoken to audiences about ethics, integrity, and whistleblowing at the following conferences:

- Ethics in Administrative Law - Canadian Institute, Edmonton
- MoMondays, Guelph
- MoMondays, Kitchener
- Brantford-Brant Chamber of Commerce Women in Business, Brantford
- Transformational Social Change Symposium - Humber College, Toronto
- Corporate Ethics and Integrity Summit - Conference Board of Canada, Toronto
- Fearless Women's Summit - One Woman, St. John's, NL
- Fearless Women's Summit - One Woman, Niagara Falls

Kelly can be booked for speaking engagements across Canada, and beyond.

CONTACT US

Subscribe to our mailing list

* indicates required

Email Address *

Subscribe

Her Blog

ALL POSTS POLICING WHISTLEBLOWING WORKPLACE

May 29, 2018

What is an Independent Workplace Investigation?

CONTINUE READING

May 11, 2018

What Policing Culture is Doing to Good People

CONTINUE READING

April 14, 2018

Discrimination Witl Ontario Policing

CONTINUE READING

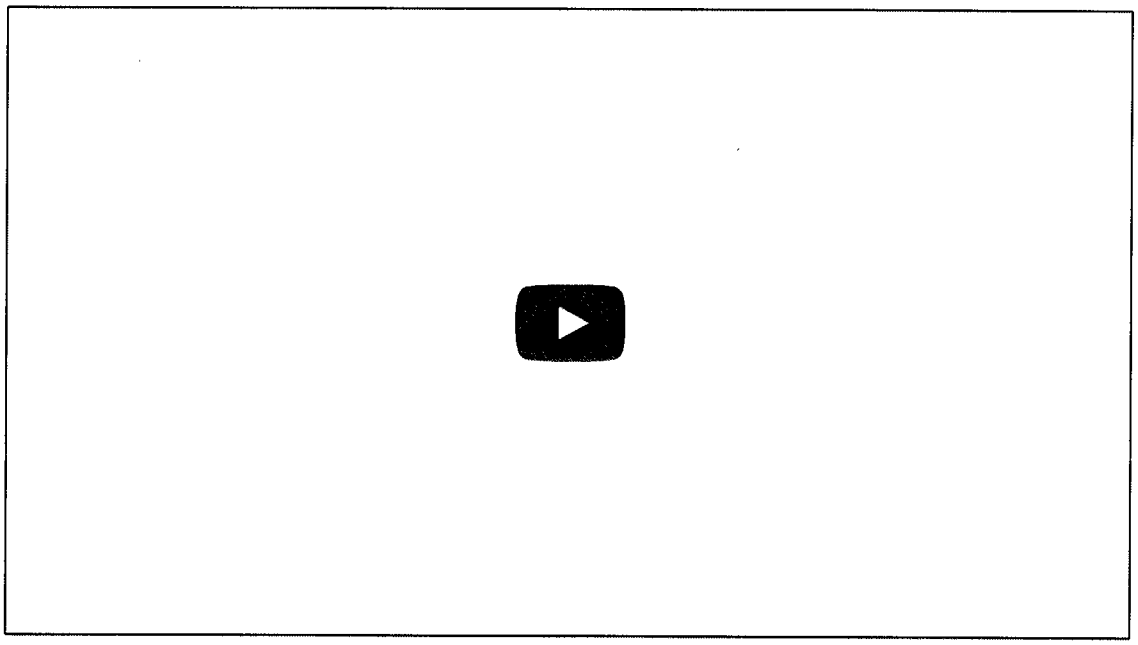
Media Appearances

LINKS PAGE

Kelly Donovan at Queen's Park

February 22, 2018, addressing the Standing Committee on Justice Policy regarding Bill 175 (Safer Ontario Act).

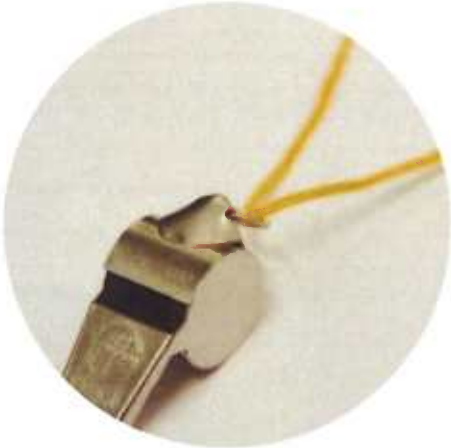
March 1, 2018, addressing the Standing Committee on Justice Policy regarding Bill 175 (Safer Ontario Act).



519-200-5721 kelly@fit4duty.ca Copyright © 2017 Fit4Duty - The Ethical Standard - All Rights Reserved.

Downloads Links Mentoring Book

Engagement Strategies



Whistleblower Programs

Give your employees and customers a venue to report workplace issues directly to an independent agency; whether anonymous or otherwise.

Ombudsman Programs

Affordable, Independent & Trusted Solutions

Statistics show that unhappy workers result in loss of productivity costing North American businesses over $350 billion per year.

Fit4Duty will tailor a program to suit your budget and needs. When employees feel engaged they are more productive and less likely to quit.

BACK TO SERVICES PAGE

519-209-5721 kelly@fit4duty.ca Copyright © 2017 Fit4Duty - The Ethical Standard - All Rights Reserved.

Downloads

Links

Mentoring

Book

Whistleblower Programs

What

A whistleblower program allows employees to anonymously report misconduct, harassment or illegal activity which is investigated independently and if substantiated, reported to the agency head along with recommendations for resolution, (in simplest terms).

Why

EMPLOYERS IN ONTARIO: Under subsection 32.0.6(2)(b) of the Occupational Health and Safety Act the employer is required to provide employees with an alternate reporting mechanism for reporting workplace harassment (which includes workplace sexual harassment).

Every year, employee theft costs Canadian businesses about $1.4 billion dollars, according to Stephen O'Keefe, a retail advisor with the Retail Council of Canada, (2017

Problems Facing Employers

Workplace Harassment

You have an employee who is being harassed by their manager, but is reluctant to report it for fear of reprisal. Turnover starts increasing and morale drops.

Misconduct

You have a manager who regularly violates your code of conduct. Other employees follow suit, believing they should do so to "fit in" and the ethical climate in your workplace deteriorates.

Bribes

You have employees accepting bribes in exchange for concealing unethical or illegal activity.

Corrupt Practices

There is internal nepotism, cronyism and patronage. Employees no longer feel appreciated. Turnover starts increasing and morale drops

Internal Thefts

Employees are making money on the side selling your material. Your profit is declining, and you don't know why.

Losing Customers

Your customers are witnessing conduct that has them doing business elsewhere, and you'll never know

How does it work?

Fit4Duty offers the only start to finish solution for corporate and government agencies.

Step 1

We can develop policy and training to introduce your employees to the new accountability platform.

We provide you with a wide range of accessibility options for reporting (toll-free number, web-based form, email and mail). Fit4Duty can also post web-based forms on the public site for easy access by employees, contractors, suppliers and customers.

Step 2

When a form is completed, a Fit4Duty investigator will attempt to substantiate the report.

Step 3

If the report is substantiated, a report is generated and provided to the business owner or oversight body. Employees and customers can choose to remain anonymous throughout this process. Fit4Duty will recommend a resolution.

Step 4

The business owner or oversight body receive periodic statistical reports on the usage or abandonment of the form, the breakdown of unsubstantiated reports and satisfaction of those making reports.

TRY THE SAMPLE FORM HERE!

519-209-5721 kelly@fit4duty.ca Copyright © 2017 Fit4Duty - The Ethical Standard - All Rights Reserved.

Downloads

Links

Mentoring

Book

Ombudsperson

For businesses who want to provide their employees and clients an independent service to handle issues and mediate disputes, the Fit4Duty Ombudsperson is an inexpensive solution you can trust.

Solutions to fit any budget:

- Email
- Web Based
- Telephone
- Combination

BACK TO SERVICES

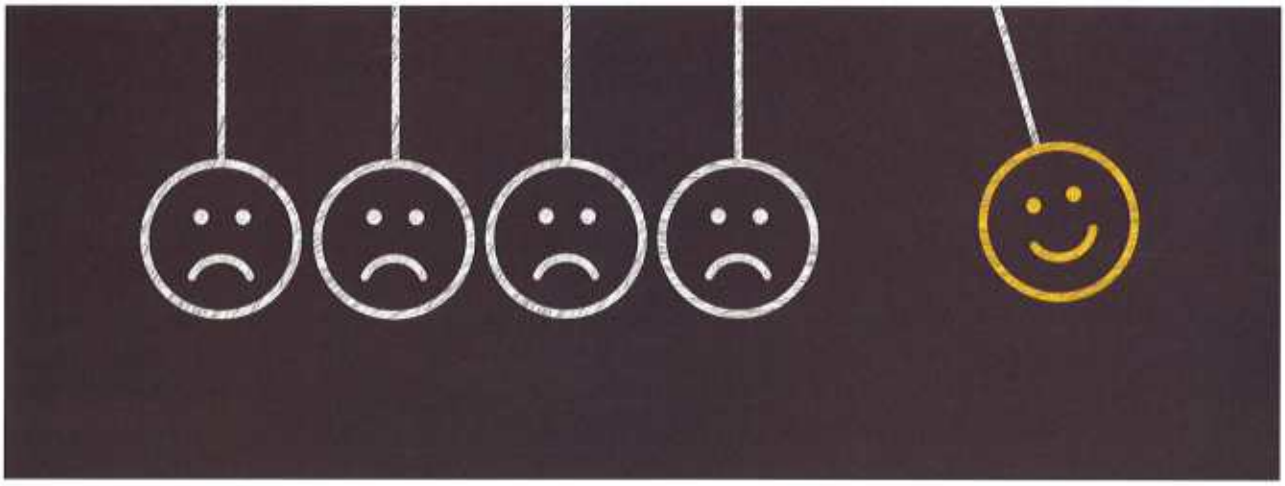
519-209-5721 kelly@fit4duty.ca Copyright © 2017 Fit4Duty - The Ethical Standard - All Rights Reserved.

Downloads

Links

Mentoring

Book



Online Mentoring

Kelly Donovan

Kelly is a brave police whistleblower who understands the fears, challenges and sacrifices of staying true to yourself and standing up for what you believe.

After resigning from policing, Kelly has connected with many people who are inspired by her courage and motivated in their own lives to stand up and speak out.

Whether you find yourself at a crossroads, or simply feel you need motivation and inspiration to refocus your efforts, online mentoring will guide you through these challenging times.

Sessions can be individual or group. Even in group sessions, your identity is not revealed, unless you want it to be.

Organization Mentoring Programs

If you are a business owner looking for an online mentoring forum to allow your employees to build mentoring relationships with each other, independent from the company, Fit4Duty has the solution. Your program will be moderated to the extent necessary until colleagues begin to build lasting mentorship connections with each other.

CONTACT US

519-209-5721 kelly@fit4duty.ca Copyright © 2017 Fit4Duty - The Ethical Standard - All Rights Reserved.

Downloads

Links

Mentoring

Book

Policy

Fit4Duty will ensure that your organization's policies go above and beyond current legislation.

We can advise you on the following policies:

- Workplace Harassment
- Diversity
- Impairment in the Workplace
- Whistleblower Programs

BACK TO SERVICES

519-209-5721 kelly@fit4duty.ca Copyright © 2017 Fit4Duty - The Ethical Standard - All Rights Reserved.

Downloads

Links

Mentoring

Book

Investigations

Fit4Duty has investigators all over Canada trained to conduct independent and impartial workplace investigations.

Fit4Duty investigators have decades of police investigation experience and experience conducting interviews.

Our investigations can be part of your Whistleblower Program or offered as a standalone service.

Our goal is to ensure your employees feel heard, treated fairly, and respected.

BACK TO SERVICES

519-209-5721 kelly@fit4duty.ca Copyright © 2017 Fit4Duty - The Ethical Standard - All Rights Reserved.

Downloads

Links

Mentoring

Book

Contact Us

We'd love to hear from you!

Name

Email*

Message

SEND

To Contact Fit4Duty Founder & President Kelly Donovan:

Kelly Donovan
kelly@fit4duty.ca

(519) 209-5721

Book an Online Meeting Now!

Discovery Session

30 mins | Free

BOOK

Survey

Fit4Duty is compiling data from visitors to this site.
Please click below to complete the 2 minute Ethical Climate survey.

COMPLETE SURVEY

519-209-5721 kelly@fit4duty.ca Copyright © 2017 Fit4Duty - The Ethical Standard - All Rights Reserved.

Downloads

Links

Mentoring

Book

Events

519-209-5721 kelly@fit4duty.ca Copyright © 2017 Fit4Duty - The Ethical Standard - All Rights Reserved.

Downloads

Links

Mentoring

Book

Downloads

August 11, 2017 - Response from Hon. Ralph Goodale (pdf)

Download

September 13, 2017 - Response from Hon. Marie-France Lalonde (pdf)

Download

September 22, 2017 - Fit4Duty Response to Lalonde (pdf)

Download

January 9, 2018 - Letter to Yasir Naqvi (pdf)

Download

February 22, 2018 - Submission to Standing Committee on Justice Policy (pdf)

Download

May 8, 2018 - Response from Hon. Yasir Naqvi (pdf)

Download

519-209-5721 kelly@fit4duty.ca Copyright © 2017 Fit4Duty - The Ethical Standard - All Rights Reserved.

Downloads

Links

Mentoring

Book

Media Links

Newsprint

May 5, 2016 - The Waterloo Record

May 11, 2016 - The Cambridge Times

July 17, 2017 - 570 News

July 18, 2017 - The Waterloo Record

July 18, 2017 - CBC News

July 18, 2017 - The Cambridge Times

July 18, 2017 - The Kitchener Post

September 6, 2017 - The Waterloo Record

September 6, 2017 - 570 News

September 6, 2017 - The Cambridge Times

Radio Interviews

July 17, 2017 - 570 News

July 18, 2017 - CBC Radio One

Legal Decisions

Human Rights Tribunal of Ontario

February 17, 2017 - Human Rights Tribunal deferring Kelly Donovan's application

Videos Uploaded to YouTube

Kelly Donovan presented a delegation to the Durham Regional Police Service on December 11, 2017.

Fit4Duty's Introduction Video, released July, 2017.

Kelly Donovan shared her story with a MoMondays crowd in Guelph, Ontario, October 23, 2017.

Friends of Fit4Duty

Brantford-Brant Chamber of Commerce

Fit4Duty is a member of the Brantford-Brant Chamber of Commerce and regularly attends events.

The Conference Board of Canada

Institute of Public Administrators of Canada

IPAC IAPC

O'Cannabiz Canada

O'CANNABIZ CANADA

The Canadian Institute

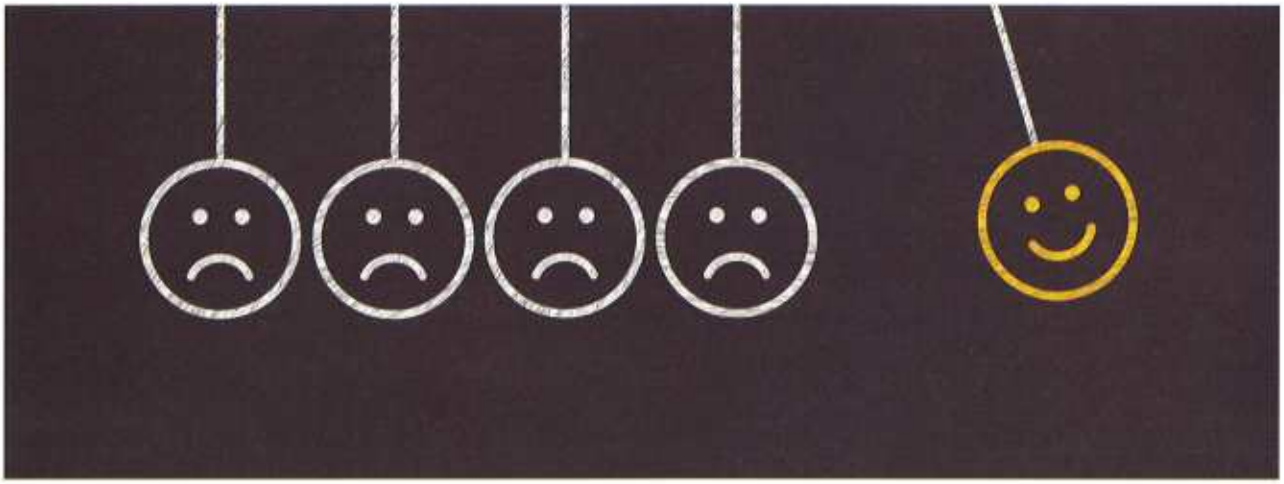
MoMondays

Fit4Duty is performing at MoMondays in Kitchener on November 20, 2017.

National Women in Law Enforcement Association

One Woman International

519-209-5721 kelly@fit4duty.ca Copyright © 2017 Fit4Duty - The Ethical Standard - All Rights Reserved.



Online Mentoring

Kelly Donovan

Kelly is a brave police whistleblower who understands the fears, challenges and sacrifices of staying true to yourself and standing up for what you believe.

After resigning from policing, Kelly has connected with many people who are inspired by her courage and motivated in their own lives to stand up and speak out.

Whether you find yourself at a crossroads, or simply feel you need motivation and inspiration to refocus your efforts, online mentoring will guide you through these challenging times.

Sessions can be individual or group. Even in group sessions, your identity is not revealed, unless you want it to be.

Organization Mentoring Programs

If you are a business owner looking for an online mentoring forum to allow your employees to build mentoring relationships with each other, independent from the company, Fit4Duty has the solution. Your program will be moderated to the extent necessary until colleagues begin to build lasting mentorship connections with each other.

CONTACT US

519-209-5721 kelly@fit4duty.ca Copyright © 2017 Fit4Duty - The Ethical Standard - All Rights Reserved.

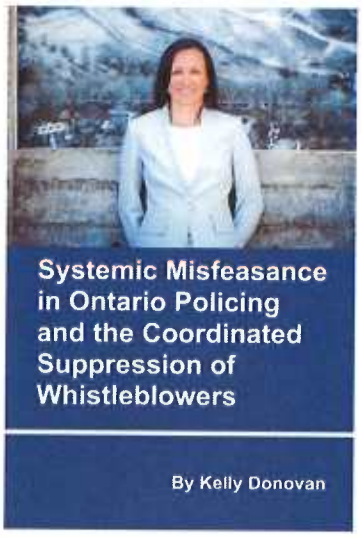
Downloads

Links

Mentoring

Book

Kelly Donovan, Author



Kelly's First Book

This book is an essential textbook for modern policing in Ontario, and across Canada. Kelly outlines how the police are policed, the current issues facing policing, how whistleblowers are treated in Canada, how we can change and breaks down current legislation.

Kelly uses examples from actual cases which are cited throughout the book for easy reference and further reading.

This is not a book about Kelly's opinions on policing. This is a well-researched book that leaves little doubt that systemic misfeasance exists in Ontario policing.

Reviews:

"I am struck by the timing of Kelly's book, it seems not a day passes without another high profile name or institution called out for their treatment of women or those who dare to question the status quo" This book should be required reading for every cadet and constable embarking on a career in law enforcement. This book seems to confirm the old adage, "for evil to flourish, good men (and women) need to do nothing"
Chris Williams, Owner, Canadian Private Investigation Services Ltd.

"This book is the first great effort to highlight what's wrong with the current day policing culture. Many thanks to Kelly for having the courage and insight of putting all the many pieces together, creating a picture of the current threats of this bullying police culture that is so dangerous to our societies."
Inspector, Ontario Municipal Police Service

Buy Paperback in Canada:

$25 CDN (Includes HST & Shipping)

Buy Now

Paperback Outside of Canada

$20 USD + Shipping

AMAZON.COM

eBook Anywhere!

$9.99 CDN

AMAZON.CA

519-209-5721 kelly@fit4duty.ca Copyright © 2017 Fit4Duty - The Ethical Standard - All Rights Reserved.

TAB 3

REPORT OF SYSTEMIC MISFEASANCE IN ONTARIO POLICING AND THE COORDINATED SUPPRESSION OF WHISTLEBLOWERS

BY

KELLY DONOVAN

© 2017

EXECUTIVE SUMMARY

This report of systemic misfeasance in Ontario policing and coordinated suppression of whistleblowers was prepared to give a voice to the thousands of police officers across the country who have fallen victim to legislation that disproportionately empowers those who have risen through the ranks and allows transparency to be subjective and perfunctory promises of accountability.

This report will provide insight into current legislation governing municipal police officers in Ontario and point out deficiencies. As government officials prepare revisions to legislation it is imperative that all stakeholders are heard.

The Royal Canadian Mounted Police (RCMP) have received plenty of media attention recently with reports released by the Civilian Review and Complaints Commission for the RCMP[1]. What has been pointed out by people like Lesley Bikos, ex-police officer and current PhD student, is that the culture is no different at other Canadian and Ontario municipal police services.[2] As the RCMP Workplace Harassment report points out, over the past decades there has been no shortage of reports, internal and external reviews, studies and surveys examining the RCMP and making recommendations for organizational reform.[3] Despite the time, energy, and expertise that has been dedicated to resolving these problem, the RCMP and its senior leaders are resistant to meaningful change.[4] Even more recently, a class action lawsuit was filed against the Waterloo Regional Police Service for gender discrimination, sexual harassment and sexual assault. As much as the police chief denies the allegations and the legitimacy of the suit itself, one of the plaintiffs was a Superintendent up until April, 2017, and has publicly stated that while he was in charge of the human resources department he raised many of those same issues and was ignored.[5] According to the Waterloo Regional Police Service, they take these allegations seriously. The service claims to have progressive policies, procedures and training to ensure that any such allegations are dealt with in accordance with the law.[6] Who is the public supposed to trust?

There have also been media campaigns by police services promoting their progressive mental health policies, which they say are in the interests of their members and promoting healthy workplaces. The Waterloo Regional Police Service recently promoted their Post-Traumatic Stress Disorder (PTSD) Prevention Plan, (something all police services in Ontario were required to submit), in the Waterloo Record[7]. Part of this plan is to provide outreach to its members who are away from work "due to positive or challenging

---

[1] https://www.crcc-ccetp.gc.ca/en/newsroom/crcc-releases-report-workplace-harassment-rcmp
[2] "It's not just the RCMP: Police culture is toxic," Lesley Bikos, Contributed to the Globe and Mail, May 17, 2017.
[3] Ibid. note 1.
[4] Ibid. note 1.
[5] http://kitchener.ctvnews.ca/lawsuit-launched-against-wrps-over-sexual-assault-harassment-discrimination-1.3439341
[6] http://www.wrps.on.ca/news/wrps-police-services-board-and-wrpa-respond-class-action-suit
[7] "Waterloo police's PTSD prevention plan focuses on education and early intervention," by Samantha Beattie, Waterloo Chronicle, July 6, 2017.

circumstances."[8] Services, such as the Waterloo Regional Police, never disclose how often officers who are off work on the advice of their doctors are often forced back to work, or that in some cases of PTSD the symptoms are brought on by operational stress caused by management. Even when the Workplace Safety and Insurance Board (WSIB) approves a claim for PTSD, the police service will pay lawyers to appeal that decision. What appears to be a supportive and healthy environment on the surface is in some cases highly toxic and in contributing to the deterioration of some police officer's mental health.

It has long been understood that the culture in policing needs to evolve to accommodate expectations of not only the public but also the changing demographic enlisting in policing. Improving diversity in policing is not only about recruiting talent it is also about retaining it. Police services have a responsibility to be representative of their communities and yet consistently struggle with meeting this objective; specifically, with retaining female police officers.

Case studies presented herein are derived from public documents and represent the mere tip of the iceberg of the collateral damage that has occurred in policing across Ontario and even Canada.

This report would not have had to be prepared if legislation allowed for true transparency and accountability. When legislation undergoes changes, it is necessary in the interest of the public that the issues identified in this report be addressed to improve fiscal and ethical responsibilities of police services.

While we wait for legislative changes, there is Fit4Duty™. To show your shareholders, the public, and your employees that integrity, accountability and transparency are important to you and your organization, you can contact Fit4Duty™ to start building your anti-corruption programme. Fit4Duty™ will heighten your Ethical Standard™.

Copyright © 2017 by Kelly Donovan. Kelly Donovan is available for speaking engagements, training, policy development, and whistleblower programs for both government and corporations. For more information visit www.fit4duty.ca.

[8] *Supra* note 7.

TABLE OF CONTENTS

INTRODUCTION 6
AUTHOR AND ACKNOWLEDGEMENTS 10
PREFACE 13

CHAPTER 1: POLICING THE POLICE 14
CONSTITUTIONALITY OF THE PSA 14
HISTORY OF COMPLAINTS SYSTEM 15
CURRENT LEGISLATIVE STRUCTURE 19
WHO CAN COMPLAIN? 20
DEFICIENCIES IN LEGISLATION 22
Ministry of Community Safety and Correctional Services 22
Ontario Civilian Police Commission 22
Office of The Independent Police Review Director 22
Police Services Board 23
SERVICE POLICY 23
Complaints 24
Ethics 25
Transparency 25
OVERSIGHT REVIEW 26

CHAPTER 2: ISSUES 28
CHANGING THE CULTURE 28
PARA-MILITARY 31
SECRECY 33
Open and Transparent? 35
ETHICS 37
SUSPENSIONS 38
DISCRETION 40
Double-Standard 47
UNION REPRESENTATION 48
MISFEASANCE 49
London 50
Ottawa 52
Toronto 53
Waterloo 54
HARASSMENT/BULLYING 55
Calgary 56
Ottawa 56
Waterloo 57

CHAPTER 3: WHISTLEBLOWERS 59
WHISTLEBLOWER LEGISLATION 60
Federal 60
Provincial 62
WHISTLEBLOWERS: COLLATERAL DAMAGE 67
ONTARIO 67
Ontario Provincial Police 67
Cornwall 68

Hamilton 70
Orangeville 71
Peel Region 72
Waterloo 74
CANADA 78
RCMP 78
Edmonton 80
Halifax 82
Montreal 83

CHAPTER 4: CHANGE 84
IT STARTS WITH THE BOARD 84
Increase Overall Impartiality 86
Increase Accountability 87
Culture Change 87

CHAPTER 5: LEGISLATION 89
SECTIONS OF THE PSA RELATING TO RESPONSIBILITY, POWERS AND DUTIES 89
Office of The Independent Police Review Director 89
Ontario Civilian Police Commission 89
Police Services Board 90
Special Investigations Unit 91

INDEX OF OFFICERS, POLICE SERVICES AND REPORTS 92

INTRODUCTION

Policing has undergone some major changes in recent years and even more change looms on the horizon. Public pressure is building for police leaders to live up to their promises of transparency and accountability.

In order to maintain transparency and accountability to all communities of Ontario, Acts and Regulations governing police services need to be clear and concise, with no room for interpretation or inconsistency. For the public to trust the judicial system, the system has to treat all participants the same; the public and police alike. The Acts and Regulations need to make **every** police officer accountable upon taking their oath of office as well as giving protection to officers from what can be best described currently as a culture of internal bullying. Changes to legislation are required to ensure that protections are built into the legislation to make the complaint procedure and disciplinary action against officers fair, impartial and expedient. By doing this, police officers have trust in the process, the public have trust in the police, and officers do not live in fear of arbitrary prosecution that can last for years and cost taxpayers across the province millions of dollars. Preventing this would make police services more accountable to the taxpayer and would allow more of police services' budgets to be allocated for use in everyday policing rather than wasting it in legal matters.

The level of supremacy afforded to Ontario's chiefs of police under the current Police Services Act, R.S.O. 1990, c. P.15 (hereafter known as the PSA), places an exorbitant amount of trust in the personal integrity of the chief since there are no legislated mechanisms in place for complaints to be made regarding the conduct of the chief from his or her subordinates within the same service and the chief has full control over what information is publicly released. It is the responsibility of the Police Services Board to monitor the performance of the chief of police and yet all communication from the service to the Board is channeled through the chief for approval.

Despite the recent attention given to civilian oversight of police there have been statutes in place for years that not only allow for complaints from members of the public but also allow for escalation of disputes arising from the disposition of a complaint. The public complaint process needs to be more accountable and transparent to the public, but at this point only fine tuning is required. Justice Michael Tulloch's report, released to the public on April 6, 2017[9], addressed many of the public and the police communities' concerns. However, since every police officer in Ontario has sworn an oath of secrecy, the internal dealings of police services have been protected. A large majority of police officers have been exposed to some form of unethical or corrupt behaviour within their police service and have not reported the behaviour for fear of reprisal. A very small number of police officers have chosen to report the behaviour and have been forced out of the profession.

A portion of this report focuses on police whistleblowers and the desire of police leaders to 'shoot the messenger' rather than face the underlying issues. There are also many

[9] The Report of the Independent Police Oversight Review, The Honourable Michael H. Tulloch, 2017.

cases of misfeasance to intimidate, bully and harass employees who have filed Human Rights or workplace harassment complaints or have simply fallen out of favour.

Ultimately, the chief of police has full discretion to decide which police officers to prosecute, and which police officers not to prosecute. In addition to work-related discipline matters, a chief of police can also choose to criminally investigate and charge a police officer. The cases cited here suggest that these decisions are not made consistently or according to the principles of justice.

In addition to Tulloch's recommendations to improve transparency and accountability of the public complaints process, there need to be legislative changes that favour transparency and equal treatment of all people. Most of the cases referenced in this report are derived from legal documents and published media and all are sourced throughout. Here in Canada officers have been subjected to searches of their residences and wiretaps of their personal phones – not because they were the subject of serious criminal investigations, but because they reported corruption or filed harassment complaints against superior officers. It's no surprise to politicians that police business is expensive. As one Toronto City Councillor put it, the $1 billion Toronto Police Service budget is "out of control."[10] However, when taxpayers learn that police services are directing resources to handle personal vendettas as opposed to community directed crime prevention and enforcement initiatives, the public must demand more transparency and internal oversight. If change does not come for ethical reasons; then change should absolutely come for financial reasons.

The problems identified in this report are not isolated to Ontario; they are happening all over the Country. Police officers are not provided an impartial judicial process and are investigated by officers who are promoted if the outcome is favourable to their superiors or whose careers are stalled if the outcome is not favourable. What results are cases that may not have resulted in any charge at all against a civilian, are turned into homicide-scale investigations costing the taxpayers hundreds of thousands of dollars. In the rare cases when the officer has the means of seeing a criminal trial through to acquittal, there are law suits settled in silence by police services. This report does not suggest that there won't be times when a police officer must be investigated for serious misconduct or criminal behaviour, only that all people of Ontario must be measured by the same scale of justice, tried by the same impartial body and not receive any inherent protections due to profession or rank.

This is also not a problem faced only by police services. As is illustrated in the case studies contained herein, neither the Ontario Civilian Police Commission, Office of the Independent Police Review Director nor the Ministry are willing to truly address the intertwined and unilateral hierarchy that exists in the justice system. Even when an officer can afford to defend their case all the way to Divisional Court and challenge the apparently biased decisions made by the involved organizations, decisions are always made in the interest of preserving trust in the judicial system. Historically, there has been a reluctance

[10] "Council passes 2016 budget with 1.3% property tax hike," CBC News, February 17, 2016.

by the courts to admit, or even investigate, the possibility of misfeasance in police administration.

Aside from the financial impact of this misfeasance, why should this issue be of public concern?

The public depend on police officers to show up for work every day, mentally and physically fit for duty. More attention is being paid to first responders suffering from PTSD due to the nature of their jobs. What the public do not know is that at times it is the operational stress an officer is facing that causes them to deal with PTSD symptoms. In some cases, the internal issues created by management can leave effects that last far longer than the difficult calls for service. Denise Revine worked as a civilian for the RCMP for 33 years and experienced PTSD after blowing the whistle on the RCMP pension scandal, see page 78. The number of officers off on sick-leave is not a figure that is regularly reported to the public, yet those numbers are staggering and continue to increase. If more and more officers are coming off the road for mental health reasons, and some of that is attributable to operational stress caused by misfeasance, then this absolutely becomes a matter of public concern.

What makes matters worse and another way the system is failing police officers is the lack of support from police associations. When a police officer has a complaint about another officer or a malignancy within their service, their only option is to file a grievance. However, if that grievance involves the conduct of other members of the same association they lose the support of the association who does not want to be seen as assisting a complaint against one of their own. This renders the association redundant for that police officer who is trying to do the right thing. Without the support of their association (as Inspector Steven Patrick Dolan of the Peel Regional Police learned), the officer can no longer proceed with their grievance and becomes the black sheep, see page 72. Despite this fact, the Waterloo Regional Police Service recently responded to allegations of systemic and institutional gender-based discrimination and harassment, sexual harassment and sexual assault made in a class action lawsuit by stating that the "Police Services Act provides for a grievance/arbitration system pursuant to the collective agreement and would have been the appropriate means to deal with the allegations."[11] Any reader can conclude that, since the officers' association is named in the class action lawsuit, there must be more than a shred of evidence that the association did not support these women when their issues came to light.

For the most part, these 93 pages will introduce you to the brave men and women who have done nothing but try to do their jobs to the best of their abilities and were simply unwilling to turn a blind eye or participate in the abuses of power that have occurred in policing for years. Unfortunately for the public, most of them have since left the profession.

---

[11] WRPS, Police Services Board and WRPS Respond to Class Action Suit, Media Release, June 1, 2017.

Almost all of the issues discussed in this report could have been prevented with better internal oversight by police services boards and transparency to the public. The report concludes with recommendations to improve transparency and accountability.

It's a mad world when a person is too ethical to stay a police officer.

Acronyms used throughout this report:

OIPRD – Office of the Independent Police Review Director
OCPC – Ontario Civilian Police Commission
SIU – Special Investigations Unit

AUTHOR AND ACKNOWLEDGEMENTS

In 2008, I was working as a banker when I witnessed collusion by police officers in the handling of allegations against one of their own. I've always believed that police officers need to be objective and maintain the highest level of integrity because of the responsibility entrusted to them by society. After all of the experiences I have had in life and all of the difficult lessons I have learned, I knew I would make a good cop. I believed the best way to change the culture in policing was from within. In 2010, I became a police officer.

It wasn't until 2015, that I witnessed misconduct during multiple internal investigations at my own police service and I soon learned that the issue was systemic. I witnessed police officers sweep allegations under the rug, violate internal policy, if they were about a favourable officer and I saw good, hardworking officers be humiliated and non-criminal allegations be stretched into homicide scale criminal investigations for officers who were not favourable. I became determined to address the mishandling of internal investigations and deficiencies in police legislation. I began my journey by addressing my police services board with my issues, since I had learned that my service does not permit members to file internal complaints. I was subsequently disciplined, constructively dismissed, my issues were not adequately addressed, and I began to research just how often police services silence whistleblowers. I attempted to have the OCPC investigate my service for changing internal policy to no avail. I attempted to have the OIPRD investigate officers who conducted a negligent investigative review to no avail. I complained to the Human Rights Tribunal for the reprisal action taken against me and the Tribunal refused to intervene. I went as far as asking the Office of the Ombudsman to examine the systemic issues and to date, no oversight body has chosen to exercise their legislated authority and investigate. From the time I reported the issues to my Board (May, 2016), to the date of my resignation in June, 2017, the service has been more interested in attacking my credibility than acknowledging that these problems exist and show a true desire to improve.

In the 1970's, widespread corruption was uncovered in the New York Police Department, much to the credit of whistleblowers. Had it not been for those brave few officers who spoke up, internal issues would not have been exposed.

I spoke with Justice Michael Tulloch regarding my case and the systemic issues I uncovered and was extremely pleased to see that many of them were transformed into recommendations in his final report. Although, historically, report recommendations have not entirely been adopted into legislation. After a year of constructive dismissal, and more

recently a medical leave from work due to stress and PTSD resulting from a shooting incident while I was a recruit at the police college, I have come to the difficult conclusion that my attempts to affect change from within have been in vain. I have chosen to leave the policing profession in order to provide my services directly to police services boards, other government agencies and corporations. I know firsthand what a police officer stands to lose when they choose integrity over loyalty, and I will do everything in my power to ensure that both become synonymous.

Despite advice I received from my supervisors, lawyers, colleagues and even family that this is "just the way policing is, and always has been" I am unable to turn a blind eye to the misfeasance and I am determined to change the culture, improve accountability and ensure that policing continues to recruit and retain the best of the best. I still believe that policing can be one of the best careers out there. In my short policing career of only 6 years I saw very qualified, confident and intelligent women come and go because they refused to remain in the toxic environment, impenetrable to change; that is policing. I also saw women be promoted and yet do nothing from their positions of power to improve the system for those beneath them.

I conducted extensive research, outside of my employment as a police officer, and located public documents detailing the history of the differential treatment of police officers and inefficiencies and inadequacies in the apparent oversight bodies.

Justice Tulloch has recognized the need to have training provided to police services boards from an independent and impartial source, as well as a whistleblower program for those reporting misconduct.

For this reason, I created **Fit4Duty™** which will become **The Ethical Standard™** for police services boards and corporations when it comes to transparency, accountability, training, ethics and community mobilization. **Fit4Duty™** will also provide an independent whistleblower program to police services, government agencies and private corporations. What differentiates the **Fit4Duty™** whistleblower program from any other program is that we will not only collect the anonymous reports from your employees, we will also investigate the allegations to attempt to substantiate them. If these reports were sent back to employees paid by the organization to investigate (which occurs in most whistleblower programs), then there is little impartiality and the integrity of the entire system is compromised.

Over 2017 and 2018, I will tour the province of Ontario making presentations to police services boards and offering my services which will include; speaking engagements, training, policy development and evaluation, community outreach, quality assurance and whistleblower programs. Through **Fit4Duty™** I will train police services board members to be knowledgeable and effective and raise the standard of police governance and community mobilization. To me, having integrity is always doing what's right even when no one is watching. I believe that by exposing the issues in this report, police services board members will better understand the importance of internal oversight. By taking initiative to address these issues the Board will regain the trust of police officers and

taxpayers. This is a crucial time for legislative changes, and it is equally important that legislators understand the ongoing cost of inadequate oversight in policing.

As stated multiple times throughout this report, police officers are often prosecuted for discussing any police issues with anyone outside of the police service. As such, I will not name those police officers who have given me moral support and encouragement throughout this process; you know who you are. I do not represent any police service or association and none of the information in this report was obtained using police resources. Despite this fact, I fully expect there to be a smear campaign against my new initiative and to be harassed by certain members of police services for having released this report. My hope is that attempts to discredit me as I move into a new career will fall on deaf ears.

I dedicate this report to the memory of my mother who, before her death in 2004, encouraged me to always stand up for myself and what I believe.

Kelly Donovan
www.fit4duty.ca - The Ethical Standard™

I modified a quote from Chris Kyle's autobiography (American Sniper)
to what I believe is accurate for policing:

Police officers are the sheepdogs of the world,
sent to protect the sheep from the wolves,
but they do not reach the top by being sheepdogs.
They must be capable of being the wolf.

The Runaway, 1958

PREFACE

It is not for the leaders of police services that men and women continue to be committed to the profession and protect you and I. It is the passion one has to serve his or her community and that is not challenged in this report. There are thousands of outstanding police officers across Ontario whose conduct is not addressed in this report as it does not need to be. It is their dedication and commitment that is keeping this ship afloat.

CHAPTER 1: POLICING THE POLICE

CONSTITUTIONALITY OF THE PSA

Police officers hold the power to deprive persons of their fundamental rights and charge them according to law. When a police officer abuses their authority against a member of the public, there are several checks and balances, in the form of civilian agencies, to adjudicate the lawfulness of the officer's conduct. The public have several avenues to lodge a complaint against the police. Those avenues are discussed and illustrated, starting on page 19.

In the case of the arrest, detention and charging of a police officer, there are no means of independent oversight. Police officers have historically been denied their right to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal.[12] Arguments have been made on many occasions that the PSA violates fundamental rights of police officers and the courts have successfully defeated those arguments by relying on the integrity and objectivity of the chief of police, (or designate). When a police officer is charged by their chief of police, for a PSA offence, it is the chief who chooses the prosecutor and judge (hearing officer). It has been said that this process has been used to rid the force of officers who are unsuitable.

The courts have never recognized the inherent bias that exists when the person in charge of the proceeding has an interest in the protection of the reputation of themselves and their institution. If there was no bias in the current PSA, then hearing officers hired by police services who acquit officers would be selected to oversee just as many proceedings as those who convict officers. There have been no studies to examine this statistic and the suggestion is that by affording chiefs of police this discretion, certain hearing officers are not as popular as others.

The objectivity of the PSA proceeding process has been compared to that of surgeons and physicians. However, the courts have failed to address one major difference. When a doctor is tried before a tribunal of the College of Physicians and Surgeons they have the ability to appeal disciplinary decisions to Divisional Court[13]. This system allows a doctor the opportunity to be tried before a body that is independent of their profession, their appeal is adjudicated in the judicial system. From the time a police officer is accused of an offence to their highest possible level of appeal, all of the participants in the process are members of the judicial system; a police officer is never given the opportunity to have their case heard by a member of the medical profession, as an example. Each participant in the process has a vested interest in the preservation of the reputation of the judicial system and as such there is no way to tell if decisions are made impartially, or to protect that reputation.

---

[12] *Constitution Act, 1982, Section 11(d).*
[13] *Regulated Health Professionals Act, 1991, S.O. 1991, c. 18, section 70(1).*

In 2012, Canadian whistleblower Edgar Schmidt, former general counsel in the Legislative Services Branch of the Department of Justice, served his own Ministry with a statement of claim for acting unlawfully by failing to properly review the constitutionality of draft legislation. Schmidt alleges that he had been responsible for ensuring, through pre-enactment examinations, that new legislation conformed to the Bill of rights. Schmidt alleges that what had been happening is that the burden of disciplining state law-making has virtually entirely been up to the citizen.[14]

Schmidt's whistleblowing becomes relevant because it uncovers questions regarding what provisions were in place when the Police Services Act came before the House of Commons. Did the first Police Services Act have to be "manifestly" inconsistent with the Charter or Bill of Rights? Or, did it have to be "likely or even almost certainly" inconsistent with the Charter in order to be declared not constitutionally compliant? Before any level of court considers an argument for or against the constitutionality of the Police Services Act, Schmidt's allegation that the Attorney General may not have acted lawfully by failing to properly review the constitutionality of the draft legislation prior to enactment should be addressed. Schmidt's case is scheduled to be heard in 2017.

Schmidt, like many other whistleblowers contained in this report, was suspended without pay the day after he brought about his lawsuit against the Ministry. Because Schmidt is not a police officer his case is not detailed in the Whistleblower section of this report.

> *"There is a valuable role for the state but I think citizens need to be vigilant and be aware that the institutions that they create, particularly the state institutions that they create, sometimes abuse the powers that are entrusted to them."*
>
> - Edgar Schmidt[15]

HISTORY OF COMPLAINTS SYSTEM

Without detailing the full extent of the history of the handling of complaints against the police, I will highlight the history since 1990 when the Police Services Act[16] was passed. Over the next 15 years many reports and reviews were conducted to examine the human rights issues and overall effectiveness of the current complaints process.

Even as far back as 1992, the issue of the handling of internal complaints of misconduct has been debated. The mandate of the 1992 Report by the Ontario Civilian Commission on Police Services was:

---

[14] "The whistleblower," Roderick MacDonell, Canadian Bar Association National, November-December, 2013.
[15] *Supra* note 14.
[16] *S.O. 1990, c.10.*

> *"...to examine the administration of the Metropolitan Toronto Police Force as it relates to internal investigations into allegations of wrongdoing by members of the force."*[17]

The Inquiry panel considered whether the management, supervision and enforcement of policies and procedures for handling alleged wrongdoing by officers of the Metropolitan Toronto Police Force were adequate in light of the need for:

- accountability to the community;
- vigilance in the maintenance of high standards of professionalism and integrity of policing;
- fairness in the exercise of authority; and
- openness to public scrutiny.

The Inquiry revealed serious mismanagement on the part of the Metropolitan Toronto Police Force in the handling of alleged misconduct by members of the force. The evidence put before the Inquiry revealed that *(excerpt)*:

- In an effort to rid the force of an officer who was considered unsuitable, expediency has taken precedence over principle.
- Accountability for police discipline and civilian review has been compromised.

The role of Internal Affairs is crucial in maintaining public trust in the police. An excerpt from the American Law Enforcement Accreditation Manual states:

> *"The internal affairs function is important for the maintenance of professional conduct in a law enforcement agency. The integrity of the agency depends on the personal integrity and discipline of each employee. To a large degree, the public image of the agency is determined by the quality of the internal affairs function in responding to allegations of misconduct against the agency or its employees."*[18]

The primary aim of the Report was to prevent a recurrence of the mismanagement revealed by the evidence given to the Inquiry. The inquiry made 24 recommendations to the Metropolitan Toronto Police Services Board, Chief and Solicitor General of Ontario. Recommendation 23 reads:

> *"The Solicitor General of Ontario should implement an educational program for members of Police Services Boards across Ontario to ensure that they are apprised of their authority and responsibilities."*

It is unknown if the recommendations of the Inquiry were implemented at Metropolitan Toronto Police Services (now Toronto Police Service), or elsewhere.

---

[17] Report on an inquiry into administration of internal investigations by the Metropolitan Toronto Police Force, The Ontario Civilian Commission on Police Services, August 1992.
[18] *Supra* Note 17.

In 1996, Rod McLeod, Q.C., was asked to review civilian oversight of police in Ontario. Shortly after the McLeod report was released came Bill 105; 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.*[19] However, the numbering of other Parts of the Act remains unchanged.

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 indicated a concern for the lack of independence in the investigative process, stating:

> *"The lack of an investigative process independent of the police is regarded as a significant impediment in regard to public confidence in the system."*[20]

It was in 2004 that the Honourable Patrick J. LeSage was mandated by the Ontario Government 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. The current structure became what it is now based on the recommendations included in the LeSage Report released in 2005.[21]

The Standing Committee on Justice Policy held public sessions in 2007 to discuss proposed changes to the PSA, Bill 103, (*the Independent Police Review Act*). The late Mr. Peter Kormos, NDP MP Niagara Centre, a member of the Standing Committee on Justice Policy at the time, expressed concerns over the lack of oversight of the oversight bodies themselves. Despite Kormos' concerns, echoed by many who attended the public sessions on January 30, 2007, and January 31, 2007, section 97 remained in the proposed Bill 103, which states:

> PSA, s. 97. The *Ombudsman Act* does not apply to anything done under this Part. 2007, c. 5, s. 10. (Regarding Part V).

Kormos had also expressed concern regarding the prohibition of a police officer from making a complaint against another member of the same service in the public debate held on January 30, 2007. Kormos asked:

> *"Why can't a police officer complain to the director about the conduct of another police officer in that same service?... Why would you bar that officer access to the independent director, the arm's-length director? If a police officer has concern about, let's say, a malignancy within his own police service, surely the independent arm's-length director is a suitable destination for that concern if, in fact, the concern is about a malignancy that could well interfere with, impede or obstruct that police*

---

[19] 1st Sess., 36th Leg., Ontario, 1997 (assented to June 26, S.O. 1997, c.8) [hereinafter Bill 105]
[20] https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/LeSage/
[21] *Supra* note 20.

officer's complaint."[22]

Mr. Graham Boswell, counsel, policy division for the Ministry of the Attorney General (at the time), responded by stating that the OPP was pursuing whistleblower protection and other municipal police services would have policy to address internal complaints.[23] However, it has never been a requirement for police services in to develop and maintain policy of accepting internal complaints. Therefore, if a police service chooses to exclude members of the service from being a complainant of internal misconduct, current legislation would allow the complaint to be suppressed, and some have. Without a legislated process by which a police officer can make a complaint and ensure the complaint is adequately addressed, there will continue to be differential treatment of cases of internal misconduct.

Since the changes to legislation that were intended to improve public confidence in policing, we have not seen a significant change. Canadians were 79% confident in police in 2000[24], and 76% of Canadians had either a great deal or some confidence in the police in 2013.[25]

In 2016, the Honourable Justice Michael Tulloch was tasked with conducting a review of oversight of police in Ontario. Contained in the Order of Council, approved on October 19, 2016, and of particular interest is the following excerpt:

"Mandate

1. The Independent Reviewer shall conduct a review and make recommendations on how to:
    a. Enhance the transparency and accountability of the police oversight bodies, while preserving fundamental rights;"[26]

The report was released to the public on April 6, 2017, and is detailed on page 26.

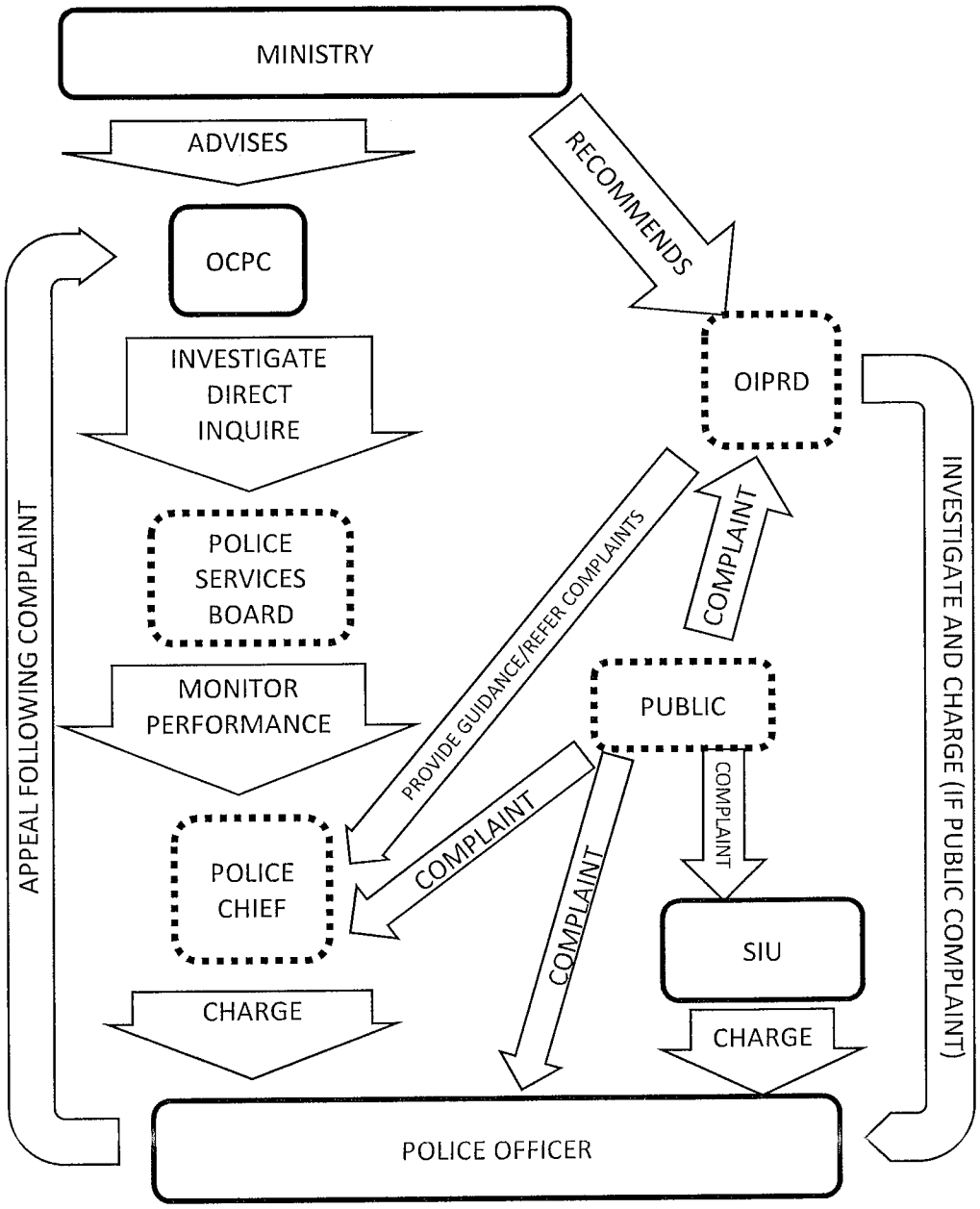
Unfortunately, Justice Tulloch was not tasked to review the transparency and accountability of police services themselves, only the oversight bodies.

---

[22] Legislative Assembly of Ontario, Second Session, 38th Parliament, Official Report of Debates (Hansard), Tuesday 30 January, 2007, Standing committee on justice policy, Independent Police Review Act, 2007.
[23] *Supra* note 22.
[24] Research Brief – Public Confidence in the Police in Canada, 1981-2000: Evidence from the World Values Survey, Tamara Candido, Senior Analyst Strategic Policy and Planning Branch, Royal Canadian Mounted Police.
[25] Spotlight on Canadians: Results from the General Social Survey Public confidence in Canadian institutions, Adam Cotter, StatsCan.
[26] http://www.policeoversightreview.ca/orderincouncil.pdf

CURRENT LEGISLATIVE STRUCTURE

(Regarding oversight of police officer conduct)



= Eligible to make a complaint against an officer under Part V, Police Services Act

Figure 1: The above graphic aims at illustrating that the only avenue available to a police officer to escalate a concern is the OCPC, and only after a disciplinary decision. The public have the most opportunity to complain about police and the police can be charged by many involved parties.

WHO CAN COMPLAIN?

Depending on where the complaint originates, there are either several or very few ways to complain about the police in Ontario. As illustrated in the previous page's diagram, the agencies with the most independence are the Office of the Independent Police Review Director (OIPRD) and the Special Investigations Unit (SIU). As noted in this section, police officers do not have access to the OIPRD, unless their complaint relates to the conduct of a police officer from another police service, and even then, complaints can be refused by the OIPRD.

The public have always depended on civilian oversight to ensure that complaints about the police are investigated objectively and transparently. The public want to know that if it is alleged that a police officer has behaved egregiously, they will be held accountable, regardless of their fraternity. Current legislation only requires transparency of the handling of a complaint if it originates with a member of the public. The next section will discuss specific deficiencies in legislation.

Public:
A member of the public has the broadest range of options to make a complaint against the police. In addition to making a complaint, a member of the public is protected against harassment, coercion or intimidation as a result of having filed a complaint,[27] and has legislated ability to escalate a refusal to investigate a complaint. A member of the public can complain in the following ways:

- directly to a police officer, including the Chief of police;
- to the OIPRD;
- to the OCPC, if it relates to the disposition of a complaint under Part V of the PSA;
- to the SIU

Police Officer:
A police officer has very limited means of making a complaint against the police. A police officer has no legislated protection against harassment, coercion or intimidation and no means of appealing decisions made by the police service in relation to a complaint. A police officer can complain in the following ways:

- to the OIPRD if the complaint relates to the conduct of a police officer at a different police service, and even then, the OIPRD can refuse to investigate
- as permitted, based on their service's policy

Chief of Police:
Chiefs of police have the authority to make a complaint about the conduct of a police officer employed by his or her service, other than the deputy chief. In addition to this blanket authority, a chief of police can also make a complaint:

- to the OCPC, if it relates to the disposition of complaint under Part V of the PSA;
- to the SIU

[27] Police Services Act, R.S.O. 1990, c. P.15, Section 79(1).

Police Services Board:
The Police Services Board (PSB) is made up of typically the head of the municipal council, one (or more) person(s) appointed by the council and one (or more) person(s) appointed by the Lieutenant Governor. The composition of a PSB depends on the size of the municipality and is laid out in legislation. A judge, justice of the peace, police officer and a person who practices criminal law as a defence counsel are ineligible to be members of a board. The Police Services Board can:

- choose to initiate an investigation into the conduct of the chief of police or deputy chief of police
- request the OCPC investigate the conduct of a police officer, a chief of police or member of the Board

OIPRD:
The Review Director is appointed to provide civilian oversight of the complaints process. The Director cannot be a current or former police officer, although investigators for the OIPRD can be former police officers. In addition to the Review Director having the authority to initiate its own investigation into the conduct of a police officer, the Review Director:

- can request the OCPC investigate the conduct of a police officer, a chief of police or member of the Board
- must refer complaints regarding the conduct of the chief of police or deputy chief of police to the Board for investigation

OCPC:
Members of the OCPC are appointed by the Lieutenant Governor in Council. The Commission can, on its own motion, investigate the conduct of a police officer, a chief of police or member of the Board.

Ministry of Community Safety and Correctional Services:
The Minister can, on its own motion, request the OCPC investigate the conduct of a police officer, a chief of police or member of the Board.

DEFICIENCIES IN LEGISLATION

With regard to complaints of misconduct of a police officer, including the Chief of police, below are some deficiencies in legislation that restrict transparency and accountability. For excerpts from the PSA regarding the responsibilities, duties and powers of the agencies below, see Chapter 5 (page 89).

Ministry of Community Safety and Correctional Services
No legislated accountability (under PSA):

- Does not require police services to maintain policy on ethics
- Does not specify how police services are to conduct internal investigations
- Does not require police services to maintain policy on internal complaints
- Does not specify what information must be made public by the police service
- Will not investigate or conduct inquiries from public or police officer complaints, will only conduct inquiries or investigations on its own motion[28]

Ontario Civilian Police Commission
No legislated accountability:

- Ombudsman Act does not apply to complaint proceedings under PSA
- Will not investigate or conduct inquiries from public or police officer complaints, will only conduct inquiries or investigations on its own motion[29]
- Does not have its own standard of ethics
- Does not define conflict of interest

No appeal process:

- Must request Judicial Review at Divisional Court

Office of The Independent Police Review Director
No legislated accountability:

- Ombudsman Act does not apply to complaint proceedings under PSA
- No change in accountability whether Director takes on investigation or refers it back to the subject police service of the initial complaint
- Does not conduct investigations into conduct of chief of police or deputy chief of police
- No standard of ethics
- No definition of conflict of interest
- Police officers cannot make a complaint of misconduct against another member of the same service

No transparency:

- Documents produced during a public complaint investigation are inadmissible in civil proceeding

Poor appeal process:

---

[28] *Dolan v. Ontario (Civilian Commission on Police Services), 2011 ONSC 1376*, para 101.
[29] *Supra* Note 28.

- If a public complainant is not satisfied with the outcome of their complaint, they can ask the Board to review the decision only
- When the OIPRD refuse to investigate a complaint from a police officer the only appeal is Judicial Review at Divisional Court

Police Services Board
No legislated accountability:
- Ombudsman Act does not apply to complaint proceedings under PSA
- In the absence of legislated standards, no requirement to establish policy on ethics or conflicts of interest (other than pecuniary)
- Not required by legislation to deal with complaints brought to the Board by members of the public or police
- No representation at Board level by members of police service other than Chief

No transparency:
- Despite being responsible for the provision of adequate and effective police services in the municipality, the information presented to the Board is redacted by the Chief

SERVICE POLICY

In addition to the laws that are in place, police officers must follow the directives and policies established by their police service or they are insubordinate and can be charged with offences under the PSA. The government sets out what policies need to be maintained by police services, although the legislation is vague, basic and allows for inconsistencies from service to service.

An excerpt from the PSA, (more detail in Chapter 5), regarding a Board's responsibility to maintain policy is as follows:

31. (1) A board is responsible for the provision of adequate and effective police services in the municipality and shall,

(c) establish policies for the effective management of the police force;[30]

The Minister of Community Safety & Correctional Services specifies what policies the police service shall provide in Police Services Act Ontario Regulation 3/99.

Those policies are broken down into the following subcategories:
- Crime Prevention
- Law Enforcement
- Victims Assistance
- Public Order Maintenance
- Emergency Response Services

[30] *Police Services Act, R.S.O. 1990, c. P.15.*

- Administration and Infrastructure

As is evident in the dozens of reports and inquests that have been done over the years focusing on police training in de-escalation, change in policing waits for Ministerial direction and as the Ombudsman pointed out in "A Matter of Life and Death" released on June 29, 2016:

> *"The Ministry of Community Safety and Correctional Services has the power, opportunity and duty to address these problems. Yet thus far, it has mostly taken a hands-off approach."*[31]

Unless police services are explicitly directed or legislated to establish a policy, inconsistencies will remain and change will come at the discretion of the chief of police or police services board.

Complaints

Section 34 of the Police Services Act Ontario Regulation 3/99 (under Administration and Infrastructure) requires the establishment of procedures for the investigation of complaints. Since specific requirements are not provided in this Regulation, different services have very different procedures.

For example, York Regional Police has a procedure for Public Complaints and a separate procedure for Sworn Misconduct Management. The YRP Sworn Misconduct Management procedure section C. 2. States:

> *"All members are responsible for reporting incidents of potential misconduct involving other members to their immediate Supervisor."*[32]

Similarly, Peel Regional Police Service has a procedure on Complaints Against Police which contains the following:

> *"Section M. 1. All matters which could become the subject of an internal investigation shall be reported immediately through the appropriate chain of command, unless to do so would prejudice the investigation."*[33]

There are police services that do not have a procedure that would allow a member to make a complaint about the misconduct of other members; only members of the public. Even the services who do have these procedures, they have not accounted for a complaint relating to the conduct of the officer's supervisor, or even the chief. These procedures are written in such a way that discretion is afforded to senior management with no appeal process, allowing complaints to be suppressed, with no means of appeal.

---

[31] The Ombudsman Report: A Matter of Life and Death, Paul Dubé, June, 2016.
[32] York Regional Police Service, General Procedure; Sworn Misconduct Management, Issue Number AI 330.
[33] Peel Regional Police Directive; Complaints Against Police, Issue Number I-B-101 (O).

Despite the Board being responsible for oversight of the police service, they may not be aware of internal dealings when issues have been suppressed.

This is just one example of the inconsistencies.

Ethics

When it comes to ethics in policing, most police services rely on a police officer's Oath of Office to be the benchmark of ethical conduct, and do not have internal policy addressing ethics.

In 2012, the Ottawa Police Service (OPS) recognized a need for service procedure on Ethics and developed its Ethics Program.[34] The OPS program was highlighted at the 2016 Canadian Association of Police Governance Conference. Since then other police services' Boards have expressed an interest in following suit, yet many services still do not have procedures or policy on Ethics. The OPS should be applauded for its leadership in developing a program that addresses the issues of ethics in policing. However, on its face, the OPS program resonates the importance for members to remain loyal to the service. The OPS program does not specifically outline a process for a member to report unethical conduct either protected or anonymously. When the OPS program was rolled out to its members by way of booklet, costing taxpayers $6,700, Ottawa Police Association President Matt Skof was quoted as saying:

> *"...if the members don't believe decisions are being made ethically, that's the problem."*[35]

There are other police services in Ontario who have implemented policies on ethics, although it is not a requirement under the PSA. At the September, 2016, meeting of the Waterloo Regional Police Services Board, Chair T. Galloway questioned if an ethics policy "should be on the radar" and the Chief "indicated that he would take this under advisement and report back at some future date."[36] There is no mention of ethics in Board minutes from that date to the date of this report.

Transparency

The PSA currently provides public transparency of matters relating to the OIPRD, OCPC and SIU. Other than Freedom of Information legislation, there are limited requirements in the PSA to encourage police service transparency.

The Ministry requires police services to report to the Board on matters such as use of force, suspect apprehension pursuits, complaints, etc. There are no parameters as to how these reports are to be completed and precisely what information needs to be contained in the report. Therefore, as with every other aspect of policing, the discretion

---

[34] Ottawa Police Service Ethics: Honour, Courage, Service.
[35] "Police ethics guide trashed: source," Kelly Roche, Ottawa Sun, May 29, 2014.
[36] Minutes, Regional Municipality of Waterloo Police Services Board, September 14, 2016, page 7.

is afforded to the chief of police by whom all reports are filtered before they are released to the Board. A quick survey of annual board reports will show that there is no consistency service to service regarding precisely what data is released to the public.

When it comes to the release of police service business to the media, only the chief of police or their designate is permitted to communicate to the media. As with other policies, different police services have difference policies on what is divulged to the media; either limiting transparency or violating the privacy of the officer. For example, the Hamilton Police Service and Halton Regional Police Service always issues a press release when one of its officers is charged, regardless of the severity of the charge or if another police service did the investigation. Ontario Provincial Police will only issue a public release when one of its officers is charged and OPP led the investigation. [37]

For police services to be truly transparent, the decision to release information should be made by someone who does not have an interest in its secrecy and who can objectively identify matters of public interest. Otherwise, transparency will never exist if the holder of the information can withhold anything unfavourable.

OVERSIGHT REVIEW

In April, 2017, Justice Tulloch's report was released to the public.[38] Justice Tulloch identified that many aspects of policing could be reviewed and potentially improved, such as hiring practices, training, performance evaluation, promotion, internal discipline and external oversight. Tulloch's mandate was to examine only Ontario's external police oversight.

Since April, 2016, Tulloch engaged 1,500 individuals in 17 public consultations and over 130 private meetings. Tulloch made 129 recommendations to the Attorney General, Honourable Yasir Naqvi, to improve transparency and accountability in police oversight.

Below is a list of Tulloch's recommendations that, if incorporated into legislation by the Attorney General, will contribute to solving some of the issues identified in this report:

- Recommendation 4.20: The Ombudsman should have jurisdiction over all three police oversight bodies;
- Recommendation 7.9; The Ministry of Community and Correctional Services should review the process for members of a police service to make internal complaints to ensure there are effective whistleblower protections;
- Recommendation 7.14; The "public interest" ground for screening out complaints should be removed or, if retained, legislatively defined;
- Recommendation 7.20; Within five years, the OIPRD should be the sole body to investigate public conduct complaints;

[37] "What happens when police officers face criminal charges in Ontario?" Nicole O'Reilly, Hamilton Spectator, August 17, 2015.
[38] *Ibid.* note 9.

- Recommendation 7.22; Over the next five years, until the OIPRD is able to conduct all public conduct complaint investigations, the OIPRD should be able to refer complaints to police forces for investigation. During this interim period, the OIPRD should be solely responsible for laying disciplinary charges and should have the authority to order further investigation or to take over an investigation conducted by a police force;
- Recommendation 7.23; The OIPRD should be solely responsible for investigating complaints against municipal chiefs of police, the OPP Commissioner, and their deputies;
- Recommendation 8.1; Independent public complaints prosecutors who work at the Ministry of the Attorney General should prosecute public complaints. After the OIPRD lays a disciplinary charge, the independent public complaints prosecutor should be given carriage of the file;
- Recommendation 8.3; The OCPC should conduct all first instance hearings of public complaints;
- Recommendation 8.4; Internal complaints should be governed by the Police Services Act. Consideration should be given to what role, if any, the OCPC should have in the internal disciplinary process and how the internal and public disciplinary processes interact;
- Recommendation 12.1; The Ministry of Community Safety and Correctional Services should establish selection criteria for police services board appointees.

The Ontario Superior Court of Justice has dismissed applications for judicial review by police officers because there is a presumption of impartiality on the part of a judicial decision-maker, (the chief of police). Interestingly, following Justice Tulloch's public consultation period he concluded the following:

> *"Chapter 8, Paragraph 13. There is broad consensus from both the public and the police that an adjudicative process where the chief of police chooses both the adjudicator and the prosecutor is not fair and does not meet the appearance of fairness test. Although the Divisional Court has said the existing regime complies with the Canadian Charter of Rights and Freedoms, it is not ideal. There can be no serious argument that the current process appears free from bias and completely impartial."*
>
> *"Chapter 8, Paragraph 18. Some members of the public noted that having the chief of police choose the prosecutor created a perception of bias. They believed that prosecutors may be unduly influenced by chiefs to produce certain results because they serve at their request."*

CHAPTER 2: ISSUES

CHANGING THE CULTURE

For decades, it has been recognized that the police culture is to blame for many of the roadblocks to change and little has been done about it. Those in policing are entrenched in the culture and at times are out of touch with the perception and expectation of the public. When external reviews or inquiries are conducted, and recommendations are made, they are often ignored by the policing community who give little weight to the opinions of civilians on police issues. The police are often frustrated with what they perceive as a lack of understanding by members of the public and the public are frustrated with the lack of empathy and self-criticism in the policing community.

In the 1992 Report by the Ontario Civilian Commission, the Inquiry succinctly put it this way:

> *"It is unfortunate that the Internal Affairs unit has chosen, in the final analysis, to defend its actions as "totally proper, totally correct and totally legal". As we have already noted, Internal Affairs demonstrated skill and thoroughness in the gathering of evidence in the Junger and Whitehead cases. But, as has been documented throughout this report, its subsequent performance was anything but perfect.*
>
> *The attitude of Internal affairs, as expressed in its final submission, seems to be that its members have learned nothing from this Inquiry, and have nothing to learn.*
>
> *That is an attitude that has to change.*
>
> *All police officers must be cognizant of their duty to the public. But officers who handle investigations into alleged wrongdoing by members of their own force must be especially sensitive to the need to be fair, open and accountable and to demonstrate the highest standards of integrity and professionalism.*
>
> *Our hope is that this Inquiry will lead to a more responsible and accountable police force and Police Services Board. But that will only happen if those involved are willing to accept criticism, recognize that errors were made and make changes."*[39]

It is not a topic for debate; there absolutely is a fraternity in policing, although it affects everybody differently. The public perception is that police officers are always going to be protected by other police officers because of this kinship. If that was the case, there would be no police officers charged by their own. The truth is, and if you survey officers who have been or are repeatedly charged by their police service, an officer's sheltering will depend on 4 things:

---

[39] *Ibid.* note 17.

1. The officer, (their history with the service/their gender/their race/their sexual orientation)
2. The political advantages/disadvantages of prosecuting the officer
3. The political advantages/disadvantages of not prosecuting the officer
4. The desire of the police service to promote the officer

The decision to charge a police officer with either criminal or misconduct charges rests solely with the chief of police (or their designate) and there are no legislative bounds for those decisions, only appeal processes once the damage has been done. To charge any person with a criminal offence, a peace officer must have reasonable grounds:

> "A set of facts or circumstances that would satisfy an ordinary, cautious, and prudent person that there is reason to believe an offence has been committed and which goes beyond mere suspicion."

It is common practice in policing that an investigator, in deciding whether or not there are reasonable grounds for any action contemplated, must review all the evidence, inculpatory as well as exculpatory, and then decide if these facts satisfy the interpretation. Rarely are police officers under investigation interviewed and given the opportunity to present exculpatory evidence, prior to the establishment of grounds for arrest.

It is widely accepted in the policing world, (yet never discussed for fear of reprisal), that some investigators have been ordered to render a specific outcome in an internal investigation, regardless of the evidence. Whether or not grounds exist for a criminal charge may not be the deciding factor in a case against a police officer if there is personal motivation or even fear of Crown prosecutors appearing to favour the officer.

There is no independent and external oversight in the process of deciding whether or not charges are warranted against a police officer. Instead, there are officers who are charged, acquitted, and eventually sue the police service. Notwithstanding the negative publicity, the cost to taxpayers and misuse of resources for this abuse of process is significant and concerning.

There are enough stories to fill several novels of officers who have received favouritism because of their profession, if only those stories could be told. Every police service has a little black book of incidents involving senior management that, had it involved a member of the public, would have been handled very differently. As much as we expect our police officers to respect their duty to the public, most officers will not arrest or charge the very person who will decide their future career path. Police officers receive a very generous salary for the dangerous work they do and will retire on a very comfortable pension; this is no secret. Most police officers remain silent about anything that could result in discipline or even conflict simply to protect their livelihood, and not at all because of a "brotherhood." However, corruption doesn't change whether a police officer is accepting pay to turn a blind eye to misfeasance by colleagues or criminal behaviour by a known drug dealer; it's still corruption.

In cases where a police officer does report serious misconduct or criminal behaviour by another police officer they are often prosecuted, sometimes suspended and have to pay a lawyer tens of thousands, if not hundreds of thousands of dollars. At the end of their ordeal, their professional reputation is quashed and they either choose to leave the profession or are bullied out by colleagues and supervisors who now see them as a "rat."

So, police officers are given a choice at some point throughout their career. Most police officers will choose to perform their duties to their own level of integrity and not be bothered by the conduct of management, continue to receive their $90,000-$100,000(+) per year salary and work up the ranks. This choice will lead to much higher paid positions of Sergeant, Staff Sergeant, Inspector, or maybe even Chief. Over a 30-year career, this figure, and fringe benefits, are irreplaceable for someone with a high school education.

Below is a list of salaries and taxable benefits for 2016 for the Chiefs of the ten largest police services in Ontario, in ascending order:

- Hamilton Police Chief Eric Girt; $236,121.77 (Chief since May, 2016) and $9,979.13 in taxable benefits
- Durham Regional Police Chief Paul Martin; $247,274.20 and $1,240.83 in taxable benefits
- OPP Commissioner Vincent Hawkes; $268,428.16 and $369.96 in taxable benefits
- York Regional Police Chief Eric Jolliffe; $272,696.60 and $12,545.50 in taxable benefits
- Halton Regional Police Chief Stephen Tanner; $277,968.91 and $19,010.88 in taxable benefits
- Ottawa Police Chief Charles Bordeleau; salary of $281,511.93 and $12,149.54 in taxable benefits;
- Peel Regional Police Chief Jennifer Evans; $283,349.20 and $18,905.52 in taxable benefits
- Waterloo Regional Police Chief Bryan Larkin; $283,984.69 and $13,289.94 in taxable benefits
- Niagara Regional Police Chief Jeffrey McGuire; $295,922.99 and $34,433.88 in taxable benefits
- Toronto Police Chief Mark Saunders; $332,511.59 and $2,677.12 in taxable benefits

For comparison, the Mayor of Toronto John Tory was paid $184,666.04 and $1,378.28 in taxable benefits, and even the Premier of Ontario Kathleen Wynne was paid less than the Chiefs listed above earning $208,974.00 and $384.33 in taxable benefits.[40]

If, upon completion of this report, the reader has difficulty understanding why such a large community of police officers would remain silent about such serious issues, please revisit this section and perform the calculations of what a successful career in policing is worth, versus the cost of disobedience. The police culture is bred by individuals who do not

[40] https://www.ontario.ca/page/public-sector-salary-disclosure-2016-all-sectors-and-seconded-employees

want to take any action that could disrupt their financial security and opportunity for future wealth. Unfortunately, those who do not tolerate the culture become labelled, their careers stalled or worse, they are bullied out of the profession entirely. A police officer should never have to make such a choice.

PARA-MILITARY

The perpetuity of the policing culture has been tolerated since it is perceived as quasi-military. Although, even due obedience in military law requires soldiers to be critical of orders given, obeying only those orders they believe, honestly and reasonably, are lawful. Military law has been dramatically civilianized since the days of court martialing with corporal punishments. Like all public bodies the military has evolved. Here in Ontario, police officers are often charged with insubordination under the PSA and disciplined for being critical of their superiors or service.

In 2013, Toronto Inspector Richard Hegedus was acting unit commander at 33 Division. Toronto Constable Kevin Drake investigated a motor vehicle collision involving a police cruiser and civilian vehicle. Drake concluded that the civilian driver was at fault and completed the official Ministry of Transportation Motor Vehicle Collision Report. Shortly thereafter, Hegedus ordered Drake to change that finding and conclude the police officer was at fault. Drake refused to do so because he did not believe that to be true. As a result of this alleged insubordination, Drake was charged with misconduct and the matter went to a police disciplinary hearing. Drake was found guilty at the PSA tribunal, and he appealed to the Ontario Civilian Police Commission (OCPC). The OCPC overturned the finding of guilt and found that Hegedus had ordered a subordinate to falsify an official record, placing Drake in the position of knowingly making a false statement and, arguably, committing an act tantamount to Deceit.[41] Despite this finding by the OCPC, one year later, Hegedus was promoted to the position of permanent Hearing Officer for the TPS disciplinary tribunal.

In October, 2016, Toronto Police Constable Adam Lourenco filed a motion to have Hegedus removed as hearing officer in his PSA proceeding, citing Drake's case and the reasonable perception of bias. Lourenco's lawyers, Peter Brauti and Lawrence Gridin, stated "the appointment of Hegedus to a prestigious position as the sole permanent hearing officer, so soon after he had apparently committed serious misconduct which the TPS took no steps to investigate, is itself likely to bring discredit upon the police service." Lourenco's PSA case involves the controversial arrest of four teens in Toronto in 2012 and has been ongoing for 5-years. Even counsel for the four complainants in the discipline proceeding supports the spirit of Lourenco's motion, which raises larger questions about the inherent lack of independence involved in police discipline proceedings.[42]

---

[41] Drake and Toronto Police Service, 2015 ONCPC 5

[42] "Fellow cop wants hearing officer removed from Neptune Four case," Wendy Gillis, The Star, October 31, 2016.

When the Standing Committee on Justice Policy met on February 1, 2007, to vote on amendments to Bill 103, (*the Independent Police Review Act*), the late Mr. Peter Kormos, NDP MP Niagara Centre, was quoted as saying:

> *"A whole lot of things have transpired since the origins of policing based on a military or a quasi-military model: due process; natural justice; the expectation of everybody that an adjudication is going to be conducted by somebody who's neutral and impartial. Police officers have that right when they are the subject matter of a complaint and when their incomes, their careers, their reputations are at stake."*[43]

The invincibility and immunity afforded to police chiefs in Ontario is unprecedented and archaic even when compared to the stalwart US Military. In 2016, reprisal was the "number one allegation" that the inspector general's office investigated and a growing percentage of the cases were substantiated.[44] The Uniform Code of Military Justice, Subchapter XI, allows any member of the armed forces to complain to any superior commissioned officer if they believe themselves wronged by their commanding officer, and who, upon due application to that commanding officer, are refused redress.[45]

In Ontario, if a police officer alleges reprisal their complaint is adjudicated by the same people against whom the complaint relates, (if it is investigated at all). There is typically no appeal process which allows complaints of this type to be suppressed within the administrative structure of the police service. Historically, even when the officer's complaint is examined by an arm's length agency, (such as the OCPC, Human Rights Tribunal, or Divisional Court), the complainant is not provided equal benefit of the law and those agencies refuse to get involved in what they see as an employment matter.

As far back as 1963, the Committee on the Judiciary, United States Senate, has been examining the Constitutional Rights of Military Personnel. The 1963 report addressed several issues such as; Negotiated Pleas, Non-judicial Punishment, Records, Right to Counsel, and Confinement.

At that time, the Air Force had not utilized a procedure for negotiated guilty pleas in courts-martial. The Air Force pointed to the danger that a conviction based on a guilty plea might be attacked on the grounds that the plea was improvident or that the accused had been pressured into pleading guilty, a sentiment that has been shared by some police officers in Ontario who have been charged criminally and investigated by their own service. Judge Homer Ferguson agreed and said "there is a great temptation to take a lighter sentence, rather than contest guilt even though the accused does not believe he is guilty."[46]

---

[43] Legislative Assembly of Ontario, Second Session, 38th Parliament, Official Report of Debates (Hansard), Thursday 1 February, 2007, Standing committee on justice policy, Independent Police Review Act, 2007.

[44] "Army Says Some Misconduct Trends Are Increasing," Lolita C. Baldor, Associated Press, December 16, 2016.

[45] 10 U.S. Code § 938 – Art. 138. Complaints of wrongs

[46] "Constitutional Rights of Military Personnel," Summary Report of Hearings by the Subcommittee on Constitutional Rights of the Committee on the Judiciary, United States Senate, 1963.

SECRECY

Since no one inside a police service is allowed to discuss any matter connected with the service without proper authority[47]; the chief of police has full control over the level of transparency that exists. Every single police service around the province will say they are transparent and accountable to the public. As access to certain documents becomes available, the public are learning those statements have been highly subjective.

Canadian Freedom of Information legislation did not come into effect until 1983.

Sweden not only gave us the world's first Ombudsman, it also created the first freedom of information legislation in 1766.[48] Sweden is currently ranked fourth on Transparency International's Corruption Perceptions Index 2016 with a score of 88, (0 being highly corrupt and 100 very clean). Canada is currently ranked ninth with a score of 82.[49]

Even with a 217-year head start, Sweden has not significantly improved their Corruption Perceptions Index rating over that of Canada. One can easily deduce that lack of transparency and accountability in government may be a problem we cannot legislate our way out of. Even since 1983, our information statutes still tend to allow for multiple loopholes and opportunities for governments to dispute and delay access to information.[50]

> *"Openness facilitates accountability; secrecy defeats it. Knowledge is power. Those who have it can hide. Those who lose control of it cannot hide. If facts are known, decisions and actions can be judged and actors can be called to account. Openness therefore advances moral and ethical government. It also promotes honesty and enables the rule of law to apply."*[51]
>
> - André Marin, Former Ontario Ombudsman

The 1992 Report of the Ontario Civilian Commission on Police Services states:

> *"Secrecy is inimical to our justice system. Law enforcement is an important part of that system. It is a matter of public concern how police forces handle criminal and serious disciplinary matters that involve their own members, who are sworn to serve and protect the public.*
>
> *Those who are responsible for the quality of policing must be accountable to the public. Our whole system is predicated on accountability. The Chief of Police is accountable to the Police Services Board and through the Board to the community.*

---

[47] *Police Services Act, Ontario Regulation 268/10, section 2(1)(e)(iii).*
[48] http://open.canada.ca/en/idea/enhancing-whistleblower-protection
[49] Transparency International Corruption Perceptions Index 2016, www.transparency.org.
[50] *Ibid.* note 48.
[51] *Ibid.* note 48.

> *The Police Services Board is responsible for providing civilian monitoring of the force and setting policies for its operation. Because of this obligation to monitor and because police investigate allegations against their own members, expectations for scrutiny by the Police Services Board, as representatives of the community, are high."*[52]

In 2014, The Toronto Star began the Breaking Badge Investigation into the handling of internal discipline matters by police services. What had been believed to be a transparent and formal process was found to be very secretive. Star reporters Jesse McLean and Jayme Poisson found that from 2010 to 2015, 640 Peel Regional Police officers, roughly 30% of the force, had been sanctioned under the secretive (informal) system, some multiple times.[53] The OPP, a force three times the size of Peel, informally disciplined almost the same number of officers over that time period. During the investigation, Toronto, Durham and York Region police refused to even say how many of their officers have been disciplined for internal matters under the informal process. The OPP, Peel and Halton released the numbers.[54] The disciplinary decisions received detailed the officer's alleged misconduct and, if guilty, the penalty. As a whole, the decisions provide a look never seen before at a system insiders and critics say isn't working. The Star analyzed thousands of pages of decisions, finding patterns of misconduct across police services as well as disparities in how certain forces punish officers for the same type of offence. [55]

One Peel officer, Shehab Balh, was informally disciplined seven times in four years and even charged criminally, (those charges were withdrawn). Balh told the Star he felt the force was using "progressive discipline" to push him out of the service. Balh resigned from Peel police:

> *"Manipulated discipline and internal hearings for the disliked officers and uncontested promotions and advancements for the well-liked officers has nothing to do with good or bad policing. That is why I left,"* Balh said.

What McLean and Poisson learned, through their investigation, was that although informal discipline was reserved for benign employer-employee matters, it was being applied to much more serious offences. According to Toronto police, the informal system allows the force to efficiently deal with misconduct that is serious, but not necessarily so serious that it warrants public airing in a formal hearing. The price of secrecy is not cheap. According to Inspector Peter Callaghan, a prosecutor for Toronto police's disciplinary hearing, "The officer is willing to agree to a much higher penalty than they get in the tribunal to settle it informally."

---

[52] *Ibid.* note 17.
[53] "Serious police discipline cases often handled in secret: Star investigation," Jesse McLean and Jayme Poisson, The Star, January 11, 2016.
[54] *Supra* note 53.
[55] "Hundreds of officers in the Greater Toronto Area disciplined for 'serious' misconduct in past five years," Jesse McLean and Jayme Poisson, The Star, September 19, 2015.

The informal process also allows the force to discipline officers when they may not feel they have a reasonable chance of getting a guilty verdict at a disciplinary hearing, police told the Star. [56] The Province of Ontario Ministry of Attorney General Crown Policy Manual states that when considering whether or not to continue the prosecution of a charge the first step must be to determine if there is a reasonable prospect of conviction. Randy Henning, President of the Durham Regional Police Association told the Star that some officers are faced with swallowing an "exorbitant" penalty for not-so serious misconduct without even seeing any of the evidence against them.[57]

There have been high-profile cases, such as that of Dameian Muirhead, York Regional Police, that were tried at a hearing, during which the Chief was quoted in media articles stating that the preference would have been to resolve the issue by way of informal discipline but Muirhead refused. Exercising one's right to a hearing to examine evidence should not mean the stakes change, however, the publicity of the actions taken by the service against the officer seems to worsen the jeopardy for the officer involved.

Open and Transparent?

In March, 2013, Durham Regional Police Chief Mike Ewles seemed more concerned over a leak of information to the Toronto Star than the conduct of an off-duty officer after leaving a pub and driving his vehicle into a ditch.

Police said the off-duty officer called an on-duty officer to pick him up at a location near the accident. Two of The Star's sources familiar with the incident said the on-duty officer was working on a local RIDE check. That officer drove him to downtown Oshawa. Ewles referred to the off-duty conduct as an internal discipline matter, and the sharing of the information with the media was a "clear breach" of the service's directives that "can't be tolerated."

Toronto lawyer Clayton Ruby, a strong advocate of freedom of the press, said the police misconduct in the case underlines a "complete double standard" in how the force treats its staff in a vehicle accident compared to the handling of other drivers and the public should know about it. Another Toronto lawyer, James Morton, said he thinks the public should be entitled to know about details of breaches by officers, it would instill more public confidence in a force's fairness and impartiality. Morton noted the case suggests the need of more protection for police whistleblowers.[58]

In July, 2015, an off-duty Durham officer was charged with impaired driving after rear-ending a vehicle causing minor injuries to two of the occupants. The officer's name was released to the media and he was assigned to administrative duties pending the case's outcome.[59]

---

[56] *Ibid.* note 53.
[57] *Ibid.* note 53.
[58] "Durham police seek source of information leaks," Tony Van Alphen, The Star, March 18, 2013.
[59] "Durham cop charged with impaired driving in off-duty crash," Jeremy Appel, Toronto Sun, July 21, 2015.

In November, 2015, a member of the Durham fraud unit was charged with impaired driving and failing to report an accident after his vehicle struck a tree and the canine unit and police helicopter were called in to attempt to locate him. The information and officer's name was released to the media.[60]

In December 2015, an off-duty Durham officer was stopped by another Durham officer conducting RIDE checks and was charged with impaired driving and exceeding blood alcohol level of 0.08. This information, and the officer's name, was released to the media. The officer was assigned to administrative duties pending the resolution of the charges against him.[61]

The December 2015 incident was the fourth-time Durham officers were charged with impaired driving in months. In a Global News article, Durham Regional Police Service spokesman Dave Selby said "anytime we charge any of our employees with a criminal charge we make sure we issue a media release, so that we're ***open and transparent***."[62]

So, who decides what police business is in the public interest and what is not?

The Ontario Civilian Commission on Police Services stated in 1992:

> *"It is a matter of public concern how police forces handle criminal and serious disciplinary matters that involve their own members, who are sworn to serve and protect the public."*[63]

Despite the Commission's statement in 1992, for the next 25 years the extent of information released by a police service to the public has remained the discretion of the chief of police.

In 2015, the Chief of the Waterloo Regional Police Service released a personal email sent by Constable Craig Markham to the organization's director of legal affairs. The Chief told reporters the letter was an example of why police chiefs should be given the option of suspending officers without pay. The content of the letter clearly brings disrepute to the policing profession, however, was addressed and intended only for the eyes of the service's director of legal affairs. Markham responded by telling CTV News the email was "private" and "never intended to be made public." Markham stated he sent the email out of frustration since he had been denied the opportunity to return to administrative duties "numerous" times during his three-year suspension.[64] The decision to publicize the letter had nothing to do with public safety and was done following Markham's dismissal from

---

[60] "Off-duty Durham cop Scott Robertson charged with impaired driving after vehicle crashed into tree," Port Perry Star, November 24, 2015.
[61] "Off-duty Durham Regional Police officer charged with impaired driving," The Canadian Press, December 4, 2015.
[62] "Off-duty Durham cop charged with impaired driving, 4th since July," Adam Miller, Global News, December 4, 2015.
[63] *Ibid.* note 17.
[64] "Email to police lawyer never meant to be made public, Markham says," CTV Kitchener, July 9, 2015.

the service and unsuccessful appeal. The Chief used an internal service document to garner support for an Ontario Association of Chiefs of Police position with the Ontario government. If a police officer had used an internal document to garner political support they would have been disciplined. This internal letter was used once again in April, 2017, this time by police services board Chair Tom Galloway in support of the political position of the Ontario Association Chiefs of Police, which violates his oath to remain impartial.

Chapter 3 examines what happens when a police officer releases or reports information and is not afforded the same protection as a chief of police or member of a police services board.

ETHICS

Provincial public servants have designated ethics executives, under the Public Servants of Ontario Act, who are responsible for determining and addressing conflicts of interest. The Conflict of Interest Rules for Public Servants (Ministers' Offices) And Former Public Servants (Ministers' Offices)[65] goes a long way in defining prohibited conduct. Although, even with concise legislation, Chapter 3 discusses how an alleged wrongdoer can remain anonymous and free from discipline for taking reprisal action against a complainant. There is little to deter the conduct listed in the Regulation and protect whistleblowers.

There is no designated ethics executive for municipal police officers in Ontario.

There is also no requirement for police services to maintain policy on ethics, as explained in Chapter 1.

The training that is provided to police officers in Ontario on ethics is extremely basic and unrealistic, and in some cases provided to officers by a member of the service with a questionable or even scandalous past – *'do as I say, not as I do.'* In the simplest of terms, officers are trained to have a very rigid set of ethical rules and to never deviate since the most minor deviation could lead to corruption. For example, officers are to never accept a free coffee. In an officer's first week on the job, they learn that the training provided around ethics is not what is practiced. The scale of ethical conduct that they once saw as black and white becomes as grey as their comfort level allows. For the most part, the officer's commitment to any kind of code of ethics is left up to their own personal level of integrity.

Once out of training and on the job, officers quickly learn to follow the lead of more senior officers and fit-in. It is at this early stage in an officer's career that the policing culture is embedded. They don't want to be labeled as a "rat" so they turn a blind eye to little dealings such as accepting gifts or violating traffic laws by their peers. A trainee will not last long with a police service if they report their coach officer for accepting a free coffee in their first week on the job.

---

[65] *Public Service of Ontario Act, 2006, O. Reg. 382/07.*

In 1994, during the Mollen Commission[66] involving NYPD corruption, Michael Dowd articulated the ethical dilemma best when he was questioned about what it meant to be a "good" police officer:

> *"Being good is a cop that would never give up another cop. A cop that if he witnesses something go down, he's 100% behind anything a cop does, no matter what it is."*

Michael Dowd may be considered "one of the dirtiest cops in New York City history," but his testimony rings true when you learn the fate of the whistleblowers in Chapter 3. If Dowd did not perfectly articulate the police culture then why is it that police services are prosecuting those who speak up about misconduct of other officers? In 2014, the story of corruption at the 75th Precinct was documented in "The Seven Five."

In 1992, the Defense Personnel Security Research Center (PERSEREC) began the Police Integrity Study. The objective was to determine if characteristics indicative of public trust betrayal could be assessed through personality tests already being used by law enforcement agencies. The study proved that there was a relationship between the subjects' Psychopathic Deviance scales and violations later on in their careers. Some police services in the United States of America still use pre-screening personality tests during candidate selection. The study also found there was a need for professional and departmental integrity standards to be clearly established and consistently administered at all levels of an organization.[67]

SUSPENSIONS

The sole discretion for suspending a police officer rests with the chief of police. The Ministry does not stipulate when an officer should or shall be suspended, leaving a broad spectrum of decisions to suspend throughout the province. There are no established parameters of when the suspension of a police officer is required in the interest of public safety. Pending changes to the PSA could see chiefs of police having the ability to suspend police officers without pay, perhaps as arbitrarily as those decisions are being made today.

There are provincial statutes that allow chiefs of police to suspend officers without pay, although those statutes are written in such a way that the police officer has several opportunities to present evidence in their defence and challenge allegations prior to the decision to suspend without pay. The British Columbia Police Act, allows a chief of police to suspend a member without pay once adequate investigation has been conducted and challenged by the subject member and it is clear that there is the prospect of conviction of serious misconduct or criminal activity.[68]

---

[66] Formerly Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department, chaired by Milton Mollen, 1994.
[67] "Police Integrity: Use of Personality Measures to Identify Corruption-Prone Officers," PERSEREC, PERS-TR-97-003, September, 1997.
[68] *Police Act, RSBC 1996, Chapter 367.*

Suspending an officer takes a body off the road, no matter how you look at it. Obviously, there are times when an officer may have to be reassigned during the course of an investigation, but the decision to suspend officers is discretionary.

In recent years, as the role of police chiefs is increasingly politicized, the Ontario Association Chiefs of Police (OACP) have been on a campaign to garner support for unpaid suspensions.

On June 25, 2014, the OACP approved Resolution 2014-02 calling upon the Government of Ontario to allow unpaid suspensions of police officers.[69]

To give this resolution some perspective and to help the reader understand the breadth of discretion afforded to chiefs of police, in 2013, following the shooting death of Sammy Yatim in Toronto, Constable James Forcillo was placed on administrative duty. It was not until a jury found him guilty of attempted murder in 2016 that Forcillo was suspended with pay.[70]

In October, 2014, Ontario Provincial Police Constable Jamie Porto was traveling 133km/h in a 50km/h zone in an unmarked police cruiser when he crashed into a civilian vehicle causing the young male driver bodily harm. Porto was charged and convicted of dangerous driving causing bodily harm. He has since appealed that conviction. During the prosecution, Porto was not suspended.

In May, 2014, London Police Service Constable Mike Sladek was arrested for off-duty conduct, allegedly uttering a threat to cause death. Sladek was immediately suspended with pay. Despite Sladek's acquittal in criminal court on December 16, 2015, he remained on paid suspension (almost three years later) while he was investigated for PSA offences, see page 50.

The opposition by police associations to the position taken by the OACP has not been effective in informing the Government and the public the impact such a decision would have on the police officer community. This report aims to illustrate the lack of independent oversight, policy and procedure involved in internal investigations and discipline. As Kormos said best, the income, career and reputation of every police officer is at risk.

In 2016, the CBC reported that Toronto Police had 14 members on suspension, the Ontario Provincial Police (OPP) had 29, Ottawa had 6 and Windsor had 1.[71] Not coincidentally, the chiefs of Toronto and OPP (Commissioner) are both directors for the OACP, and the chief of Ottawa is the President of the OACP.

---

[69] http://www.oacp.on.ca/Userfiles/Files/NewAndEvents/Resolutions/Resolution%202014-02_Final.pdf
[70] "Forcillo suspended with pay after guilty verdict," Shawn Jeffords, Toronto Sun, January 25, 2016.
[71] "At least 50 police officers currently suspended with pay in Ontario," Mike Crawley, CBC News, January 28, 2016.

Instead of examining the reasons why police chiefs choose to suspend police officers or the effect of suspensions on public safety, the media coverage has centered on the cost to taxpayers. The very individuals who control the number of officers currently suspended with pay are ensuring that the cost to taxpayers is so great there is no other solution than to allow unpaid suspensions.

DISCRETION

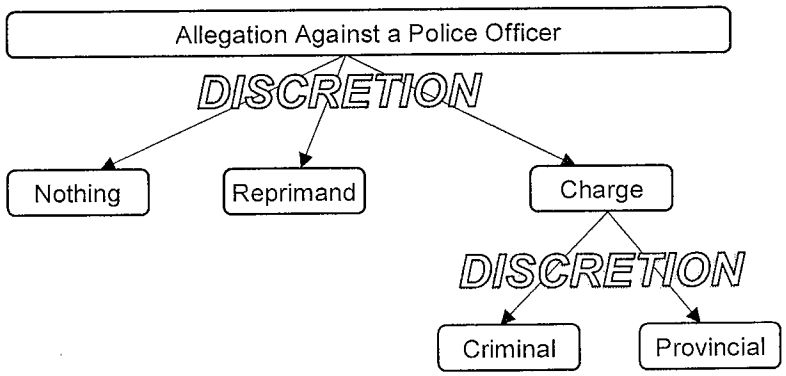


Figure 2: The above diagram shows the decision process taken by a Chief (or their designate) in deciding the outcome of an internal investigation where there is a finding of wrongdoing. The same process takes place during any interaction the police have with the public (in most cases). It is a basic illustration of the discretion afforded to police.

Discretion is the freedom to decide; in general terms.

From *Baker v. Canada (Minister of Citizenship and Immigration)*[72]:

> *"The concept of discretion refers to decisions where the law does not dictate a specific outcome, or where the decision-maker is given a choice of options within a statutorily imposed set of boundaries…*
>
> *…Though discretionary decisions will generally be given considerable respect, that discretion must be exercised in accordance with the boundaries imposed in the statute, the principles of the rule of law, the principles of administrative law, the fundamental values of Canadian society, and the principles of the Charter."*

If a police officer is charged with a PSA offence (provincial) the matter is overseen by a Police Services Act Tribunal. The statutory power of decision is conferred upon the Police Services Act tribunal by the Law Society Act.[73] As such, the tribunal, along with a federal or provincial court, are adjudicative bodies and have an obligation to maintain public confidence in the administration of justice.

The Crown Policy Manual sets out how criminal charges are to be handled by the courts and is accessible to the public on the Attorney General's website, thus enhancing public

[72] *[1999] 2 SCR 817.*
[73] Law Society Act, R.S.O. 1990, c. L.8, Part 0.I, Section 1(1)(b).

confidence in the operation of the criminal justice system. Crown counsel is expected to exercise their discretion in accordance with overall priorities in the Manual. Notwithstanding the importance of discretion, it is also necessary in the public interest to have uniform prosecution policies applicable across the province.[74]

Most times, when there is conflict between the public and the police it is due to a disagreement over the use of discretion; the criticism of decision-making.

In the case of the SIU, the statutorily imposed boundaries are fairly strict; either it is decided that an officer has committed a criminal offence, or not. Although, having said that, it is still the Director of the SIU who decides if he or she believes the threshold of a criminal offence has been reached. The public are always made aware when the SIU have invoked their mandate and are investigating an incident. If the public learn that the SIU has decided not to charge an officer in a situation where the public perception is that charges are warranted, the public can influence political pressure. In 2008, public pressure resulted in the Ombudsman report; "Oversight Unseen."

The public push for more transparency and accountability in the police oversight bodies is what lead to the Independent Police Oversight Review in 2016, led by Justice Michael H. Tulloch. The public perception is that discretion is used far too often in favour of police officers and objectivity and impartiality is lost when police investigate police. Despite all of the reviews that have occurred over the years and the government's attempts to improve transparency and accountability, police services themselves have remained invincible and fairly immune to criticism; especially from within.

Under the current legislative structure, the public can find out when a police officer has been:

- charged by the SIU;
- tried at a PSA hearing;
- charged by the OIPRD;
- charged criminally or provincially for on-duty or off-duty conduct, where the officer's chief of police authorizes the release of information.

If a member of the public makes a complaint either directly to the OIPRD, or the complaint is referred to the OIPRD, the statistics are recorded in the OIPRD Annual Report. Although the OIPRD does retain and conduct some investigations of misconduct, the majority are referred back to the police service to which the complaint relates for investigation. A brief analysis of the data for the period from April 1, 2014, to March 31, 2015, shows that public complaints result in findings of misconduct much more frequently at some services than others. Below are the ten largest police services in Ontario, and the percentage of substantiated misconduct complaints from the public per total number of sworn members.[75]

---

[74] The Royal Commission on the Donald Marshall Junior Prosecution; the Canadian Law Reform Commission Working Paper entitled Controlling Criminal Prosecutions; the Attorney General and the Crown Prosecutor; The 1998 Report on Proceedings involving Guy Paul Morin

[75] Office of the Independent Police Review Director Annual Report 2014-2015.

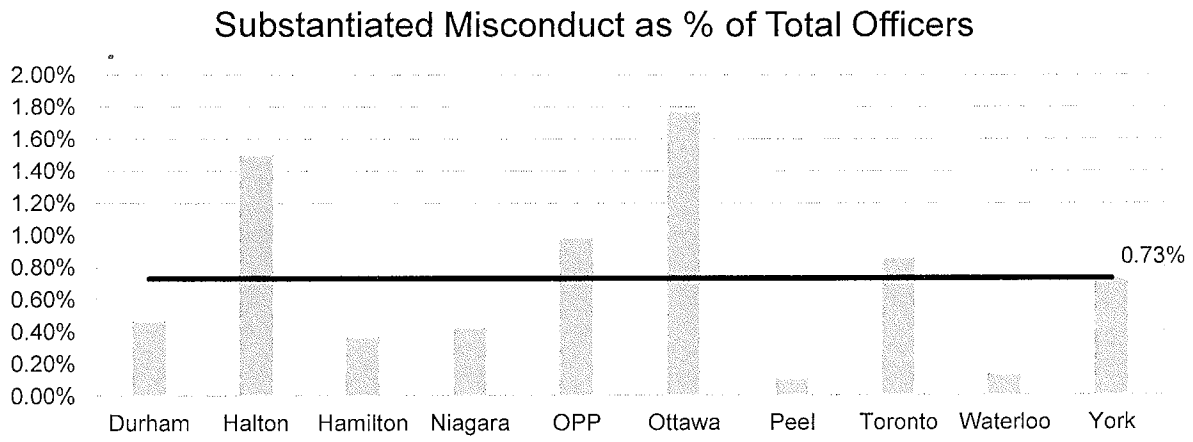


Figure 3: These are the substantiated public complaints represented as a percentage of total officers at the service during the reporting period, April 1, 2014, to March 31, 2015, OIPRD Annual Report.[76] Average = 0.73%.

According to the figures for this time period, and based on complaints from the public, officers were more than ten times more likely to commit misconduct at Halton or Ottawa than Peel or Waterloo. Obviously, the Province does not have misfit police services, so why the inconsistency?

No studies have been done to attempt to examine a police service's inclination to charge, or even investigate its own member. In some cases, members are charged, in others they are not. The public's perception is that because of the "brotherhood" that exists, all police officers have a certain level of protection; that when they make a complaint it is not investigated impartially. But, it is clear from the chart above that not all officers are protected and not all behaviour is protected, and some Chiefs handle those complaints differently.

What has never been examined or reported to the public is how discretion is applied internally; this would greatly improve the public confidence in police. Figure 3 shows only complaints made by members of the public to the OIPRD. When we look at complaints initiated internally by the Chief of Police, it is a different story.

For the time period above, April 1, 2014, to March 31, 2015, the OIPRD determined that out of the 37 public complaints of misconduct against a Waterloo Regional Police Service (WRPS) officer, only 1 complaint was substantiated. Although, the WRPS reported that between January 1, 2014, and December 31, 2014, (slightly different reporting periods), there were 21 substantiated complaints of misconduct, (for that time period there were 21 Chief's Complaints). This means, 36.2% of all complaints of misconduct were initiated by the Chief (21 out of 58), and 95% of the substantiated complaints were initiated by the Chief (20 out of 21).[77] Historically, the Chief of the WRPS initiates a large majority of the total complaints of misconduct (34% in 2013 and 61% in 2012).

---

[76] *Supra* note 75.
[77] Waterloo Regional Police Services Board, Professional Standards, Annual Report: 2014 Complaints Statistics.

Other police services such as Halton reported that in 2014 there were 17 Chief's Complaints versus 69 total complaints from the public, (19.8% of total complaints were initiated by the Chief).[78]

Ottawa reported that in 2014, 183 out of 392 complaints were Chief's Complaints (46.7%). In 2015, an even larger percentage were Chief's Complaints (50.6%), and these figures include policy or service complaints. Ottawa does not report how many of these complaints were substantiated versus unsubstantiated in their annual report.[79]

Peel Regional Police does not report the breakdown of misconduct investigations that resulted from Chief's Complaints on their website, although as listed in the section starting on page 33, Peel have internally disciplined roughly 30% of their workforce over a 5-year period.[80]

It is difficult to determine a reasonable percentage of Chief's Complaints versus public complaints, although one has to question why officers at one service would be more likely to be disciplined than officers at another service.

It is plain to see that there is inconsistency between police services when it comes to internal discipline. Using the above data, in 2014, the WRPS had only 1 substantiated complaint of misconduct from a member of the public, yet 20 of the 21 Chief's Complaints were found to be substantiated. This explains why the public may be satisfied with the level of service provided by the police service at a time when officer morale is at an all-time low. Not to say some of these complaints were not warranted, however, as you will see in Chapter 3, many officers find themselves the subject of a complaint for reasons other than their compliance with a code of conduct.

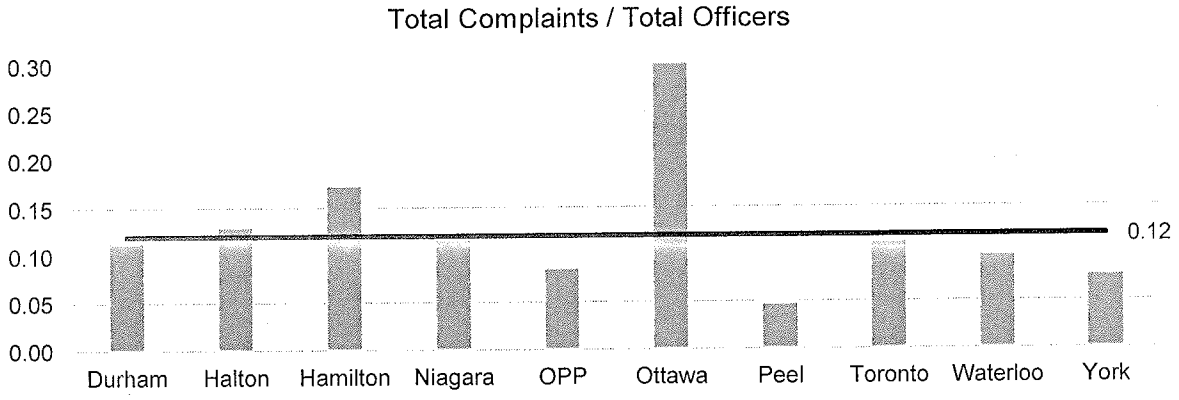


Figure 4: These are the total complaints represented as a percentage of total officers at the service during the reporting period, January 1, 2014, to December 31, 2014. Average = 0.12.

[78] Halton Regional Police Service, Annual Report 2014.
[79] Ottawa Police 2015 Annual Report.
[80] *Ibid.* note 53.

If you look at total complaints received by a police service, (and these numbers include whatever is reported as "total complaints" by the service in their annual report), the average is about 1 complaint for every 8 officers. Ottawa is the anomaly with just about 1 complaint for every 6 officers. Again, these may or may not include Chief's Complaints and they also include all of the unsubstantiated complaints.

Peel Regional Police is low in both Figure 3 and Figure 4, while Ottawa Police is high in both Figure 3 and Figure 4. No police oversight body has ever delved into the problem of inconsistency service to service. As noted in the investigation by The Star, Peel Regional Police was one of the services with the highest percentage of officers disciplined "informally" as opposed to formally, (almost 1 complaint for every 3 officers).[81] So, the figures reported to the public may not be a true reflection of what is really happening within.

The services with a high number of complaints (Figure 4) and a high proportion of substantiated public complaints (Figure 3) would tell us that not only does the public complain about those officers more, but that a larger majority of those complaints are found to be substantiated, (Ottawa). Similarly, some cities may complain about their police service more often, but they are less often substantiated complaints, (Hamilton). This may indicate a problem with officer behaviour, or it may indicate a difference in how internal investigations are conducted by each service.

So, why should the public be concerned about the discretion exercised by police services when it comes to misconduct?

For starters, a PSA hearing (meaning a police officer is charged with misconduct offences under the PSA and is afforded their right to a fair and open hearing), could cost taxpayers over $150,000.00.[82] Because of this, officers are often advised that penalties will increase if a matter is not resolved informally. There have been many officers who have chosen to fight their cases, been found guilty at a PSA tribunal and are later acquitted by the OCPC on appeal - although this process can take years and cost officers in excess of $100,000.00 in legal fees, not to mention the reciprocal cost to taxpayers. Even though officers are afforded the opportunity to be heard in a "fair and impartial tribunal," many choose to save themselves the legal expense and accept whatever is put before them informally, whether guilty or not, since seeing an allegation all the way to appeal can be financially crippling.

If police officers were only being charged and prosecuted for the most egregious offences, then the public would trust that taxpayer dollars were being spent wisely to ensure police officer conduct remained in check with expectations. However, at some police services officers are tried for such trivial acts as not completing their notes properly, failing to pay a parking ticket, sending a personal fax from work or even reporting misconduct of other officers. Is a PSA prosecution really the most efficient use of police resources in these

---

[81] *Ibid.* note 53.
[82] "Timmins police hearing cost $150,000," Len Gillis, The Sudbury Star, August 24, 2016.

cases? It was identified as far back as 1992 that internal affairs departments lacked accountability when it came to internal investigations of misconduct.[83]

What is most concerning being that some police services are using informal discipline to handle allegations of criminal behaviour by their members, which is not intended to be disclosed to the public. There simply is no consistency.

Police Chiefs (or their designate) have the authority to decide which officers to prosecute. Perhaps it's time that this discretion was analyzed and criticized to not only to save money but also to improve the morale and trust of police officers in the very system they are sworn to uphold.

In 2011, York Regional Police Constable Dameian Muirhead was dispatched to a rural property to investigate allegations of domestic abuse. Party-goers refused to identify themselves and Muirhead moved a leather jacket on the seat of a motorcycle so that he could see the licence plate. The jacket fell to the ground and Muirhead refused to pick it up. During the interaction, Muirhead was the subject of racial comments made by attendees at the party. The owner of the jacket filed a formal complaint over Muirhead's refusal to pick up the jacket with the OIPRD.[84] The owner of the jacket was offended when Muirhead ignored his request to "Pick up my (expletive) jacket!" The OIPRD initiated investigation resulted in two PSA charges against Muirhead although the York prosecutor charged Muirhead with three PSA offences. Gerry McNeilly, head of the OIPRD, sent a letter to York Chief Eric Jolliffe regarding the third charge stating that those concerns ought to have been the subject of a Chief's complaint and a separate investigation.[85]

In 2012, while Dameian Muirhead was facing the disciplinary issues, his wife Chantal Muirhead began to feel harassed by her supervisor.

In May, 2013, after Dameian Muirhead attempted to subpoena the Chief to testify at his PSA proceeding, the York Regional Police Association withdrew their financial support of his PSA proceeding because the case was considered "systemic." One of Muirhead's lawyers stated due to the fact "that Dameian seeks to interrogate his persecutors has ruffled the association's feathers."[86] Later that month, the matter was put to a vote before the York Association who voted in favour of restoring legal funding of the PSA proceeding.

In January, 2014, for reasons not explained, the Chief said York's command team has decided it was "no longer in the best interest" of the service, the community or the complainant to continue with proceedings against Dameian Muirhead. The Chief said

---

[83] *Ibid.* note 17.
[84] "York police chief's testimony sought at racially charged police hearing," Peter Edwards, The Star, May 21, 2013.
[85] "OIPRD raises concern about racism-related charges facing York police officer," Staff, Torstar News Service, May 1, 2013.
[86] "York police association axes legal funding for officer in racially charged discipline hearing," Staff, Torstar News Service, May 22, 2013.

that he would have preferred to have dealt with the citizen's complaint informally with a written reprimand, but Muirhead refused.[87]

In July 2014, the workplace harassment investigator submitted her report and findings to the York police in the Chantal Muirhead matter. A month later, the service forwarded the report to Chantal Muirhead with a cover letter which stated that the service's harassment review committee agreed with the findings – that harassment had indeed taken place. The investigator found that the supervisor had engaged in "name-calling" using profanity, made "derogatory" comments about Chantal's work performance, spread "malicious" rumours about her personal life and did so with another supervisor in a "non-private" setting. The supervisor also made informal inquiries to Pearson Airport and Canadian Border Services Agency (CBSA) about Chantal's whereabouts. The service committee's recommendations were for Chantal and her supervisor to engage in mediation.[88]

On March 6, 2017, the Toronto Sun reported that a "Morale Survey" of the Toronto Police Association show 68% of respondents feel "overall morale is negative. Up 18% from the December 2016 survey."[89] According to Mike McCormack, (Association President), 20 officers left in early 2017 to pursue other employment, and in all of 2016, 29 officers left for other jobs. Other police services in the province have completed internal surveys, although if the results are unfavourable, the results are not released to the public. Research shows that most police officers in the province are experiencing the same diminishing enthusiasm for the job; which is very dangerous for police services with an aging complement and struggling recruiting efforts.

Another prevalent abuse of discretion by police Chiefs occurs when a whistleblower is prosecuted. An officer's Oath of Secrecy is to protect information that is trusted to the police in the administration of justice. However, when a subordinate officer reveals information that is unfavourable to the administration, the Oath of Secrecy is used as a means to prosecute the whistleblower for not remaining loyal to their employer and their Oath. It is extremely rare when allegations made by a whistleblower are properly investigated. What occurs most often, (and is illustrated in the case studies starting on page 67), is that the member brave enough to allege misconduct by officers of equal or higher rank is punished and jurisprudence is massaged to deny their fundamental rights by all involved agencies whose reputation relies on the continued secrecy of the allegations.

Without a truly independent and politically impartial body to which police officers can complain, there are no checks and balances for the exercise of authority and discretion entrusted to police leaders.

---

[87] "Charges against York police officer Dameian Muirhead dropped," Robyn Doolittle, The Star, January 13, 2014.
[88] "York Regional Police officer harassed by her superior," Jim Rankin, The Star, October 12, 2014.
[89] "Low morale prompts exodus of officers: Toronto Police Association," Joe Warmington, Toronto Sun, March 6, 2017.

Double-Standard

In June, 2016, Constable Lindsy Richardson, Ottawa Police Service, filed a workplace harassment complaint against Acting Superintendent Paul Johnston, in charge of the professional standards section which investigates officer misconduct. The bulk of the complaint alleged unethical and bullying workplace behaviour by Johnston, as a supervisor, toward Richardson. Within the workplace harassment complaint, Richardson also alleged two particular incidents between November 2015 and February 2016 that would be considered misconduct under the PSA. Since Richardson cannot bring a complaint of misconduct to the OIPRD, the Chief of the Ottawa Police Service would have to launch a Chief's complaint to have the misconduct properly investigated.

In August, 2016, Chief Charles Bordeleau made the determination that there were no grounds for a Chief's complaint into the conduct of Johnston. Johnston and Bordeleau were both students in the same recruit class when hired as police officers. Numerous officers of the Ottawa Police Service felt that, on the optics of their decades-long friendship alone, an outside organization should be assigned to investigate the allegations of misconduct.

The Ottawa Police Association brought attention to a clear "double standard" when it comes to the actions of police brass compared to that of their lower-ranking counterparts.

Rank-and-file officers of the Ottawa Police Service circulated a petition to express a vote of non-confidence in the leadership of Chief Charles Bordeleau.[90]

In September, 2016, Bordeleau asked the Ontario Provincial Police to probe misconduct allegations against a senior officer. Bordeleau had heard concerns from officers and their union that the decision to not subject Johnston to an internal affairs probe should be reviewed. Only after all of this had occurred, Bordeleau is quoted as saying:

> *"Given the attention related to this file, both internally and externally, I think it is important that we ensure as much transparency as possible in this process."*[91]

Even when a police service seeks the investigative abilities of a neighbouring police service, to attempt to satisfy impartiality, it is not always achieved. Every police officer knows that throughout one's career they'll spend weeks camped out at the police college, getting to know other officers from other services. Friendships and connections are made. There is no way to ensure complete impartiality service to service even when a fair, full and impartial review is required. As you will see in Chapter 3, when police services need to silence whistleblowers and other police services become involved, those services are selected by the Chief.

---

[90] "Police chief declines to investigate misconduct allegations against officer in charge of internal affairs," Shaamini Yogaretnam, Ottawa Citizen, August 16, 2016.
[91] "Chief reverses decision, senior officer will be subject to misconduct probe," Shaamini Yogaretnam, Ottawa Sun, September 9, 2016.

UNION REPRESENTATION

The PSA legislates labour relations for policing in Ontario. Police services with at least 50% of their members belonging to an association can bargain for remuneration, pensions, sick leave credit gratuities, grievance procedures and certain working conditions.[92]

Each association has their own constitution and can decide how they treat all other matters. Without surveying all Ontario police associations, the specific differences in constitutions cannot be explained, however, most associations agree that on-duty conduct that results in criminal or PSA charges against an officer will be defended by the association. Most associations make the distinction that if an officer is charged for off-duty conduct they will pay for their own defense. The irony is that police services are quick to charge officers with PSA offences for off-duty conduct even though the conduct of the officer must be connected to the occupational requirements for a police officer or the reputation of the police force.[93] In those situations, the officer does not have a blank cheque signed by the association to defend themselves; they are most often on their own.

Regardless of whether the charges have any basis, the officer's financial resources will most often determine their innocence or guilt. An officer may accept a guilty plea and penalty within the first few months of a PSA investigation for the sole purpose of saving thousands in legal fees. In the case of criminal charges, an early guilty plea could save the officer more than $100,000.00. It is naïve and parochial to assume that a police officer charged with a criminal offence has the right to a fair and public hearing by an independent and impartial tribunal. Without the support of their association, officers who are charged for off-duty conduct tend to make decisions based on their family's financial resources as opposed to the legitimacy of the charges.

When police whistleblowers have reported misconduct of other officers, associations have the ability to choose to not support the officer; which happens most often. As opposed to being critical of allegations or conduct, associations remain neutral and will not support the whistleblower.

Just as each association is different in their constitutions and priorities, they also have differences in strength of leadership and presence in the media. Some associations have maintained an oppositional stance, vocal with media, while others play a more passive role mediating relationships between the police service and their members. Some police associations in the province have stood behind police whistleblowers and supported requests of oversight bodies to investigate conduct. However, the courts have proven time and time again that the rigidity of current legislation does not allow for internal oversight, even if a whistleblower has the support of their association.

Police associations can file grievances with the police service on behalf of a member, or regarding a general issue affecting many members. However, police associations can

---

[92] *Police Services Act, R.S.O. 1990, c. P.15, Section 119(3).*
[93] *Police Services Act, R.S.O. 1990, c. P.15, Section 80(2).*

choose when to file a grievance with the police service on behalf of a member and a member cannot file a grievance without the support of their association. All decisions by the Ontario Police Arbitration Commission are posted to their website.[94] It does not take long to find decisions that exemplify the inefficiencies and superfluousness of the current labour relations structure. The only currently legislated manner in which a police officer can file a complaint is through a grievance, and only if the association supports the complaint.

As an example, in the matter of Thunder Bay Police Services Board and James Mauro[95], Mauro had filed two grievances against the Board with the support of his association. The nature of the grievances was Mauro being refused the opportunity for promotion. The association settled those two grievances, but obtained no remedy for Mauro. Mauro was not satisfied that no remedy was sought and he therefore filed his own grievance. Since legislation does not permit a member to file a grievance, the arbitrator appointed dismissed the grievance. Some mediator profiles on the site Mediator Dates[96] shows fees as high as $1,500.00 for a half day and $500 per hour thereafter. The expense of the arbitration process is shared among the parties.[97] If police services were able to resolve disputes prior to the need to involve a mediator, this would also save time and money.

MISFEASANCE

"...overarching unconstitutional action of the police..."
"...breach of procedural fairness, natural justice and fundamental justice."

Nothing in this report suggests that police officers should not be subjected to legitimate investigations into their conduct. What the following case studies show is that there are systemic issues that are costing the public and police officers millions of dollars and could be eliminated if matters could be brought before an independent adjudicator.

The Crown Attorney has a fiscal responsibility to the public to not proceed with a case where the prospect of conviction is low. However, time and time again, police officers are charged, acquitted and the legitimacy of the investigation is called into question by Justices. Despite some officers receiving financial indemnification by way of civil lawsuit, their reputation undoubtedly suffers irreparable harm and in most cases, their professional careers end. Taxpayers are left funding the bill on behalf of the police service and the public are left confused, not knowing who to trust.

Despite police leaders preaching transparency and accountability, police officers are often charged with PSA offences for legitimately questioning or criticizing leadership, or are harassed and bullied for alleging discrimination.

---

[94] Policearbitration.on.ca
[95] Ontario Police Arbitration Commission decision 09-012.
[96] www.mediatordates.com
[97] Police Services Act, R.S.O. 1990, c. P.15, Section 122(3.7).

The current police culture and the nonfeasance by the oversight bodies are the root causes for this collateral damage.

London

On June 16, 2012, members of the St. Thomas Police Service were called to an address in that City regarding a domestic dispute between London Police Service (LPS) Constable Chad Power and a female officer, who was also employed with the LPS. The following day, June 17, 2012, members of the St. Thomas Police Service were called a second time to the same address as a result of a further domestic problem between Power and the same female officer. Power was allegedly disrespectful, unprofessional, condescending and aggressive towards the St. Thomas police officers. Power was arrested and charged with forcible entry and mischief under $5,000 contrary to the Criminal Code of Canada. Those charges were withdrawn within a month.

In 2013, the LPS commenced a criminal investigation into the potential involvement of Power into a break and enter incident, and possession of stolen clothing. At the same time, the LPS initiated an internal Professional Standards Unit (PSU) investigation into the conduct of Power. The LPS decided that the two investigations would be conducted separately, yet that notion was abandoned from the outset as the investigators collaborated on each other's investigations almost immediately.

The PSU investigator monitored the criminal interview of Power and assisted the criminal investigator with preparing the information to obtain a search warrant on the residence of Power. At the conclusion of the search warrant, the criminal investigator reported his findings to the PSU investigator. During Power's compelled PSA interview with the PSU investigator, Power was ordered to produce emails to the criminal investigator. The PSA interview was later shared with the criminal investigator.

During the investigation, Power revealed that he had purchased the stolen clothing from someone on the online site "kijiji.com." Power declined to fully comply with some orders given over the course of the investigations, fearing he was being ordered unlawfully to incriminate himself in the aid of the criminal investigation.

On August 31, 2012, Power was convicted of neglect of duty and discreditable conduct and demoted to 2nd Class Constable for a period of 6 months.

On April 18, 2013, Power was found guilty of one count of discreditable conduct in relation to the June 17, 2012, incident in St. Thomas. On September 13, 2013, the Hearing Officer imposed a penalty of the forfeiture of 48 hours [6 days'] time off, and a written letter of apology to the Chief of Police for the St. Thomas Police Service.

On December 23, 2013, the OCPC ordered a stay of the August 31, 2012, PSA proceedings against Power citing that the error by the Hearing Officer amounted to a breach of procedural fairness, natural justice and fundamental justice.[98]

In July 16, 2014, Power appealed the penalty issued September 13, 2013, to the Commission and the penalty was reduced to 24 hours [3 days'] time off and the letter of apology.[99]

Constable Mike Sladek of the London Police Service was accused in 2014 of two criminal offences and investigated by his own service. Sladek was placed on paid suspension. On August 15, 2015, during his lengthy criminal trial that cost him over $140,000.00, a *voir dire* took place during which all of the evidence obtained during the execution of a search warrant of his residence was excluded due to the legality of the officers' conduct and breaches of Sladek's Charter Rights. Honourable Justice Glenn was quoted as saying:

> *"Police must not unilaterally augment their powers of search by deciding that an article named in a search warrant can be deconstructed into smaller parts.*
>
> *Further, fair and accurate reporting by the police following the execution of the warrant to the justice who issued the warrant forms a crucial part of the check and balance of the intervention of the state into the privacy interests of the individual. While search warrants issued by a justice under s. 487 give special authority to the state to search for and seize specific items located in specific places at specific times, their equally important function is to set limits on the extent of the State intrusion. Providing misleading reports to a justice undermines the justice's ability to assess compliance with the search warrant. Any one of these missteps has the potential of undermining the rights of the individual and in turn, eroding public confidence in the justice system and bringing the administration of justice into disrepute.*
>
> *However, these were exactly the missteps that occurred in this case. I do not condone the actions of the officers in this case and I wish to distance the court from any suggestion of approval.*
>
> *In spite of the considerations that would have favoured the inclusion of the evidence produced by the execution of the search warrants, given the concerns raised by the overarching unconstitutional action of the police, all evidence that was produced pursuant to the searches that took place on May 7, 2014 will be excluded."*[100]

---

[98] *Power v London Police Service, 2013 CanLII 101392 (ON CPC).*
[99] *Constable Chad Power and The London Police Service, 2014 CanLII 100624 (ON CPC)*
[100] *R. V. Sladek, 2015, ONJC 467.*

As the trial progressed and more and more inconsistencies and discrepancies were discovered, the Crown Prosecutor, (one designated for cases involving police officers), refused to drop the case against Sladek; even after Justice Glenn's ruling above.

Sladek was acquitted in 2015 yet remained on a paid suspension for another 2-years until he could be informally disciplined. Despite his complaints to the London Police Professional Standards Branch, no charges were ever laid against the officers who committed misconduct while executing the search warrant at his residence, provided misleading reports to a justice or provided false testimony.

Sladek did not receive any financial support from his Association.

It is unknown at this time how much it cost taxpayers to prosecute Sladek, (in addition to his salary for 3-years while on paid suspension, despite his acquittal).

Ottawa

In 2009, Constable Paul Heffler, Ottawa Police Service, returned to patrol after spending 8 years in the Intelligence/High Risk section. Heffler began using the service's new records management system to maintain his notes, (which he says was done by many officers and known to his supervisors). Heffler's notetaking was investigated by professional standards and Heffler was advised no charges would be laid.

In 2013, Heffler sent a service-wide email addressing the need for traffic safety vests in cruisers and a better patrol shift schedule to assist with the transition out of night shifts. A week later, Heffler was advised he was being charged for his improper notetaking, (despite the conclusion of the previous investigation). Heffler was convicted at a PSA hearing for insubordination and neglect of duty for his improper notetaking and was demoted for 3 months to 2nd class constable.

In March, 2016, Heffler sent a mass email to all Ottawa Police users challenging the Ottawa Police Service Chief's leadership. Heffler stated in his letter that the force suffers from an "inbred system of self-promotion." Heffler made claims that actions by senior leaders at the service are affecting patrol officer morale. In reference to an internal "phantom ticket" probe, Heffler stated:

> *"Your ghost warning investigation isn't a symptom of corrupt cops, it's a symptom of a corrupt system."*

In June, 2016, Heffler was advised he was once again under investigation for his notetaking and transferred to work the front desk at his division. Heffler successfully challenged the transfer with a workplace harassment complaint and was returned to patrol.

Heffler was late for a court appearance following a night shift and as a result was transferred off patrol once again. With the help of the OPS workplace harassment

representative, Heffler was once again reinstated to patrol. In eary 2017, Heffler was convicted of neglect of duty, for being late for court, and surrendered 8 hours pay.

Heffler said he was made a "scapegoat" because he criticized the administration by internal email. Heffler stated:

> *"Ironically, I have become a perfect example of this treatment. I was charged, not for losing cases or being corrupt, or any other worthy purpose. I was charged as a vindictive act."*[101]

Toronto

In June, 2016, Sergeant Jamie Clark, Detective Sergeant Steven Watts and Detective Sergeant Donald Belanger of the Toronto Police Service broke ground when they filed a lawsuit against the Crown. Their allegations included that the Crown knew there was "compelling evidence" that allegations against them were "complete lies and fabrication," yet took no action.[102] The three senior officers say they took action against the Crown to restore their reputations. They say they were wrongly condemned in court for police brutality. The lawyers for the officers were quoted as saying:

> If it weren't for negligence by the Crown, *"the resulting irreparable damage to the officers' livelihood and reputation never would have occurred."*[103]

The officers allege that when the claim was made by the accused in a criminal trial that he had been beaten by the officers the Crown withheld evidence that could have exonerated them and did not even have the officers testify, despite calling them as witnesses for the trial.

Superior Court Justice Julie Thorburn reduced the sentence of the accused because of the "police brutality" in the case and that the Crown Attorney, Sheila Cressman, made no effort to challenge their accounts. In 2013, the accused appealed his conviction and a new Crown Attorney was assigned to the appeal, Amy Alyea. The officers allege that they attempted to tell the new Crown that an "egregious mistake had occurred," but "she took no steps to investigate further."[104]

In December, 2013, the Court of Appeal threw out the conviction and harshly denounced the officers for using beatings and threats to get confessions out of suspects, and as Chief Bill Blair stated Ontario's top court only got one side of the story. Blair was quoted as saying:

---

[101] "Officer challenges police chief in internal mass email," Shaamini Yogaretnam, Ottawa Citizen, March 15, 2016.
[102] "Three senior Toronto officers sue Attorney General in rare case," Wendy Gillis, News reporter, Shanning Kari, Special to the Star, June 24, 2016.
[103] *Supra* note 102.
[104] *Ibid.* note 102.

> *"Quite frankly, I don't understand why that decision was made. The officers were anxious to testify but were not afforded the opportunity to do that by the Crown Attorney."*[105]

The SIU investigated the matter twice and did not find any wrongdoing by any of the officers.

Waterloo

In September, 2012, Constable Jeremy Snyder, a 13-year member of the WRPS, was arrested for sexual assault by the WRPS for an off-duty incident. Snyder was immediately placed on paid suspension. In January, 2014, after an eight-day criminal trial, Justice Kim Carpenter-Gunn emphatically acquitted Snyder, repeatedly questioning the credibility and motives of his accuser. The WRPS had charged Snyder with discreditable conduct under the PSA.[106] Following the decision at Superior Court, that charge was dropped. The entire ordeal cost Snyder $90,000.00 and led to his financial demise. Snyder had been on paid suspension for 2-years and did not receive any financial assistance from his association.

Snyder submitted an internal complaint and requested a Chief's complaint regarding the criminal investigation started in 2012. At that time, WRPS internal policy allowed for a complaint to be brought by a member of the service through the chain of command. Snyder did not receive a response to his request. Shortly after, the WRPS internal policy was changed to no longer allow members of the service to file complaints.

Snyder filed a lawsuit against the WRPS for $2M for negligent investigation.[107]

In January, 2016, Snyder was once again charged criminally by the WRPS for a domestic related, off-duty, incident, and once again placed on paid suspension.[108] Those charges were later withdrawn and Snyder entered into a peace bond. After a 10-month paid suspension, Snyder returned to work as a police officer. In January, 2017, Snyder pled guilty to discreditable conduct under the PSA and gave up 80-hours' pay.

Snyder's lawsuit is ongoing.

Snyder did not receive any financial support from his Association for the criminal matters brought against him by the WRPS.

---

[105] *Ibid.* note 102.
[106] "Defence lawyer blasts system after Waterloo Regional Police officer acquitted of sexual assault," Brian Caldwell, Waterloo Region Record, January 8, 2014.
[107] "Officer facing criminal charges is suing police," Waterloo Region Record, February 6, 2016.
[108] "New charges for WRPS officer previously acquitted of sexual assault," CTV Kitchener, published February 4, 2016.

It is unknown what the proceedings against Snyder have cost the Region of Waterloo, (in addition to the almost 3-year paid suspension he served and there was one less police officer on the road).

In January, 2015, Sergeant Bradley Finucan, a 26-year member of the WRPS, was arrested for domestic allegations by the WRPS, some dating back 2-years. One of the complainants was also a member of the WRPS, the other had recently resigned under questionable circumstances. Finucan was not interviewed prior to his arrest, and he was immediately suspended with pay. During his arrest, investigators obtained his personal cellphone from which the only real and objective evidence of the case was later retrieved. That cellphone contained evidence that contradicted allegations, and yet no charges were withdrawn. The WRPS maintained carriage of the investigation despite the obvious conflicts of interest.

Over the course of the next sixteen months, WRPS investigators went to great lengths to substantiate the criminal charges laid against Finucan. Despite Finucan's lawyer drawing the attention of the Crown Prosecutor, (the same Crown Attorney in the Sladek case), to significant evidence that contradicted the complainants' statements and called the allegations into question, the prosecution was determined to bring the case to trial.

In April, 2016, Finucan pled guilty to two charges, largely to prevent further financial ruin. As a result of all of the challenges Finucan has faced in the past four years, on his doctor's advice he took stress leave from his duty to sign-in at his division every work day. In early 2017, entering his third year of paid suspension, the WRPS forced him back to signing in so that they could compel him to be interviewed as part of their ongoing PSA investigation. Finucan filed a Human Rights complaint due to his treatment by the WRPS while suffering mental health issues, and the Tribunal allowed the WRPS to continue to prolong their PSA investigation and failed to intervene.

As of the date of this report, the WRPS have not prosecuted Finucan under the PSA (despite the 6-month limitation in the PSA), and he remains on paid suspension.

Finucan did not receive any financial support from his Association during his criminal matter.

It is unknown what the proceedings against Finucan have cost the Region of Waterloo, (in addition to his salary for the 31 months that he has been suspended, and there has been one less police officer on the road).

HARASSMENT/BULLYING

Some officers have been subjected to discipline or have had their constitutional rights violated for alleging harassment by other members of their service. For some, the reprisal has been sufficient to warrant their resignation from the profession.

Calgary

In 2013, Constable Jennifer Magnus had decided to stand up for other members as well as civilian staff who were trying to seek "equality and justice." Magnus and another officer went to former chief Rick Hanson with their concerns, which led to a human resources audit. Since that time, some of these members were told by their supervisors that nothing would be done if they filed a grievance while others were advised by the police union it would not take on blue-on-blue complaints.

In January, 2017, Magnus publicly resigned at a Calgary Police Commission meeting. Magnus, and other employees, say the culture of the service protects those who are involved in abusive behavior in the workplace.

Magnus' lawyer Rachel West stated:

> *"They cannot turn to the individual and say, 'Look, if you make a complaint, your complaint not only will not be heard, nothing will happen and this is a career-limiting move, do you really want to do this?' That can't be the culture."*[109]

Magnus told the Commission that speaking out about the service's workplace culture had led to her being branded a "chain jumper, challenging and not to be trusted."[110]

Ottawa

In 2013, a group of 10 officers working the Airport Unit for Ottawa Police Service started addressing issues of workplace bullying, under the Occupational Health and Safety Act, through their chain of command. In February, 2015, when nothing was done about their concerns internally, the officers attempted to file an official grievance, but could not garner the support of their union. In April, 2015, Constable Matt Clarke, Kelly Ryan and Sergeant Alex Bender were all transferred to different units. The reassigned officers complained to their union that they felt like they were being punished for speaking out about the bullying, but the association told them they did not have a legal basis to file the grievance.

In this case, the Ottawa Police Association said they negotiated for an investigation by a neutral investigator, but since the investigator would be chosen by management and the force would not disclose the findings, Clarke and Ryan refused to participate.

Ryan stated:

---

[109] "13 Calgary police officers to submit formal complaints about bullying at work," The Canadian Press, Winnipeg Free Press, February 21, 2017.
[110] "13 Calgary police employees file formal bullying, harassment complaints directly to police chief," Meghan Potkins, Postmedia News, February 21, 2017.

"I didn't sign up to be controlled and harassed and manipulated by management. Why would you do that to your own officer?"[111]

Waterloo

In 1989, Constable Rajiv Sharma was hired by the Waterloo Regional Police Service.

In 1995, Sharma was witness to an incident on the firing range involving the careless use of a firearm by another member of the tactical unit. As a result of this incident, Sharma and the other member were relieved from the unit. Shortly after, the other member was reinstated to the unit and Sharma was not. Sharma addressed the issue with his supervisor. From that point on, Sharma believed he was being treated differently because of his race and was targeted for discipline because he spoke up about the treatment he was receiving.

In 1997, Rajiv Sharma faced his first bout of PSA charges following a verbal argument he had with a former fiancée while on duty. Sharma was convicted of discreditable conduct and lost 20 hours' pay. Sharma was also charged with insubordination at that time, but was acquitted.

In 2004, Sharma was charged with neglect of duty, discreditable conduct, insubordination, corrupt practices and secondary activity. In concert with his second PSA hearing Sharma filed a complaint with the Human Rights Tribunal of Ontario alleging discrimination based on race. Sharma's complaint was dismissed by the HRTO in 2008.[112]

In 2006, Sharma requested a judicial review of his PSA proceeding and the alleged biases that he believed existed in the PSA hearing procedures. Sharma's request was dismissed. Following that, Sharma experienced a lengthy medical leave of absence. Upon Sharma's return to work in April, 2009, he alleges he was discriminated against when his pay was cut because he could not perform full duties.

In 2012, Sharma filed a new complaint with the HRTO.[113]

On September 5, 2012, a judicial authorization was granted by a Judge pursuant to Part VI of the Criminal Code to intercept private communications of Sharma for a period of four months, from September 5, 2012, to January 1, 2013.[114] Sharma was not notified of this authorization until approximately May, 2013. The notification Sharma received by mail did not indicate which police service was listening to his private conversations and for what purpose.

---

[111] "Ottawa police officers break ranks over 'tyrannical' staff sergeant," Judy Trinh, CBC News, January 30, 2017.
[112] Ontario Human Rights Commission file no. NRIX-68QRK5.
[113] HRTO File Number: 2012-10979-I.
[114] Department of Justice Canada File No. DOJ#F12-070/F12-089.

In May, 2013, the Human Rights Tribunal of Ontario dismissed some of Sharma's allegations against the Waterloo Regional Police Association and allowed some to proceed.[115]

In December, 2015, Sharma had applied to amend his HRTO application to include new allegations, including the violation of his privacy by way of interception of his personal communication by the WRPS. The HRTO dismissed the majority of Sharma's amendments to his ongoing application, including the allegation that the WRPS had requested the judicial authorization to intercept Sharma's personal communication. Mark Hart, Vice-Chair of the Tribunal, stated it was speculation that the WRPS had requested the authorization and Hart noted that Sharma had not requested a court order to obtain accurate information. The HRTO did not assist Sharma in obtaining a court order to determine whether the WRPS had used a Part VI authorization to intimidate or harass Sharma as a result of him exercising his rights under the Human Rights Code[116], although Supreme Court of Canada ruling *R. v. Hynes*[117], determined that an administrative tribunal (such as the HRTO) is a court of competent jurisdiction, and Hart was in a position to facilitate this investigation.

As time went on, Sharma became frustrated at how often the HRTO dismiss allegations of discrimination as opposed to investigate them. Sharma garnered public support to attempt to pressure the HRTO to finally proceed with his complaint of racial discrimination. In February, 2017, Sharma was notified by the HRTO that his application would proceed.

Sharma has not received any financial support from his Association and has spent over $100,000.00 defending his PSA matters and Human Rights Application.

It is unknown what the proceedings against Sharma have cost the Region of Waterloo.

---

[115] *Sharma v. The Regional Municipality of Waterloo Police Services Board, 2013 HRTO 722.*
[116] *R.S.O. 1990, c. H.19.*
[117] *2001 SCC 82.*

CHAPTER 3: WHISTLEBLOWERS

"Whistleblowing is generally consistent with the principles of open government and the public interest. In fact, they have served as a major catalyst in the drive towards openness and transparency."[118]

- André Marin, Former Ontario Ombudsman

Frank Serpico was the first well-known police whistleblower, thanks to the 1973 movie "Serpico" starring Al Pacino. Serpico's story became sensational since he was the first police officer to testify against another officer. In 1970, after only a 12-year career in policing, Serpico reported and exposed corruption in the New York Police Department.[119] Serpico became a marked man within the force. He received death threats for "ratting out" fellow cops. In 1971, he was shot in the face by a drug dealer during a police raid, a bullet lodged in his brain, leaving him deaf in his left ear. Serpico believed the department had set him up.

Serpico was assisted by Sergeant David Durk, who despite allegations made by the Mayor that Serpico was a "psycho who could not be trusted," was successful in having Serpico's allegations printed across the front pages of the *Times*. The Mayor was pressured into appointing an independent commission to investigate and what resulted was the Knapp Commission[120]; the Commission to Investigate Alleged Police Corruption chaired by Whitman Knapp.[121] The Commission concluded that corruption in the NYPD was endemic and institutionalized, reaching to its highest levels, even inside the police commissioner's office. The police commissioner, Howard Leary, was forced to resign. Following the ordeal, Serpico moved to Europe for the next 10-years as a recluse.

Richard M. "Richie" Roberts began working as Detective for the Essex County Prosecutor's Office in Essex County, New Jersey, in 1963. In 1976, Roberts was integral in the investigation, arrest, and prosecution of Frank Lucas, Harlem "drug kingpin." Roberts' investigation also uncovered police corruption connected with the drug trade.[122] In 2007, although criticized for its departure from the real story, the movie "American Gangster" represented the events.

In 1974, the exposure of the web of internal spies, secret surveillance, dirty tricks and cover-ups that led to the unprecedented resignation of President Richard M. Nixon, and to prison sentences for some of Nixon's highest-ranking aides, was the work of a whistleblower; "Deep Throat." In 1976, the blockbuster movie "All the President's Men" brought attention to the suspenseful late-night encounters between Bob Woodward and his source. Three decades later, in 2005, the identity of The Washington Post's secret

---

[118] "Whistleblower Protection vs. Government Confidentiality," André Marin, Ombudsman of Ontario, address to the International Conference of Ombudsmen, in Willemstad, Curaçao, June 14, 2011.
[119] http://www.biography.com/people/frank-serpico-9542108
[120] "David Durk: Another Lost Whistle-Blower," NYPD Confidential, November 19, 2012.
[121] https://en.wikipedia.org/wiki/Knapp_Commission
[122] https://en.wikipedia.org/wiki/Richie_Roberts

source was revealed by his family as Mark Felt, who was a pillar of the FBI. At the time, Felt knew that Nixon's administration was willing to use wiretaps and break-ins to hunt down leakers, so no amount of caution was too great in his mind. Felt's identity and reputation were protected by Woodward and Carl Bernstein, in what has become one of modern America's best-kept secrets.[123] Felt died in 2008, at the age of 95.

In 2009, after reporting that the 81st Precinct of the NYPD was using arrest quotas and fudging crime stats[124], fellow officers barged into NYPD officer Adrian Schoolcraft's home and hauled him off to a hospital where he was kept in a psychiatric ward for six days against his will.[125] He has been suspended without pay since that time. Schoolcraft's allegations were later substantiated and those involved were either disciplined or transferred.

In 2015, Schoolcraft settled his lawsuit with the NYPD for $600,000.00 and has an outstanding $50M suit against the city for his alleged unlawful detention at the hospital.

In 2013, after the largest leak of classified documents in U.S. history, Private Bradley Manning, (also known as Chelsea Manning), was sentenced to 35 years in prison. The verdict was based on several convictions, including violations of the Espionage Act. Civil liberties groups condemned the judge's decision, stating:

> *"When a soldier who shared information with the press and public is punished far more harshly than others who tortured prisoners and killed civilians, something is seriously wrong with our justice system. This is a sad day for Bradley Manning, but it's also a sad day for all Americans who depend on brave whistleblowers and a free press for a fully informed public debate."*[126]

Even though historical whistleblowers have drawn the public's attention to the lack of internal oversight and protection for those who report corruption, whistleblower legislation has done little to improve transparency and accountability in municipal policing.

WHISTLEBLOWER LEGISLATION

Federal

In 2004, Criminal Code of Canada section 425.1 made it a criminal offence for employers, anyone acting on behalf of an employer, or a person in a position of authority over an employee, to take disciplinary action, demote, terminate, otherwise adversely affect the employee's employment or threaten any of these things, in order to force the employee

---

[123] "FBI's No. 2 Was 'Deep Throat': Mark Felt Ends 30-Year Mystery of The Post's Watergate Source," David Von Drehle, The Washington Post, June 1, 2005.
[124] "NYPD whistleblower Adrian Schoolcraft settles suit for $600G," Rocco Parascandola, New York Daily News, September 29, 2015.
[125] *Ibid.* note 120.
[126] "Bradley Manning sentenced to 35 years in WikiLeaks case," Julie Tate, The Washington Post, August 21, 2013.

to refrain from providing information to law enforcement officials about the commission of an offence by his or her employer or by an officer, employee or director of the employer. This section also makes it an offence to threaten or retaliate against an employee who has already provided information. However, employees are only protected if they approach a person whose duties include law enforcement.[127] No consideration was given to a situation that may arise if the disclosure that must be made to law enforcement is regarding the actions of a member of a law enforcement agency.

The Public Servants Disclosure Protection Act (PSDPA), S.C. 2005, c. 46, came into force in Canada on April 15, 2007. This act applies to RCMP officers (and other Federal employees). An excerpt from the preamble is as follows:

> *"...it is in the public interest to maintain and enhance public confidence in the integrity of public servants; confidence in public institutions can be enhanced by establishing effective procedures for the disclosure of wrongdoings and for protecting public servants who disclose wrongdoings, and by establishing a code of conduct for the public sector; public servants owe a duty of loyalty to their employer and enjoy the right to freedom of expression as guaranteed by the Canadian Charter of Rights and Freedoms and that this Act strives to achieve an appropriate balance between those two important principles;"*

Under the PSDPA, it is the Office of the Public Sector Integrity Commissioner of Canada (the "Commissioner") that receives all incoming complaints of wrongdoing and decides which complaints to investigate. The Commissioner can refer allegations of reprisal to the Public Servants Disclosure Protection Tribunal (the "Tribunal") who can grant remedies in favour of complainants and order disciplinary action against persons who take reprisals.

The decisions of the Office of the Public Sector Integrity Commissioner of Canada (the "Commissioner") are posted to their website.[128]

Since 2011, there have been 13 cases that concluded in a finding of wrongdoing; some of them taking up to 5 years to resolve. In that same time period, the Commissioner referred 7 recipients of reprisals to the Tribunal for investigation. What is concerning to Canadian taxpayers is that most of the investigations before the Tribunal are settled prior to any disciplinary action taken against persons who take reprisals against whistleblowers. Therefore, the spirit of the legislation, to encourage transparency and deter reprisals against whistleblowers has been circumvented by agencies able to pay the price to avoid public prosecution. Not to say that whistleblowers who have legitimately been disciplined for simply acting ethically do not deserve financial restitution, but to treat a public process intended to deter reprisals in the same manner as civil litigation, the government essentially continues to insulate those responsible for the wrongdoing; making the legislation redundant.

---

[127] http://www.slaw.ca/2013/06/06/the-state-of-whistleblowing-in-canada/
[128] http://www.psic-ispc.gc.ca/

In *Wayne Roberts and Atomic Energy Canada Limited, Case #: T-2011-02*, Roberts initially made a report of wrongdoing through internal channels at Atomic Energy Canada Limited in 2007. In 2008, Roberts' employment was terminated following a performance review during which it was noted he had become a "source of conflict." In 2009, Roberts filed a reprisal complaint with the Commissioner. It wasn't until 2011 that the Commissioner decided to commence an investigation. Upon completion of the Commissioner's investigation, Roberts was referred to the Tribunal. In 2016, Roberts accepted a settlement and his application was withdrawn, (7 years after Roberts' initial complaint).

In *El-Helou v. Courts Administration Service, Cast #: T-2011-01*, El-Helou was referred by the Commissioner to the Tribunal for remedy for reprisal action taken against him, but only for those allegations not previously dismissed by the Commissioner. Despite the Tribunal's mission including to ensure the parties are treated fairly and impartially, legislation does not give jurisdiction to the Tribunal to assist recipients of reprisal where the decision to dismiss has already been rendered by the Commissioner.[129]

In 2016, Canada's current legal framework for whistleblowing was criticized by Transparency International Canada in its submission to "Canada's Action Plan on Open Government 2016-18." According to Transparency International Canada, the legislation is outdated and out of step with internationally recognized best practices. The most serious deficiencies were identified as the lack of protection for public sector whistleblowers and lack of coverage of the legislation.

One example of the shortcomings of the PSDPA is that the onus is on the whistleblower to prove that adverse actions were intended by the employer as reprisals: almost an impossible task.

Transparency International Canada also identified that none of Canada's whistleblowing laws contains adequate measures for preventing or halting reprisals in the first place, before the whistleblower suffers serious harm.

The PSDPA requires that the President of the Treasury Board conduct a five-year review of the legislation and report on the review to Parliament and the Senate. Since 2007, no review has been conducted.[130]

The PSDPA does not apply to municipal police officers in Ontario.

Provincial

Public Service of Ontario Act, 2006, S.O. 2006, c. 35, Sched. A, serves to establish procedures for the disclosure and investigation of wrongdoing in the public service of Ontario and to protect public servants who disclose wrongdoing from reprisals[131].

---

[129] *El-Helou v. Courts Administration Service, 2011-PT-01.*
[130] *Ibid.* note 48.
[131] *Public Service of Ontario Act, 2006, S.O. 2006, c. 35, Sched. A, (excerpt).*

It is the Integrity Commissioner of Ontario who receives complaints under the Public Service of Ontario Act. In 2015-2016, the Integrity Commissioner's office concluded 25 matters from public servants making disclosures of wrongdoing. Out of those 25 matters, only 8 were investigated. In the 17 abandoned matters, it was determined that the allegations could not possible reveal a "wrongdoing" as defined in the Act, the circumstances were outside the Office's jurisdiction or there was insufficient information for the Office to pursue the matter. There is also a growing number of complaints of reprisals against disclosers of wrongdoing. Although the Act prohibits any person from taking a reprisal against any public servant who makes, seeks advice about or cooperates with an investigation into the disclosure of wrongdoing, the Act does not give the Commissioner any jurisdiction to deal with reprisals, if they occur.[132]

None of the disclosure summaries posted to The Office of the Integrity Commissioner's website include any names of public servants alleged, or even found, to have committed wrongdoing.[133]

This Act does not apply to municipal police officers in Ontario.

In 2016, the Ontario Securities Commission (OSC) instituted the Office of the Whistleblower. The OSC recognized the need for employees of financial firms to have an ability to report wrongdoing without the fear of reprisal. The OSC even pays cash rewards for information that leads to enforcement action.

The OSC program, obviously, does not apply to municipal police officers in Ontario.

Canadian courts have done little to protect whistleblowers. In *Fraser v. P.S.S.R.B. 1985*[134], the Supreme Court observed that "the public interest in both the actual and apparent impartiality of the public service dictates a general requirement of loyalty on the part of the public servant to the Government of Canada, as opposed to the political party in power." Further, the Federal Court of Appeal, in *Anderson v IMTT-Quebec Inc. 2013*[135], emphasized that in order for employees to uphold their duty of loyalty and fidelity to the employer, they must exhaust all internal whistleblowing mechanisms before going public. Practically speaking, most employees would be unwilling to report their employer's misconduct to their immediate supervisor, thus, the actual quality of this protection as interpreted by the courts is questionable.[136]

---

[132] Office of The Integrity Commissioner of Ontario, Annual Report 2015-2016.
[133] http://www.oico.on.ca/home/disclosure-of-wrongdoing/disclosure-summaries
[134] *[1985] 2 SCR 455, 1985.*
[135] *2013 FCA 90.*
[136] "The Neglected State of Whistleblower Laws in Canada," Obaidul Hoque of Rochon Genova LLP, November 13, 2015.

In the Supreme Court of Canada case of *Merk v. International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 771*, Justice Binnie stated:

> *"Having a robust and transparent internal whistleblower protection policy will therefore protect the employer both in terms of early discovery of wrongdoing by its employees and in justifying taking disciplinary action against employees who breach confidentiality obligations and their duty of loyalty."*[137]

Police services in Ontario rarely venture outside of the guidelines provided by the Ministry of Community Safety and Correctional Services and enhance service policy beyond their requirements within the PSA[138]. There currently is no requirement for police services to maintain whistleblower protection policy.

Police services across the country rely on an officer's Oath of Secrecy to persecute whistleblowers. Police officers in Ontario must swear (affirm) to the following:

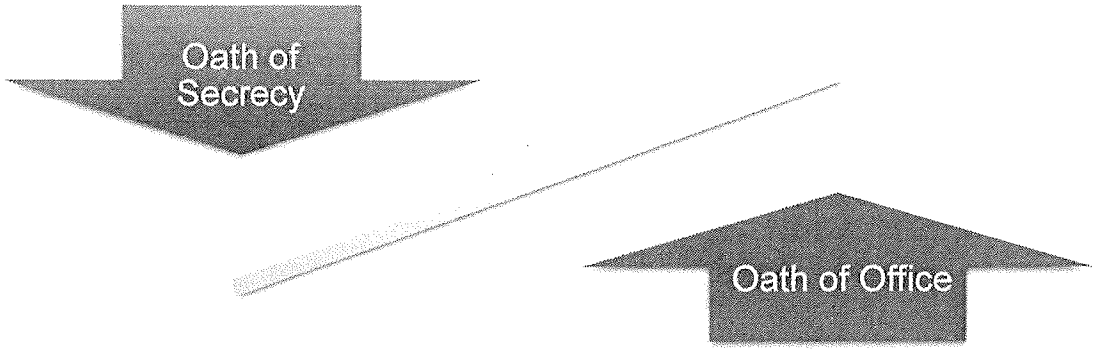
> *...that I will not disclose any information obtained by me in the course of my duties, except as I may be authorized or required by law.*[139]

Police whistleblowers are put in an extremely difficult position since they have also sworn or affirmed an Oath of Office, which in Ontario requires them to:

> *...be loyal to Her Majesty the Queen and to Canada, and to uphold the Constitution of Canada and, preserve the peace, prevent offences and discharge other duties faithfully, impartially and according to law.*[140]

---

[137] *[2005] 3 SCR 425, 2005 SCC 70*, at para 25-26.
[138] *Police Services Act, O. Reg. 3/99.*
[139] *Police Services Act, O. Reg. 268/10.*
[140] *Supra* note 139.



Police whistleblowing results when an officer is guided by their moral obligation to their Oath of Office and their duty to report. Every whistleblower chooses to respect their integrity in the face of fear of retribution.

In 1978, the Honourable R. Roy McMurtry wrote in the RCMP Gazette, no. 12, "Police Discretionary Powers in a Democratically Responsive Society":

> *"No one can tell an officer to take an oath which violates his conscience and no one can tell an officer to refrain from taking an oath which he is satisfied reflects a true state of facts."*[141]

In 2017, police whistleblowers are being prosecuted for bringing discredit to the profession by exposing internal wrongdoings and the suppressive powers of an officer's Oath of Secrecy are relied upon to perpetuate malignancies.

In most cases of police whistleblowing, an allegation is made by a member of the police service that another member has committed misconduct, or criminal acts. The chief of police then has a choice to make; do they properly and objectively investigate the allegations made, or do they prosecute the whistleblower?

Current legislation allows chiefs of police, who are vicariously liable for any internal wrongdoing, to allege misconduct by a whistleblower, and maintain full carriage over the disciplinary proceedings. Once an officer is alleged to have committed offences under the PSA, there are no independent bodies who are willing to intervene to protect the officer's rights. The officer is given an opportunity to defend allegations at a public PSA hearing, appeal to the OCPC and finally to a Divisional Court. This entire process can take years and come at a very high cost to both the officer and the police service, (and therefore, the municipality). In most cases where a plea was struck it was due largely in part to the officer's inability to continue to fund a defence. The pockets of the Ontario taxpayer are much deeper than any one individual police officer. In most cases of police whistleblowing the original allegations made by the whistleblower are rarely investigated;

[141] Public Prosecution Service of Canada, Part III Principles Governing Crown Counsel's Conduct, Chapter 11, 11.2.1 The Common Law Principle.

instead, the officer who tried to do the right thing ends up suffering harassment, retribution and irreparable mental, financial and psychological damage.

The Courts of Justice Act[142], section 137.1, prevents proceedings that limit freedom of expression on matters of public interest. However, it is left up to both parties to argue whether or not the matter in question is of public interest. To date, there is no public record of an attempt to dismiss a PSA proceeding that arose from an expression that relates to a matter of public interest. And, in most cases where a police chief uses prosecutorial means to silence a whistleblower, the officer's Oath of Secrecy is used as the overarching mechanism.

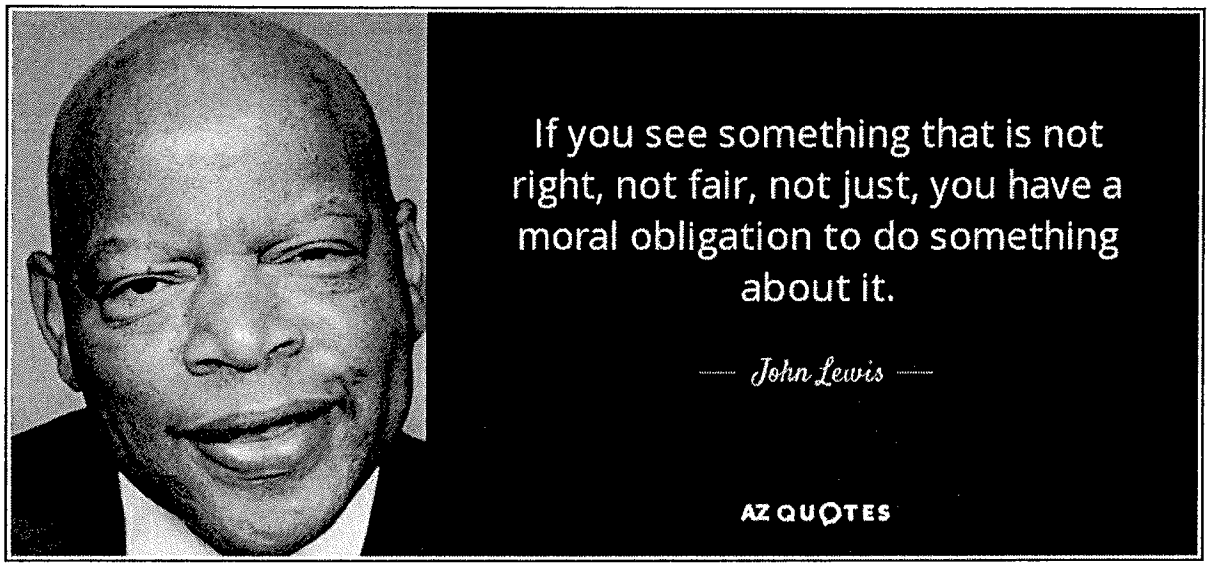
The municipal police whistleblower in Ontario has no choice but to consider the financial, emotional and psychological costs of exposing misconduct an occupational hazard. Police officers have a good, stable income and reliable pension. These are the most significant reasons most municipal police officers choose to turn a blind-eye to the misconduct and allow the abuses of power to perpetuate. Enough police officers have been prosecuted to date that those who remain are scared into silence.

It should be noted that, although Ontario does not have whistleblower protection for municipal police officers, Finland, (Transparency International's least corrupt country in the world[143]), also has no specific whistleblower protection system. Finland relies on its general principles of openness, transparency and accountability of public administration as the main guarantees against corruption. Finland does have a code of conduct for state officials focusing on traditional values such as equality, legality, responsibility and impartiality.[144]

---

[142] *R.S.O. 1990, CHAPTER C.43.*
[143] *Ibid.* note 49.
[144] https://blueprintforfreespeech.net/document/finland-overview

WHISTLEBLOWERS: COLLATERAL DAMAGE



The following cases outline situations when police officers have reported misconduct by other officers at the same police service or other participants in the justice system. In each of these incidents, the officer making the report is prosecuted as opposed to the alleged wrongdoer.

ONTARIO

Ontario Provincial Police

In 2010, Detective Constable Salvatore (Sam) Amormino of the Ontario Provincial Police began an investigation titled Project Savage. Eighteen months later, several charges were laid against three men for allegedly fraudulently delivering vehicles to the Congo for eventual use by a listed terrorist group. In April, 2012, Amormino testified at an eight-week hearing at the Ontario Motor Vehicle Industry Council with respect to the licences of two of the accused. At this hearing, the two accused were represented by a lawyer who also happened to be the husband of the Regional Deputy Crown Attorney who had previously been assigned to the case.

In November, 2012, the criminal charges against one of the accused were withdrawn. Amormino alleges there were no discussions with any police investigators prior to the withdrawal of charges.

In June, 2013, when the third accused returned from Lebanon a plea deal had been arranged and he paid a $300 fine.

Amormino complained about the withdrawal of the charges and what he perceived to be a conflict of interest. Amormino alleged that the criminal charges were dropped to protect

the Regional Deputy Crown Attorney and her husband against the consequences of obvious conflict of interest and, "in all likelihood a compromise of the investigation."

On August 7, 2013, Amormino was suspended "pending criminal investigation" and was barred from the Courthouse and Crown Attorney's office. By November 14, 2013, the OPP had concluded that there was no basis for criminal charges against Amormino.

However, in 2013, several Crown Attorneys involved in the case made "internal" complaints about Amormino to the Professional Standards Bureau of the OPP, including eight PSA offences.

On February 14, 2014, the allegations made by the Crown Attorneys came before an Adjudicator. On May 14, 2014, pre-hearing motions were scheduled for December, 2014, and the hearing was scheduled for January and February, 2015.

In September, 2014, OPP consented to adjourn the disciplinary proceedings for Amormino to pursue a Judicial Review. By December 14, 2015, the OPP ordered that pre-hearing motions commence. The hearing of the Application for Judicial Review was scheduled for December 7, 2015. As such, Amormino brought an application to Divisional Court to stay the disciplinary proceeding on the basis that the proceedings are retributive, have been brought in bad faith, in response to the Applicant's own complaints against a number of individuals, and to deflect attention from their own improper conduct.

On November 27, 2015, Justice M.A. Sanderson J. granted Amormino the stay until after the Application for Judicial Review had been heard and decided.

On December 7, 2015, Amormino asked the court to quash the disciplinary proceedings on the basis that the proceedings contravene his rights under the Canadian Charter of Rights and Freedoms, or as an alternative, stay the proceedings, or in the further alternative make an order requiring the OPP Association to fund counsel of his choice. Not only did Justices Gordon R.S.J, Molloy and Sanderson JJ. not quash the disciplinary proceedings, Amormino's application for judicial review was dismissed altogether.[145]

On September 22, 2016, Justices McLachlin C.J., Moldaver and Gascon JJ. dismissed Amormino's application for leave to appeal.[146]

A Freedom of Information request has been submitted and appealed to obtain the figure of what it has cost tax payers to prosecute Amormino as opposed to investigate his claims impartially and objectively. As of the date of this report, the OPP have not provided the requested, public information.

Cornwall

---

[145] *Amormino v. Police Services Board (OPP) et. al. ONSC 7718.*

[146] Detective Constable Salvatore Amormino (OPP) v. Police Services Board (OPP), et al., 2016 CanLII 61674 (SCC)

In 1993, 11-year police officer Perry Dunlop learned about an allegation of sexual assault that was made against a Father at his Parish and a probation officer.[147] Dunlop discovered that there had been no criminal investigation into the matter due to a financial settlement in the amount of $32,000.00 paid by the local Roman Catholic Archdiocese. Dunlop felt obligated, under his Oath of Office, to report the matter to the Children's Aid Society to protect the safety of other children. Dunlop provided a copy of the victim's statement to the Children's Aid Society. Dunlop was charged under the Police Services Act for discreditable conduct, and two counts of breach of confidence.

In January, 1995, Dunlop was successful in having these charges stayed, and the Police Complaints Commissioner appealed, yet was not successful due to the duty to report to Children's Aid Society for police officers.

What happened over the next 6 years drove the family to uproot and move from Ontario to British Columbia. Initially, police were reluctant to lay any criminal charges. This was when Dunlop began to lose trust in the judicial system. Dunlop collected a series of victim statements in his own time and presented the Ontario Provincial Police with the explosive evidence. These statements alleged the existence of a widespread pedophile "clan" in the Cornwall area comprised of many leading citizens. Shortly after, the OPP formed Project Truth. As of January, 2001, Project Truth had resulted in 115 charges laid against 21 men.[148] In 1996, Dunlop filed a lawsuit against several agencies and men, including two former Cornwall Police Chiefs for $1.2M in which he claims his whistle-blowing ruined his career. Dunlop's lawyer, Charles Bourgeois, stated:

> *"He can't go back to work because he's been ostracized by all the officers."*[149]

After 3 years of stress leave Dunlop did return to work, but found himself confined to a small, windowless office with a single computer and no telephone. In August, 1997, there was a report by one of the victims of sexual assault that several alleged abusers were conspiring to murder the Dunlop family.

It was in 2001 that Dunlop moved his family to British Columbia. Dunlop applied to join the RCMP and was turned down. It is alleged that the recruiting officer in Vancouver stated Dunlop was lacking "Integrity & Honesty."[150]

A Public Inquiry was launched into the OPP investigation (the Cornwall Inquiry) where Dunlop and his wife became the focus of blame for those accused.

On September 27, 2004, the Dunlop's were visited at their home on Vancouver Island at 7:10a.m. by the two Ontario Provincial Police (OPP) officers investigating Project Truth and served with a photocopy of an Order of Production, despite already turning over 11

---

[147] Centre for Free Expression, https://www.cfe.ryerson.ca/key-resources/lists/prominent-canadian-whistleblowers
[148] http://www.projecttruth2.com/Perry%20Dunlop.htm
[149] *Supra* note 148.
[150] Theinquiry.ca/perry-dunlop/

bankers' boxes full of documents to the OPP. The two OPP officers stayed in Vancouver for a week, at public expense. Dunlop feared that the OPP were going to execute a search warrant on his home or arrest him. Despite the family seeking refuge on Vancouver Island they continued to be harassed.[151]

In one local media article, one of the lawyers of a former priest accused of sexual assault was quoted as saying:

> *"I suggest to you, inspector," Neville told Hall [an OPP Det. Insp.], "that (Helen Dunlop's quote) is a complete, utter, bald-faced misrepresentation of what the document represented and what the Dunlops themselves knew."*[152]

In 2008, Dunlop was jailed for 7 ½ months for refusing to testify at the inquiry, saying he had lost confidence in the justice system.[153]

In December, 2009, (16 years after Dunlop first made his report), the Honourable G. Normand Glaude, Commissioner, released the Report of the Cornwall Inquiry in 4 volumes. The main theme in the Commissioner's recommendation was the requirement in policy at all involved police services and parishes to report alleged sexual assault against a minor.

To summarize how Dunlop feels about his initial disclosure he has this to say:

> *"I've been asked, 'Would you do it again?' And I always answer, 'Yes, absolutely'" says Mr. Dunlop, who is currently looking for work with the RCMP in B.C. "And then they sometimes ask me, "How do you feel?' And I tell them I feel that I've been shot down behind enemy lines. And that kind of says it all."*[154]

In 1999, the Vancouver Island Human Rights Coalition honoured the Dunlops with an award. In 2000, the Texas-based Southwestern Law Enforcement Institute gave Dunlop its Ethical Courage Award. In 2008, Dunlop was awarded the Golden Whistle Award for his service to Canada in pursuit of truth and accountability.

A Freedom of Information request has been submitted and appealed to obtain the amount of tax payer dollars that the City of Cornwall spent to prosecute Dunlop. As of the date of this report, they have not provided the requested information.

Hamilton

Constable Paul Manning immigrated to Canada from England and was hired by the Hamilton Police Service in 2005. After dealing with mental health issues and experiencing incidents on the job that led him to lose trust in the Hamilton Police and even

---

[151] *Supra* note 150.
[152] "Dunlop, Guzzo in inquiry spotlight," Trevor Pritchard, Standard-Freeholder, December 12, 2008.
[153] *Ibid.* note 150.
[154] *Ibid.* note 150.

uncover corruption, Manning turned to his police service for support. Manning was not given support to deal with his mental health issues and none of Manning's allegations of corruption were investigated. Manning notified then Chief De Caire in 2014 that he would be suing the service.

Soon after 21 officers stormed his house with a warrant alleging they had received an "anonymous tip" that he had a marijuana grow operation in his home. During the raid, they seized old notebooks Manning had kept from his undercover days which he planned to use as evidence in his lawsuit. No evidence of a marijuana grow operation was found.

Manning and his wife Sabrina filed a lawsuit in the summer of 2016 against the service for $6.75M.

A Freedom of Information request has been submitted and appealed to obtain the amount of taxpayer money that has been spent to prosecute Manning. As of the date of this report, the requested information has not been provided.

Orangeville

In 2010, the Orangeville Police Service charged Sergeant Curtis Rutt for insubordination and neglect of duty, under the Police Services Act, for his handling of a domestic violence complaint.

In December, 2010, Rutt released a 100-page report in which he alleged poor training and sloppy police work by members of the Orangeville Police Service. The report also called for an independent review and the suspension of the Chief. Rutt circulated his report to the Orangeville Police Services Board, Orangeville Town Council, the Ontario Civilian Police Commission, the Solicitor General and the Office of the Independent Police Review Director. In January, 2011, Chief Tomei announced a third-party review of Rutt's report would be conducted by Toronto Police. Following the release of this report, Rutt raised serious criticisms about the impartiality and thoroughness of the Toronto Police report; Rutt was not even interviewed as a key witness in this review.

Immediately following a finding of not guilty for the 2 previous PSA charges, Rutt was charged with an additional 4 charges as recommended in the Toronto Police review relating to his request for a Section 25 review. The review even contained a quote by Rutt that Rutt states was not even written by him. *"I had no consent. I had no knowledge of that. It was just put in."*[155] Peter Edwards, Star Reporter, was cited in the review as a witness to the investigation that led to charges against Rutt, although Edwards was not even contacted by the Toronto Police investigator.[156] Edwards went as far as contacting the other 2 journalists reported by Toronto Police to be witnesses; neither of them were contacted either. Chief Tomei reported that the Toronto Police review was fair. In regards

[155] "Orangeville police sergeant caught in lengthy disciplinary process," Peter Edwards, Star Reporter, March 19, 2013.
[156] *Supra* note 155.

to Rutt's allegations against the Orangeville Police Service, Chief Tomei was quoted as saying:

> *"I'm satisfied they were all without merit."*[157]

Rutt filed a complaint against the Orangeville Police Service with the Human Rights Tribunal of Ontario. The OPS requested the HRTO matter be deferred pending the outcome of his disciplinary tribunal, and it was granted.[158]

In August, 2013, as soon as Rutt received his paralegal licence from the Law Society of Upper Canada, he resigned from the OPS.

The entire proceeding cost the taxpayers of Orangeville a reported $ 596,294.46.

"I think it is deplorable the amount of public money squandered by this police service to prosecute me for simply requesting a long-needed overhaul on how police services are provided to our community," Rutt wrote in his letter of resignation.

When asked if he regretted writing or releasing his report, Rutt stated *"not at all."*[159]

Peel Region

Inspector Steven Patrick Dolan, Peel Regional Police (PRP), brought a complaint of misconduct of other senior members of the service to the Ontario Civilian Police Commission and requested the Minister of Community Safety and Correctional Services request the Commission to carry out an investigation.

Dolan alleged that he was targeted for harassment by a group of senior officers in the PRP from November, 2002, to 2007.

Dolan alleged that members of the senior officer group at PRP attempted to interfere with witnesses in a criminal trial in which he was a defendant. Dolan was ultimately acquitted.

Dolan alleged that members of the senior officer group at PRP prevented the proper investigation of allegations of a domestic assault against one of the members of the group.

When he refused to remain silent about the incident, he was charged with breach of confidence under the PSA. Those charges were ultimately withdrawn.

In 2007, Dolan commenced a civil action in which he advanced allegations of serious misconduct against the Board and the Chief, Acting Deputy Chief and Acting Staff Superintendent of the PRP. Dolan sought damages for breach of public duty or misfeasance in public office, malicious prosecution, conspiracy and intentional infliction

---

[157] "Rutt resigns, Police Act charges dissolved," Bill Tremblay, Orangeville Banner, August 30, 2013.
[158] *Rutt v. Orangeville Police Service, 2011 HRTO 1610.*
[159] "Orangeville Cop whistleblower resigns," Peter Edwards, Star Reporter, August 29, 2013.

of mental anguish. At that time, the Board took the position that a civil action was not the proper route, but that the matter should be addressed by way of a grievance under the collective agreement. During this time, the Peel Regional Police Association (PRPA) wrote to the Commission asking it to initiate an independent investigation of the allegations under s.25 of the PSA.

Dolan then abandoned the civil action in favour of the grievance route which was filed in January, 2008. In this same month, the Commission responded to the PRPA stating it had decided "not to take any action at this time."

In February, 2008, the Chief took the position that Dolan's documents did not constitute a proper grievance and refused to consider them. In this same month, the PRPA made a second request to the Commission that it conduct an investigation.

In May, 2008, Dolan sent the Commission two letters requesting an investigation.

In June, 2008, the Board took the position that Dolan did not have the capacity or standing to advance the grievances to arbitration.

In December, 2008, Dolan's lawyer wrote to the Commission requesting an independent investigation. In January, 2009, the Commission responded that they are not considering the request.

In February, 2009, with the support of the Senior Officer Association (SOA), Dolan requested the Minister appoint a conciliator. The Board objected to the appointment. In May, 2009, the Minister appointed a conciliator, and the conciliation was not successful.

In June, 2009, Dolan requested the appointment of an arbitrator. In this same month, Dolan's lawyer wrote the Minister requesting the Minister to request the Commission to investigate. The Minister responded in September, 2009, refusing to make a request to the Commission.

In October, 2009, the SOA withdrew their support of Dolan. On February 3, 2010, the Arbitrator ruled that Dolan could not arbitrate the issues without the support of the SOA and dismissed the grievances.

Finally, in May, 2010, Dolan initiated an application for judicial review and challenged the Commission's refusal to investigate; the Minister's refusal to request the Commission to investigate; and the Arbitrator's dismissal of the grievances.

On March 10, 2011, the Honourable Justice of the Ontario Superior Court of Justice Herman concluded that Dolan did not have standing to challenge the decisions of the Commission and the Minister and dismissed Dolan's application for Judicial Review. Dolan was ordered to pay legal costs of $6,000.00 to the Commission.[160]

---

[160] *Dolan v. Ontario (Civilian Commission on Police Services), 2011 ONSC 1376.*

Later in 2011, Dolan applied for judicial review of the Arbitrator's decision to dismiss his grievances. It was decided that Dolan had to be supported by the SOA, not the PRPA, since he is a senior officer. No consideration was given to the fact that the membership of the SOA was largely comprised of officers whose names had surfaced in Dolan's complaints of misconduct. Since the other members of the SOA were not interested in incriminating themselves by way of allowing Dolan's grievance and complaint to proceed their support was withdrawn. On November 22, 2011, the Superior Court of Justice of Ontario ruled to dismiss Dolan's application for judicial review of the Arbitrator's ruling and ordered he pay $4,000.00 in legal costs to the Commission.[161]

Dolan did not receive financial assistance from the Peel Senior Officers' Association and the entire ordeal cost him $200,000.00.

It is unknown what it cost the regional municipality of Peel to prosecute Dolan and suppress his allegations.

Dolan is no longer employed by the Peel Regional Police Service; he operates his own business. A Freedom of Information request was submitted and appealed to obtain the amount of tax payer dollars that were spent to prosecute Dolan as opposed to objectively investigate his allegations against other members of PRP. As of the date of this report, the requested information has not been provided.

Waterloo

In 2015, Constable Kelly Donovan, a 6-year member of the Waterloo Regional Police Service (WRPS), witnessed misconduct by senior investigators at the WRPS by not following service procedure and failing to properly investigate criminal allegations against members of the WRPS. Donovan began to research avenues to address complaints of internal misconduct. Donovan learned that the WRPS procedure on Complaints had been changed in April, 2014, to no longer allow a member of the service to make a complaint through the chain of command. Donovan learned from Constable Jeremy Snyder that he had submitted an internal complaint following his acquittal from criminal charges in January, 2014, and had never received a response. Donovan learned that although the WRPS had prohibited members from making internal complaints there were no adequacy standards established by the Ministry requiring the WRPS to maintain such policy.

Donovan consulted with other officers during her off-duty time and determined that several issues existed at the service with the lack of identification of conflicts of interest during investigations, lack of policy on ethics and conflicts of interest, and overall inconsistency in the manner in which the service exercises discretion and investigates allegations against its officers. Donovan extensively researched current legislation and determined that the only manner to address concerns with the police service was through

[161] *Dolan v. Ontario Civilian Commission on Police Services, 2011 ONSC 6720.*

the police services board. Donovan was aware that the Board is legislatively responsible for the provision of adequate and effective police services in the municipality.[162]

In May, 2016, Donovan addressed the WRPS Board by way of delegation regarding the inconsistencies in internal investigations.[163] Throughout the ten minutes that Donovan was allowed to speak the Board remained in public session, it is at the Board's discretion to enter into a closed session.[164]

A week later, Donovan was served with a Notice of Investigation for six PSA allegations, and directed by the Chief of the WRPS to no longer address the Board at future meetings. That same day, the Cambridge Times published an article about Donovan's delegation which stated that Chief Larkin assured the media "that the officer has a democratic right to vocalize her disapproval during the public session of the police board meeting."[165] Larkin also questioned Donovan's decision to address the civilian board stating there are many mechanisms within the force and the union to call for change. Larkin added that investigations are done by "exemplary" and high-calibre members with input from the Crown Attorney's office.[166]

Donovan sent an email to Board members to notify them of the reprisal action taken against her and was served with a second Notice of Investigation for doing so, including allegations of two further offences under the PSA. At that time, Donovan was ordered by the Chief to not communicate with members of the Board.

Donovan filed workplace harassment and human rights complaints immediately.

Donovan also filed a complaint with the OCPC regarding the change of service procedure by the WRPS to prohibit a member from making an internal complaint and regarding the conduct of members of the Board to suppress her complaints addressed in her delegation.

The WRPS hired a lawyer to complete the workplace harassment investigation. According to Donovan, this investigation was biased and did not objectively investigate her allegations or even deny them. The investigator focused much of her final report on the personal life of Donovan as opposed to Donovan's allegations of workplace harassment. The lawyer even stated in her report that Donovan was not a reliable witness because she deflected the questions regarding her personal life and attempted to refocus the interview on her allegations of harassment.

The WRPS contracted the York Regional Police Service (YRP) to conduct an investigative review of one of the criminal investigations cited in Donovan's delegation to

---

[162] *PSA, R.S.O. 1990, c. P.15, section 31(1).*
[163] "Officer criticizes detectives for improper investigation at police board meeting," Waterloo Region Record, May 5, 2016.
[164] *PSA, R.S.O. 1990, c. P.15, section 35(4).*
[165] "Local police officer accuses department of unfair discipline," Cambridge Times, May 11, 2016.
[166] Supra note 165.

the Board. Donovan was interviewed by the senior investigator from YRP and provided an extensive list of false statements made in court documents by WRPS investigators and victim, who was also a police officer. Donovan provided the YRP investigator with a list of exculpatory evidences that were known to investigators and which they failed to report in favour of the defendant.

In August, 2014, Donovan was made aware that the YRP report had been submitted to the WRPS, she therefore filed a request to obtain the report, pursuant to the Municipal Freedom of Information and Protection of Privacy Act, (MFIPPA).[167] Donovan received a refusal letter stating the WRPS did not have the report. Donovan filed an appeal with the Privacy Commissioner and the report was immediately disclosed.

The report only addressed one of several allegations reported by Donovan and that one allegation was proven to be accurate. Without conducting investigation into the remaining allegations brought forward by Donovan, the report concluded that the WRPS conducted a full, fair and transparent criminal investigation against the officer. Despite the subject officer being willing to participate in the review process, he was not contacted until after the report was submitted. Despite evidence of his willingness to participate in the review process, the investigator falsely stated in the report:

> *"...at the time of this report he has chosen not to participate."*[168]

The report revealed that the WRPS did not consult with a crown attorney before the officer was arrested but did consult with senior command, (included in this group of senior officers is an individual who was rumoured to have had off-duty contact with one of the victims in the case, and has since been removed from the subject officer's PSA investigation as a result of this conflict). Despite all of the obvious and apparent personal and professional relationships involved in the case, no conflict of interest was ever identified in the criminal investigation of the officer and no objective or impartial opinion was sought prior to the officer's arrest.

Despite numerous emails from the officer to the Crown Attorney on his case outlining evidence that contradicted the statements of the victims, the report quoted the Crown Attorney as stating:

> *"he spoke to the defense counsel many times through emails and phone calls and he was never advised of any issues that arose regarding the criminal case against [the officer]."*[169]

Donovan submitted a complaint to the OIPRD due to the bias, negligence and false statements of the senior investigator with York Regional Police.

---

[167] *R.S.O. 1990, c. M.56.*
[168] PSB Investigative Report, Waterloo Regional Police Service, PSB # INQ2016-017.
[169] *Supra* note 168.

Donovan's Human Rights Tribunal of Ontario (HRTO) complaint had been deferred in July, 2016, upon consent. In December, 2016, (upon completion of her workplace harassment investigation and investigative review by York), Donovan applied to have the HRTO matter resume. The WRPS objected and requested another deferral in order to prosecute Donovan under the PSA. Donovan cited several violations of her Charter Rights in her objection to the request by the WRPS, alleging that a deferral of her HRTO application is in essence permitting reprisal by the WRPS, further harassment and discrimination and denying her fundamental rights afforded to her by the Charter. In February, 2017, the HRTO delivered a decision to allow WRPS the continued deferral of Donovan's Human Rights complaint. The HRTO's decision did not address Donovan's allegations of violations of her Charter Rights or reprisal.[170]

On March 6, 2017, Donovan received a letter from the Commission regarding her complaint against the WRPS and the Board that stated:

> *"Your concern stems from the result of a change in Policy at the Waterloo Regional Police Service and the manner in which the Chief of Police and the Police Services Board have handled a complaint made by a member of the police service...*
>
> *The Commission, however, has decided not to commence an investigation into your complaint."*[171]

In March, 2017, the OIPRD concluded that it was not in the public interest to send Donovan's complaint of the senior investigator with York Regional Police for investigation. The decision stated:

> *"...this is an internal matter for you to address with your service and is not properly the subject of a public complaint."*[172]

Despite the Chief of the WRPS ordering Donovan to have no further contact with the WRPS Board, the OIPRD advised Donovan that if there are issues with the adequacy or scope of the review conducted by the senior investigator with YRP they are for her to "raise again with the Board."

Failing the intervention by any independent agency into her matter, Donovan remained the subject of a PSA investigation. The misconduct reported by Donovan to the Board has never been objectively and impartially investigated.

Donovan did not receive any financial support from her Association and since May, 2016, had been forced to work in a toxic environment, doing nothing but administrative duties at a desk in a basement office at headquarters with no daylight. As of June, 2017, Donovan chose to resolve all matters between herself and the WRPS in order to focus

---

[170] *Donovan v. Waterloo Regional Police Service, 2017 HRTO 221.*
[171] Letter dated March 6, 2017, by Joyce Mackey, Registrar, Ontario Civilian Police Commission.
[172] OIPRD Complaint Number: E-201611281450436483.

on starting her own business (Fit4Duty™) and moving on with her life. This ordeal cost Donovan over $10,000 in legal fees.

It is unknown what these proceedings cost the Region of Waterloo taxpayers. A Freedom of Information request has been submitted and appealed and this information is pending.

CANADA

RCMP

The RCMP Five

In the spring of 2003, Human Resource Director of the RCMP and 33-year employee, Denise Revine, was assigned an extensive budget review. It was then that Revine discovered how senior RCMP officials were misspending millions of dollars of members' pension funds and, it later turned out, insurance funds.[173] Revine compiled a massive file of evidence and turned it over to her boss, Chief Superintendent Fraser Macauley. Macauley attempted to have the evidence properly investigated only to be removed from his position and sent to the Department of National Defence, what he believed was a punitive secondment. RCMP Commissioner Giuliano Zaccardelli stated at a Commons committee that Macauley hadn't come forward soon enough, that it wasn't a punishment transfer, but for Macauley's own good "so he could learn from his mistake." Revine was sent packing, humiliated in public.

Retired Staff Sergeant Ron Lewis made several attempts to have the matter investigated within the RCMP and when those efforts failed Lewis then approached the Treasury Board, Auditor General and finally to MPs and the media.

Staff Sergeant Steve Walker assisted with the Ottawa Police Service's criminal investigation. Once interim Commissioner Bev Busson suspected she had been deceived about the extent of senior bungling on the pension file, she leapt in. Busson posted Hansard transcripts of every Commons committee hearing into the scandal on the RCMP's internal website for all members to read. Busson suspended deputy commissioner Barbara George, and relieved Paul Gauvin of his duties as chief financial officer.

Staff Sergeant Mike Frizzell was abruptly removed from the investigation as his lines of inquiry began to lead him to suspect senior RCMP management. Frizzell's laptop was wiped clean and backup copies of data "went missing."[174]

These officers have come to be known as the RCMP Five.[175]

---

[173] "High cost of whistleblowing," Tonda MacCharles, Ottawa Bureau, The Star, June 30, 2007.
[174] *Supra* note 173.
[175] *Ibid.* note 147.

What came next was *"years of RCMP foot-dragging, denials and career reprisals, three months of embarrassing parliamentary hearings and finally a damning report on the RCMP's mismanagement."*[176]

The five RCMP members were awarded the RCMP's Commissioner's Commendations, the force's top honour, for their perseverance in tracking misdeeds in the force's pension fund that revealed a "horribly broken" management culture out of step with the RCMP's own values of honesty and accountability, a special investigator concluded.[177]

As a result of the investigation, lawyer David Brown conducted an inquiry into the ordeal and recommended a complete overhaul of top management and RCMP culture in his report.[178] Regarding the cost to whistleblowers, Brown was quoted as saying the following:

> *"People who speak out often pay a significant personal price in terms of their peace of mind, their professional, social and family relationships, and their confidence in the future."*

As a result of the operational stress, Revine had to cope with what doctors told her was post-traumatic stress disorder.

The corrosive effect of facing his bosses' wrath and colleagues' doubts began to take a toll on Macauley's health, personal relationships and on his *"core beliefs in the organization."* It will affect him for the rest of his life, he says.[179]

Regarding Brown's recommendation Frizzell had this to say:

> Brown's recommendation was *"important to me personally,"* he admits, but adds *"it would have meant far more to me had my own organization looked into this and come to the same conclusion. This is basically vindication from a stranger who in, what, six weeks was able to figure all this out."*[180]

When asked if it was worth it, Walker replied:

> *"Unequivocally, the answer is yes because – to quote my dad – the right thing will always be the right thing. If we can help make positive change in this organization, it will be worth it in the long run."*[181]

Four years after the ordeal, Lewis quips that the whole thing has badly cut into his golf game,[182] (that's his personality, say his colleagues and friends).

---

[176] *Ibid.* note 173.
[177] *Ibid.* note 173.
[178] *Ibid.* note 173.
[179] *Ibid.* note 173.
[180] *Ibid.* note 173.
[181] *Ibid.* note 173.
[182] *Ibid.* note 173.

In 1999, Staff Sergeant Robert Stenhouse, who had extensive undercover experience, became frustrated with the lack of enforcement initiatives by the RCMP against the Hells Angels. Stenhouse disclosed RCMP media strategies for outlaw biker gangs to Yves Lavingne which appear in the book Hells Angels at War. Stenhouse was found guilty of discreditable conduct and ordered to resign. The RCMP External Review Committee found that the Force could not be expected to retain a member whose understanding of the obligations which the duty of loyalty entails was somewhat limited and did not appear to be trustworthy.[183] Stenhouse made an application to the Federal Court, asking that the Commissioner's decision be overturned. The Court concluded that:

> *"...the accumulation of the Commissioner's past involvements and actions"* in S/Sgt. Stenhouse's case *"cannot but give rise to a clear and obvious reasonable apprehension of bias" on the issues to be determined."*[184]

A court ruled his disciplinary hearing was unfair and ordered a new one which ruled he should be reinstated. In June, 2004, he was reinstated and then immediately suspended with pay.[185]

Stenhouse's career as an uncover officer was detailed on CBC's "The Fifth Estate," Episode 39, "Walk the Line."

Edmonton

In 1999, Detective Ron Robertson came forward with concerns that the Edmonton Police Service (EPS) had been infiltrated by organized crime. In January, 2000, it was revealed that the Alberta RCMP had been investigating allegations of biker infiltration into EPS for 7 years.

Robertson was alleged to have committed 15 acts of misconduct and faced a disciplinary proceeding.

In 2002, he brought a request for judicial review to the Court of the Queen's Bench of Alberta and was unsuccessful.[186]

In November, 2002, Robertson made an application to the Court of the Queen's Bench of Alberta to stay the disciplinary proceedings which were ongoing against him on the principles of natural justice, as applied to his circumstances, require that he be provided with funded counsel. Robertson's application sought to stay the proceedings until the EPS provided funded counsel to him. His application failed. *Robertson v. Edmonton (City) Police Service (#5),*[187] states:

---

[183] "Update: Decision of the Federal Court in the Stenhouse Case," Martin Griffin, Counsel, March 2004.
[184] *Supra* note 183.
[185] *Ibid.* note 183.
[186] *Robertson v. Edmonton (City) Police Service (#1), 2002 ABQB 368.*
[187] *2002, ABQB 988, para. 30.*

> *"There is no doubt that the disciplinary proceeding has serious implications for Detective Robertson's career as a police officer and his reputation in that role. As well, the economic ramifications of the proceeding and potential penalty are significant."*

In *Robertson v. Edmonton (City) Police Service (#6),*[188] Robertson made an application for a broad judicial review in relation to the investigation, charging, conduct of, prosecution of and privacy of a disciplinary hearing against him. Robertson alleged a reasonable apprehension that EPS Chief Wasylyshen and Superintendent Dibbs are biased. Robertson's application was dismissed and costs awarded to the EPS.

In 2004, Chief Wasylyshen (EPS) brought an application for an order sealing part of the record, a partial publication ban, and an order that part of the proceedings be held in camera.[189] The Honourable Mr. Justice Frans F. Slatter ordered a partial publication ban.

On March 26, 2004, (5 years after Robertson disclosed his findings), his application for judicial review was dismissed by Justice Slatter.[190]

On July 8, 2005, Chief Wasylyshen brought an application for costs against Robertson for 3 previous decisions of the Court.[191] The Chief was successful and Robertson was ordered to pay the costs of the EPS for those 3 matters. There is no evidence that matters proceeded any further.

It appears that Robertson chose to leave the profession following this decision.

It is unknown what it cost the City of Edmonton to prosecute Robertson all those years.

In 2010, Constable Derek Huff, Edmonton Police Service, witnessed colleagues use excessive force and injure a prisoner in handcuffs. Huff reported the incident to his Sergeant and nothing was done about it. Huff says he and his partner were branded as "rats" and were mocked and shunned. Huff said it got so bad he and his partner called for backup on the street and no one came. Huff said the ostracizing became so unbearable, he couldn't function at work. Two years after witnessing the alleged police brutality, Huff said he went to the Deputy Chief and revealed all, in a formal, written complaint. The complaint was sent to the Alberta Serious Incident Response Team (ASIRT), which investigates police misconduct. Huff went on stress leave. Even after the investigation into his complaint was completed, Huff was not advised of the outcome. Huff was ordered back to work and instead; he quit.

Huff stated:

---

[188] *2003 ABQB 188.*
[189] *Robertson v. Edmonton (City) Police Service (#8), 2004 ABQB 242.*
[190] *Robertson v. Edmonton (City) Police Service (#10), 2004 ABQB 519.*
[191] *Robertson v. Edmonton (City) Police Service (#11), 2005 ABQB 499.*

> *"I gave up. I sacrificed my career. I stood up for what's right, and I just got run out of the police service. I thought there is nothing else I could do. I lost."*

When Chief Knecht came on as EPS Chief, he promised to protect whistleblowers. He's now promising to take Huff's allegations seriously. Huff stated:

> *"I did absolutely nothing wrong. All I've ever wanted since day one was the truth – and it's finally coming out."*[192]

In 2013, the constable alleged to have used excessive force pled guilty to one count of discreditable conduct for pulling a man out of his cruiser, taking him into a school ground and beating him. The constable was demoted for one year. The presiding officer noted that the incident was "extremely serious" but that there were also several mitigating factors, including the fact that the officer was suffering from depression.[193]

In 2016, the EPS officers accused of excessive force were cleared. The hearing officer said:

> *"I find without any doubt that Mr. Huff's version of what happened did not happen."*[194]

Regarding his whistleblowing, Huff had this to say:

> *"I stood up for what's right, and I just got run out of the police service,"* said Derek Huff, 37. *"I still can't even really believe it."*

Halifax

In 1994, Bruce Brine, who had 22-years of policing, was awarded a governor-general's award for exemplary service. In 1995, he was demoted from his job as chief of the Halifax Ports Police after he made allegations that senior officials with the Canada ports police were getting kickbacks from the Hells Angels.[195]

Brine subsequently went on long-term disability for depression. In 1996, Brine filed a complaint with the Canadian Human Rights Commission, alleging he had been poorly treated by Ports Canada.

In 1998, the insurer stopped paying Brine disability benefits. In 1999, Brine declared bankruptcy.

---

[192] All information about Huff derived from "Former Edmonton cop Derek Huff blows whistle on brutality, corruption," Kathy Tomlinson, CBC News, September 27, 2013.
[193] "Edmonton's police owe the public far better than this," Matt Gurney, National Post, September 30, 2013.
[194] "Edmonton police officers cleared in beating of drug suspect," Bill Stadel, CBC News, July 20, 2016.
[195] *Ibid.* note 147.

The insurer in this case caused Brine a significant amount of suffering by alleging an overpayment of disability benefits and even once payments had stopped, continuing to issue him T4 slips for the income and claim he owed income tax on those payments. The insurer started legal proceedings against Brine in 2001, and Brine counterclaimed.

In 2004, Brine was awarded a $300,000.00 settlement by the Canadian Human Rights Commission, and was ordered to pay $210,000.00 of that to the insurer.[196]

Montreal

At the start of 2012, Inspector Jimmy Cacchione & Inspector Giovanni Di Feo first discovered a case of corruption within the Montreal Police. The two approached their supervisors and wrote a letter to internal affairs. The two men allege members of the force's internal affairs department embellish or fabricate evidence against lower-ranking officers who fall out of favour. Spurious investigations were then allegedly launched to obtain phone records and other surveillance warrants in order to intimidate colleagues. Montreal Police conducted wiretaps to obtain evidence they used as grounds for suspension of the two officers. They were suspended without pay in June, 2013.

In August, 2013, three Justices of the Court of Quebec ordered Montreal Police to continue to pay their salary until their appeal of the suspensions had been completed. In January, 2014, Quebec's Superior Court denied the officers' application to have their discipline proceedings stayed. Both officers eventually resigned.

As a result of the issues raised by these two officers, the Quebec government now believes:

> *"This serious information suggests that beyond certain files, there are also more systemic issues, notably involving the (Montreal police's) internal investigation practices."*[197]

It is not known how much has been spent by Montreal Police to attempt to have this problem go away since 2012.

---

[196] "Ex-Ports Canada Police chief in Halifax wins big disability settlement," Eva Hoare, Staff Reporter, The Chronicle Herald, July 4, 2014.
[197] "Quebec broadens probe into Montreal police force corruption allegations," The Canadian Press, February 24, 2017

CHAPTER 4: CHANGE

> Peelian Principle 7 – "*Police, at all times, should maintain a relationship with the public that gives reality to the historic tradition that the police are the public and the public are the police; the police being only members of the public who are paid to give full-time attention to duties which are incumbent on every citizen in the interests of community welfare and existence.*"

Generally speaking, the opinions of the public are unanimous; change has to occur. Historically, the police hierarchy has been impenetrable to change and reliant on a military structure of leadership.

The Canadian Association of Police Governance, the Canadian Police Association and Police Association of Ontario all agree on many key issues, yet the police services themselves continue to operate status quo with little outside interference.

IT STARTS WITH THE BOARD

This chapter focuses on the important role, and legislated responsibilities, of police services boards. The police services board is the first stage of civilian governance over the police and without it there is no democracy.

Justice W. Morden highlighted the value of a civilian board in a report on the actions of the Toronto Police Service during the G20 summit.[198] Justice Morden stated:

> *"Police boards are the intermediary between the police and the public, acting as a conduit to receive and impart information, providing a forum to ensure public sentiment makes its way to the ears of law enforcers, and, ultimately, arbitrating interests in determining what is incorporated into the policies that guide the actions of the police."*[199]

Following recent reports and surveys it appears there is a disconnect between expectations of a police services board from the public's perspective and from the policing perspective.

The public's expectations were broadcast loud and clear throughout Justice Michael Tulloch's public consultation sessions and outlined in his report.[200] Justice Tulloch pointed out that some board members do not receive any form of training. Starting at paragraph 12.212, the report states:

---

[198] The Honourable John W Morden, *Independent Civilian Review into Matters Relating to the G20 Summit* (2012).
[199] *Supra* note 198.
[200] *Ibid.* note 9.

> *"And without the appropriate skills, knowledge, and understanding, they may lack confidence to govern independently from the police service…*
>
> Ensuring that every police services board member receives mandatory core training and ongoing training throughout their tenures *"will raise the capacity of boards to govern independently and hold police accountable within the communities they serve."*[201]

When the Ontario Association of Police Services Boards (OAPSB) surveyed their members in 2016 regarding the rewrite of the Police Services Act[202], respondents felt strongly that:

> *"The PSA must provide greater precision and clarity regarding the roles of Police Boards and Police Chiefs…"*

OAPSB members also agreed that their number one priority for the Provincial Government's PSA rewrite is:

> *"Strengthening Police Board Governance."*

So, which is it? Is the PSA not precise or clear enough? Or, do police services boards lack the capacity to govern independently and hold police accountable? Police leaders rely on the fact that police services boards cannot direct the chief on the day-to-day operations of a police service. However, if we defined the day-to-day operations as who they will arrest, how they will execute a search warrant, then yes… The police chief has much more experience and resources to make these decisions over a police services board. Every other issue, such as personnel, discipline, transparency, is the responsibility of the police services board, and that responsibility has to now be taken much more seriously than it has in the past.

When political allegiances are formed between a police services board and police service leadership, the ability to govern impartially and objectively is lost. Police Services Board members are representatives of the community responsible for oversight of the police service. Change can come from within; however, it will take strong leadership and knowledgeable and impartial advice.

In 2016, during Justice Michael Tulloch's pubic consultation sessions across Ontario, several members of the communities either did not know they were welcome to attend police services board meetings or felt too intimidated to attend. Videos and transcripts are available online for review.[203] Several police services boards across the province do not post meeting schedules to the police service website or any independent contact information at all. The public will not view the police services board as an independent

---

[201] *Ibid.* note 9.
[202] https://oapsb.ca/wp-content/uploads/OAPSB-Survey-Results.pdf
[203] www.policeoversightreview.ca

and impartial body when communication to board members is filtered through an office at the police department.

Increase Overall Impartiality

Police services board members have a Code of Conduct under the PSA.[204] Excerpt:

> *"Board members shall discharge their duties loyally, faithfully, impartially and according to the Act, any other Act and any regulation, rule or by-law, as provided in their oath or affirmation of office."*

It does not bode well for the policing community when members of their police services boards violate their code of conduct by failing to remain impartial on issues that divide the upper and lower echelon.

In April, 2017, Waterloo Regional Police Services Board Chair Tom Galloway openly supported a position taken by the Ontario Association of Chiefs of Police, saying the system of paid suspensions "has been abused."[205] The article acknowledged that the Chief of Waterloo is a "strong proponent of changing the law so that officers who are suspended after serious, egregious misconduct are not paid." The article fails to disclose that the decision to suspend at all rests with the chief of police and that if these decisions have been abused it has been by the chief and not the officers. As indicated in Chapter 2, these decisions are inconsistent and at times arbitrary. If the suspension of officers is costing municipalities millions of dollars across Ontario then police chiefs need to start substantiating their decisions to suspend and explain to their police services boards why there were no alternatives. If the goal is to achieve fundamental governance then the tough questions need to be asked.

For police services boards to accurately and impartially monitor the performance of the chief of police there needs to be policy in place to allow reporting from all levels of the police service and even community engagement. Whistleblower protection, as recommended by Justice Tulloch, would ensure that complainants are not deterred from making a report and unfavourable reports are not suppressed.

If the goal is to achieve impartiality in the adjudication of investigations of police officer conduct then the solution has to apply to every officer and every incident; whether criminal or disciplinary, on-duty or off-duty, constable or chief.

Justice Tulloch suggested that a public complaints prosecutor, appointed by the Attorney General, is the most impartial adjudicator of public complaints of police misconduct. If the decision is made to direct all public complaints to a public complaints prosecutor then all investigations of misconduct, whether resulting from a public complaint or an internal complaint need to be handled in the same manner; or the police lose trust in the process

---

[204] O. Reg. 421/97: MEMBERS OF POLICE SERVICES BOARDS - CODE OF CONDUCT

[205] "Waterloo Regional police board chair wants changes to suspensions with pay," Liz Monteiro, Waterloo Region Record, April 27, 2017.

that is intended to achieve impartiality. If this consideration is not made, police services will continue to use any available means to prosecute officers who have fallen out of favour; internal complaint and disciplinary action or criminal charge for off-duty conduct.

Increase Accountability

Without any means of internal oversight of police services, and with the protection of an officer's oath of secrecy, police management have full control over the level of secrecy that exists.

How can the public hold police management accountable for something they don't know?

In order for police services boards to effectively evaluate police organizational performance there needs to be a mechanism for reports to be made from inside a police service. These reports need to be made to a third-party completely independent of the police service, the police services board and the Ministry, (anyone with a stake in preserving the reputation of the judicial system). Only then can the public be assured that all complaints will be adjudicated objectively, regardless of rank or stature.

Members of the community need to know they are welcome at police services board meetings. An open-door policy needs to exist between a community and their police services board. As recommended by Justice Tulloch, this can be achieved through community outreach. After a quick survey of police service's websites, it is easy to determine that some police services boards do not even post contact information, let alone meeting schedules and locations. This needs to improve.

Culture Change

Board members can't be expected to change the personalities of police officers already on the job. What can be done is retaining and attracting the right people and assuring them a work environment that fosters honesty, integrity, accountability and respect. Culture change will not happen overnight.

If police services boards want to increase the gender and racial diversity at their police services, focus must also be placed on retaining that talent. In order to ensure retention, police services boards need to understand the internal issues, and address internal issues before they become the reasons good people leave.

Leadership

> *"The secret of change is to focus all of your energy, not on fighting the old, but on building the new."*
>
> - Socrates

Since 1968, recommendations have been made by the public to improve policing. Social advocacy groups have pushed for more accountability, transparency and equality in

policing. The policing community has stayed reactionary, waiting for direction from the Ministry.

Police services board members need to understand the history of criticisms of police governance in order to realize the pressure that has been building and the need to make positive changes now. Change is not about assigning blame it is about moving in the right direction. Justice Tulloch makes several specific recommendations for police services boards, much of which was echoed by OAPSB members in the recent survey.

It is now up to the Board to take action or wait for Ministerial direction. It is clear that since the Kerner Commission of 1968, the Report of the Race Relations and Policing Task Force of 1989, the Report by the Ontario Civilian Commission on Police Services of 1992, the recent Report into Workplace Harassment in the RCMP and many other relevant reports, that very little has changed in police culture and legislation despite the expectations of the public.

It is now up to the police services boards to take appropriate action to achieve their objectives. Fit4Duty™ is The Ethics Standard™ for training, policy evaluation and whistleblower programs to achieve many of the objectives stated in this report.

Together, let's start building the new.

CHAPTER 5: LEGISLATION

The following is excerpts from current PSA legislation regarding responsibility, powers and duties of the parties responsible for the oversight of police business.

SECTIONS OF THE PSA RELATING TO RESPONSIBILITY, POWERS AND DUTIES

Office of The Independent Police Review Director

S. 5 (1) For the purposes of this Part, the Independent Police Review Director may,

(a) establish procedural rules for anything related to the powers, duties or functions of the Independent Police Review Director under this Part;

(b) establish procedural rules and guidelines for the handling by chiefs of police and boards of complaints made by members of the public under this Part; and

(c) provide guidance to assist chiefs of police and boards in the handling of complaints made by members of the public under this Part. 2007, c. 5, s. 10.

S. 57. In addition to his or her other functions under this Act, the Independent Police Review Director may examine and review issues of a systemic nature that are the subject of, or that give rise to, complaints made by members of the public under this Part and may make recommendations respecting such issues to the Solicitor General, the Attorney General, chiefs of police, boards, or any other person or body. 2007, c. 5, s. 10.

S. 59 (1) The Independent Police Review Director shall review every complaint made to him or her by a member of the public under this Part, and shall determine whether the complaint is about the policies of or services provided by a police force or about the conduct of a police officer. 2007, c. 5, s. 10.
(2) Subject to section 60, the Independent Police Review Director shall ensure that every complaint reviewed under subsection (1) is referred or retained and dealt with in accordance with section 61. 2007, c. 5, s. 10.

Ontario Civilian Police Commission

S. 22 (1) The Commission's powers and duties include,

(a) if the Solicitor General advises the Commission that a board or municipal police force is not complying with prescribed standards of police services,

(i) directing the board or police force to comply, and

(ii) if the Commission considers it appropriate, taking measures in accordance with subsection 23 (1);

(b) conducting investigations with respect to appointing officials under the *Interprovincial Policing Act, 2009* under section 25;

(c) conducting investigations with respect to municipal police matters under section 25;

(d) conducting inquiries into matters relating to crime and law enforcement under section 26;

(e) conducting inquiries, on its own motion, in respect of a complaint or complaints made about the policies of or services provided by a police force or about the conduct of a police officer and the disposition of such complaint or complaints by a chief of police or board;

(e.1) REPEALED: 2007, c. 5, s. 6 (1).

(e.2) making recommendations with respect to the policies of or services provided by a police force by sending the recommendations, with any supporting documents, to the Solicitor General, the chief of police, the association, if any, and, in the case of a municipal police force, the board;

(f) hearing and disposing of matters referred to it by boards and appealed to it by police officers and complainants in accordance with Part V. R.S.O. 1990, c. P.15, s. 22 (1); 1995, c. 4, s. 4 (3); 1997, c. 8, s. 16 (1-3); 2007, c. 5, s. 6 (1, 2); 2009, c. 30, s. 44.

Police Services Board

S. 31 (1) A board is responsible for the provision of adequate and effective police services in the municipality and shall,

(a) appoint the members of the municipal police force;

(b) generally determine, after consultation with the chief of police, objectives and priorities with respect to police services in the municipality;

(c) establish policies for the effective management of the police force;

(d) recruit and appoint the chief of police and any deputy chief of police, and annually determine their remuneration and working conditions, taking their submissions into account;

(e) direct the chief of police and monitor his or her performance;

(f) establish policies respecting the disclosure by chiefs of police of personal information about individuals;

(g) receive regular reports from the chief of police on disclosures and decisions made under section 49 (secondary activities);

(h) establish guidelines with respect to the indemnification of members of the police force for legal costs under section 50;

(i) establish guidelines for dealing with complaints under Part V, subject to subsection (1.1);

(j) review the chief of police's administration of the complaints system under Part V and receive regular reports from the chief of police on his or her administration of the complaints system. R.S.O. 1990, c. P.15, s. 31 (1); 1995, c. 4, s. 4 (7); 1997, c. 8, s. 21 (1-3); 1997, c. 17, s. 8; 2007, c. 5, s. 9 (1).

Special Investigations Unit

s. 113 (5) The director may, on his or her own initiative, and shall, at the request of the Solicitor General or Attorney General, cause investigations to be conducted into the circumstances of serious injuries and deaths that may have resulted from criminal offences committed by police officers. R.S.O. 1990, c. P.15, s. 113 (5).

s. 113 (7) If there are reasonable grounds to do so in his or her opinion, the director shall cause informations to be laid against police officers in connection with the matters investigated and shall refer them to the Crown Attorney for prosecution. R.S.O. 1990, c. P.15, s. 113 (7).

INDEX OF OFFICERS, POLICE SERVICES AND REPORTS

A

Adam Lourenco, **31**
Adrian Schoolcraft, **60**
Alex Bender, **56**
André Marin, **33, 59**

B

Bev Busson, **78**
Bradley Finucan, **55**
Bradley Manning
  Chelsea Manning, **60**
Bruce Brine, **82**
Bryan Larkin, **30**

C

Calgary Police, **56**
Canadian Association of Police Governance, **25, 84**
Canadian Police Association, **84**
Chad Power, **50, 51**
Chantal Muirhead, **45, 46**
Charles Bordeleau, **30, 47**
Craig Markham, **36**
Curtis Rutt, **71**

D

Dameian Muirhead, **35, 45, 46**
David Durk, **59**
David Foulds, **52**
Denise Revine, 8, 78
Derek Huff, **81, 82**
Donald Belanger, **53**
Durham Regional Police, **30, 35, 36**

E

Edgar Schmidt, **15**
Edmonton Police, **80, 81**
El-Helou, 62
Eric Girt, **30**
Eric Jolliffe, **30, 45**

F

Frank Serpico, **59**
Fraser Macauley, **78**

G

Giovanni Di Feo, **83**
Graham Boswell, 18

H

Halifax Ports Police, **82**
Halton Regional Police, **26, 30, 43**
Hamilton Police, **26, 30, 70**
Honourable Patrick J. LeSage, **17**
Honourable R. Roy McMurtry, **65**

J

James Forcillo, **39**
James Mauro, **49**
Jamie Clark, **53**
Jamie Porto, **39**
Jeffrey McGuire, **30**
Jennifer Evans, **30**
Jennifer Magnus, **56**
Jeremy Snyder, **54, 74**
Jimmy Cacchione, **83**
John Tory, **30**
Justice Michael Tulloch, **18**
  Tulloch, **6, 7, 10, 11, 18, 26, 27, 41, 85, 86, 87, 88**
Justice W. Morden, **84**

K

Kathleen Wynne, **30**
Kelly Donovan, **74**
Kelly Ryan, **56**
Kerner Commission, **88**
Kevin Drake, **31**
Knapp Commission, **59**

L

Lindsy Richardson, **47**

M

Mark Felt, **60**
Mark Saunders, **30**
Matt Clarke, 56
Metropolitan Toronto Police, **16**
  Toronto Police, **7, 16, 17, 30, 31, 39, 46, 53, 71**
Michael Dowd, **38**
Mike Ewles, **35**
Mike Frizzell, **78**
Mike McCormack, **46**
Mike Sladek, **39**
  Sladek, **51**
Montreal Police, **83**

N

Niagara Regional Police, **30**

O

Ontario Association of Police Services Boards, **85**
OPP, **18, 26, 27, 30, 34, 39, 68, 69, 70**
Orangeville Police, **71, 72**
Ottawa Police, **25, 30, 43, 44, 47, 52, 56, 78**

P

Paul Heffler, **52**
Paul Johnston, **47**
Paul Manning, **70**
Paul Martin, **30**
Peel Regional Police, **8, 24, 30, 34, 43, 44, 72, 73, 74**
Perry Dunlop, **69**
Peter Callaghan, **34**
Peter Kormos, 17, 32
Police Association of Ontario, **84**

R

Rajiv Sharma, **57**
RCMP, **8, 61, 65, 69, 70, 78, 79, 80**
Report by the Ontario Civilian Commission on Police Services, **15, 88**
Report into Workplace Harassment in the RCMP, **88**
Report of the Race Relations and Policing Task Force, **88**
Richard Hegedus, **31**
Richard M. "Richie" Roberts, **59**
Robert Stenhouse, **80**
Ron Lewis, **78**
Ron Robertson, **80**

S

Salvatore (Sam) Amormino, **67**
Shehab Balh, **34**
Stephen Tanner, **30**
Steve Walker, **78**
Steven Patrick Dolan, **8, 72**
Steven Watts, **53**

T

Toronto Police Service
TPS, **16, 17, 31, 53**
Transparency International, **33, 62, 66**

V

Vincent Hawkes, **30**

W

Waterloo Regional Police, **30, 36, 42, 54, 57, 58, 74, 76, 77, 86**
Wayne Roberts, **62**

Y

York Regional Police, **24, 30, 35, 45, 46, 75, 76, 77**

TAB 4

From: GREENO, CHERRI
Sent: Monday, July 17, 2017 11:34 AM
To: TORRANCE, VIRGINIA
Subject: FW: 93-page-report comment

Cherri Greeno
Media Relations Coordinator
Waterloo Regional Police Service
200 Maple Grove Road
Cambridge ON N3H 5M1
(519) 653-7700 ext. 8773
Cherri.greeno@wrps.on.ca

From: Adam Haga [mailto:Adam.Haga@rci.rogers.com]
Sent: Monday, July 17, 2017 10:57 AM

To: GREENO, CHERRI
Subject: 93-page-report comment

Hi Cherri,

I hope all is well. Wondering if you've been made aware of this 93-page-report by a former member of WRPS and can comment on the allegations made in the file. If not, an official "no comment" is good too!

An attachment to the file is below. Hoping for that sometime today!

Thanks so much,

Adam

https://nebula.wsimg.com/b0efa29691bcdee183f4a1a789a8bd57?AccessKeyId=6AA2A515D22B681BFA2F&disposition=0&alloworigin=1

Adam Haga
Reporter/Weekend Anchor, 570 News

Rogers Communications
230-1B The Boardwalk
Kitchener, ON

adam.haga@rci.rogers.com
c 613.617.9156 **o** 519.743.6397

This communication is confidential. We only send and receive email on the basis of the terms set out at www.rogers.com/web/content/emailnotice

Ce message est confidentiel. Notre transmission et réception de courriels se fait strictement suivant les modalités énoncées dans l'avis publié à www.rogers.com/aviscourriel

TAB 5

NEWS INSIDERS

Former Regional Police Constable releases 93-page report calling for change in policing

LOCAL (HTTP://WWW.570NEWS.COM/CATEGORY/LOCAL/)

by LISA DREW (HTTP://WWW.570NEWS.COM/AUTHOR/LISA-DREW)
Posted Jul 17, 2017 11:15 am EDT Last Updated Jul 18, 2017 at 4:32 am EDT

Courtesy: Robin Cimitrux photography

A former Waterloo Regional Police officer is calling for change in policing locally and around the country.

Kelly Donovan resigned from the Waterloo Regional Police Service in June after she says she brought forward a number of issues surrounding ethics in policing locally and how a police service investigates its own members.

Donovan says she brought forward what she calls “very valid concerns” to the police services board and says her allegations were suppressed. Since then, Donovan says the service “has been more interested in attacking my credibility than acknowledging that these problems exist.”

Donovan has written a 93-page report about "the systemic misfeasance in police management and coordinated suppression of whistleblowers". The report has been sent to Prime Minister Justin Trudeau, Ontario Premier Kathleen Wynne, past and current local police chiefs and high ranking officers locally.

The full report can be found at www.fit4duty.ca (https://www.fit4duty.ca/)

She adds she's not part of the current class action lawsuit against Waterloo Regional Police.

In early June, two officers and a retired officer launched legal action citing discrimination, sexual harassment, and sexual assault.

Donovan is the Founder and President of "Fit4Duty." She tells The Mike Farwell Show she was a Cambridge constable for six years before leaving last month.

Donovan says she got exposed to headquarter business in the last two years and says "that really opened her eyes."

Donovan says there is no policy in place to handle an internal investigation. Members also can't make a complaint internally.

In regards to the report released by Donovan, Regional Police have released the following statement:

"The Waterloo Regional Police Service has just been made aware of this report through the media and, therefore, is unable to speak to the opinions expressed in it. However, we want to highlight that police oversight, accountability and transparency are the hallmarks of policing in Waterloo Region, as well as in Ontario and Canada. We are, and have long been, committed to building a strong workplace where all of our members thrive. We are extremely proud of our members, whose hard work and dedication to Waterloo Region is showcased daily throughout the community. The WRPS is an integral partner in supporting the advancement of police modernization and has endorsed the recent recommendations of Justice

Tulloch, which call on the provincial government to invest, modernize and support enhanced police oversight in the province. Ontario continues to be a leader in policing, with more than 25 years of independent oversight and an acknowledgment that our system requires change as it continues to evolve. Locally, the WPRS is actively involved in significant transformation as we work to advance policing and focus on member engagement and empowerment. Provincially, the Ontario Association of Chiefs of Police has been at the forefront of modernization, change and promoting civilian oversight."

Chinese tourist dies in hospital after bus crash in eastern Ontario

PROVINCIAL (HTTP://WWW.570NEWS.COM/CATEGORY/PROVINCIAL/)

by CANADIAN PRESS (HTTP://WWW.570NEWS.COM/AUTHOR/CANADIAN-PRESS)
Posted Jun 5, 2018 8:45 am EDT

TAB 6

CBC

Former officer's report aims to 'expose' police internal practice

'My report was a way for me to expose the current state of policing in Canada,' said Kelly Donovan

Carmen Ponciano · CBC News ·
Posted: Jul 18, 2017 1:50 PM ET | Last Updated: July 18, 2017

Police continue to investigate after an SUV struck a 78-year-old woman and an 11-year-old boy Friday afternoon in Cambridge. (Gary Graves/CBC)

A former constable with the Waterloo Regional Police Service (WRPS) released a 93-page report on Monday she calls *The Systemic Misfeasance in Police Management and the Coordination of Suppressing of Whistleblowers*, in hopes to spark change within police forces.

Kelly Donovan, who was with WRPS for six-and-a-half years, had the option to join constables Angelina Rivers and Sharon Zehr in a $167 million class action lawsuit against the WRPS when she left the force in June. But she decided to take a different path.

- **Women claim workplace sexual assault, harassment in $167M lawsuit against Waterloo Regional Police**
- **Women detail sexual harassment allegations at heart of WRPS class action lawsuit**

"I just had additional issues that I wanted to address in the gender discrimination," Donovan **told CBC's *The Morning Edition* host, Craig Norris** on Tuesday.

"My report was a way for me to expose the current state of policing in Canada."

Report

The report highlights how police officials handle internal investigations of their own members and looks at the lack of protection for whistleblowers across the country.

Donovan said there is protection for provincial and national police employees, but there are no means of protection for whistleblowers at the municipal level when they decide to come forward with an internal issue.

"When a police officer decides to speak up about an issue, they know that they will face reprisal, which was what happened to me, and there is very little assistance. Nobody wants to intervene," she said.

"It's all left up to that internal discipline procedure, which isn't working."

Response

In response to the report, WRPS's chief Bryan Larkin said in a statement on Monday:

> *"The Waterloo Regional Police Service has just been made aware of this report through the media and, therefore, is unable to speak to the opinions expressed in it.*
>
> *However, we want to highlight that police oversight, accountability and transparency are the hallmarks of policing in Waterloo Region, as well as in Ontario and Canada. We are, and have long been, committed to building a strong workplace where all of our members thrive. We are extremely proud of our members, whose hard work and dedication to Waterloo Region is showcased daily throughout the community.*
>
> *The WRPS is an integral partner in supporting the advancement of police modernization and has endorsed the recent recommendations of Justice Tulloch, which call on the provincial government to invest, modernize and support enhanced police oversight in the province.*
>
> *Ontario continues to be a leader in policing, with more than 25 years of independent oversight and an acknowledgment that our system requires change as it continues to evolve. Locally, the WPRS is actively involved in significant transformation as we work to advance policing and focus on member engagement and empowerment. Provincially, the Ontario Association of Chiefs of Police has been at the forefront of modernization, change and promoting civilian oversight."*

Kelly Donovan, a former police officer from Waterloo Regional Police, has put together a 93-page report that looks at how police handle internal investigations. 6:41

Call for change

As as result, Donovan has taken it upon herself to create change within police forces.

She has launched her own business, Fit4Duty, which provides training programs for police oversight bodies and corporate management.

- **RCMP employees' sex-harassment suit against force certified as class action**

She said she will hire retired police officers to do independent investigations, when required.

She will also make a presentation to the police services board in the future and hopes to do the same for other municipal police services.

©2018 CBC/Radio-Canada. All rights reserved.

Visitez Radio-Canada.ca

TAB 7

Twitter, Inc. [US] | https://twitter.com/Fit4Duty_Ethics/status/989346402798133248

CanLII | LexisNexis® Quickla | Welcome to the e-L | Free People Search | Your online newspa | Your Cambridge on | Ontario Civilian Pol | Other bookmarks

Twitter has a new Terms of Service and Privacy Policy, effective May 25, 2018. Learn more

Got it

Home | Moments

Have an account? Log in

Fit4Duty™
@Fit4Duty_Ethics

Follow

Fit4Duty™
@Fit4Duty_Ethics

Kelly Donovan is a Former police officer and published author continuing the good fight to improve workplace culture everywhere.

Ontario, Canada

fit4duty.ca

Joined June 2017

172 Photos and videos

Fit4Duty™
@Fit4Duty_Ethics

Follow

Ken Seiling was sitting on the @WRPSToday board when I exposed internal corruption and he allowed the chief to silence me and take reprisal. Is that leadership worth awarding? @mobinfiltrator @KarynGreenwood1 #Whistleblower #oversightunseen @Ont_AndreMarin

Elizabeth Clarke @EClarkeYW
The United Way's Community Leader award recognizes an exemplary public leader who has driven the spirit of community: Regional Chair Ken Seiling!

8:32 PM - 25 Apr 2018

6 Retweets **9** Likes

1 | 6 | 9

Angry Cop @army6965 · 5h
Replying to @Fit4Duty_Ethics @WRPSToday and 3 others
Oh look, the good ole boys club!!!!

New to Twitter?
Sign up now to get your own personalized timeline!

Sign up

Worldwide trends

#LaManada
545K Tweets

#YoSiTeCreo
179K Tweets

#NoEsNo
86.2K Tweets

#LOVE_YOURSELF
377K Tweets

#JusticiaPatriarcal
87.9K Tweets

Kelis
17K Tweets

Mike Pompeo
27.1K Tweets

Diamond and Silk
28.3K Tweets

Fox & Friends
92.4K Tweets

Baker Mayfield
42.1K Tweets

Promoted Tweet

© 2018 Twitter | About | Help Center | Terms | Privacy policy | Cookies | Ads info

TAB 8

Ex-officer asks Waterloo Regional Police Services Board to hire her

News Sep 06, 2017 by Liz Monteiro (/waterlooregion-author/liz-monteiro/A5427C0A-DB30-4DC3-8F41-9F6F2D8F80BC/) (mailto:lmonteiro@therecord.com) Waterloo Region Record

WATERLOO REGION — Former police constable Kelly Donovan received a cool reception Wednesday when she asked the Waterloo Regional Police Services Board to hire her to help train board members and keep police accountable.

Donovan, who quit the police service in June after six years and is an outspoken critic, now represents her own business, Fit4Duty, which offers an independent whistleblower program to police services, government agencies and private companies.

Addressing the board, Donovan suggested she could help it establish an ethics policy and a better process to deal with internal allegations.

After she spoke, chair Tom Galloway said the board does not hear from delegations promoting businesses and suggested to Donovan that the service has a procurement policy for hiring.

In an interview after the meeting, Donovan said she expected the response she received.

"The policing culture is extremely resistant to change," she said.

"If they truly want to represent the community they serve, something needs to change. They need effective oversight and better governance."

Donovan said she wasn't trying "to pitch her business" but rather is trying to improve police culture.

"It's a huge struggle to get police on board," she said.

Donovan said she will visit other police boards, but "if the police is not interested in applying ethical standards, then I'll focus on the corporate world."

In July, Donovan released a 93-page report outlining how local police and other police services intimidate, bully and harass their employees who try to lodge internal complaints.

Donovan said officers who complain are treated unfairly and targeted by their superiors.

Wednesday's address was the second time she publicly spoke to the police board. In May 2016, she spoke to the board as an officer and supported Sgt. Brad Finucan who was charged with criminal harassment.

She said he was treated unfairly by detectives and evidence was withheld.

At his trial last year, Finucan pleaded guilty to harassment and illegal gun possession. He received an absolute discharge on the gun charge and a conditional discharge on the count of harassment against a woman, who is currently an officer with Waterloo Regional Police.

lmonteiro@therecord.com (mailto:lmonteiro@therecord.com) , Twitter: @MonteiroRecord

Ex-officer asks Waterloo Regional Police Services Board to hire her

News Sep 06, 2017 by Liz Monteiro (/waterlooregion-author/liz-monteiro/A5427C0A-DB30-4DC3-8F41-9F6F2D8F80BC/) (mailto:lmonteiro@therecord.com) Waterloo Region Record

WATERLOO REGION — Former police constable Kelly Donovan received a cool reception Wednesday when she asked the Waterloo Regional Police Services Board to hire her to help train board members and keep police accountable.

Donovan, who quit the police service in June after six years and is an outspoken critic, now represents her own business, Fit4Duty, which offers an independent whistleblower program to police services, government agencies and private companies.

Addressing the board, Donovan suggested she could help it establish an ethics policy and a better process to deal with internal allegations.

After she spoke, chair Tom Galloway said the board does not hear from delegations promoting businesses and suggested to Donovan that the service has a procurement policy for hiring.

In an interview after the meeting, Donovan said she expected the response she received.

"The policing culture is extremely resistant to change," she said.

"If they truly want to represent the community they serve, something needs to change. They need effective oversight and better governance."

Donovan said she wasn't trying "to pitch her business" but rather is trying to improve police culture.

"It's a huge struggle to get police on board," she said.

Donovan said she will visit other police boards, but "if the police is not interested in applying ethical standards, then I'll focus on the corporate world."

In July, Donovan released a 93-page report outlining how local police and other police services intimidate, bully and harass their employees who try to lodge internal complaints.

Donovan said officers who complain are treated unfairly and targeted by their superiors.

Wednesday's address was the second time she publicly spoke to the police board. In May 2016, she spoke to the board as an officer and supported Sgt. Brad Finucan who was charged with criminal harassment.

She said he was treated unfairly by detectives and evidence was withheld.

At his trial last year, Finucan pleaded guilty to harassment and illegal gun possession. He received an absolute discharge on the gun charge and a conditional discharge on the count of harassment against a woman, who is currently an officer with Waterloo Regional Police.

lmonteiro@therecord.com (mailto:lmonteiro@therecord.com) , Twitter: @MonteiroRecord

TheRecord.com

Ex-officer asks Waterloo Regional Police Services Board to hire her

News Sep 06, 2017 by Liz Monteiro (/waterlooregion-author/liz-monteiro/A5427C0A-DB30-4DC3-8F41-9F6F2D8F80BC/) (mailto:lmonteiro@therecord.com) Waterloo Region Record

WATERLOO REGION — Former police constable Kelly Donovan received a cool reception Wednesday when she asked the Waterloo Regional Police Services Board to hire her to help train board members and keep police accountable.

Donovan, who quit the police service in June after six years and is an outspoken critic, now represents her own business, Fit4Duty, which offers an independent whistleblower program to police services, government agencies and private companies.

Addressing the board, Donovan suggested she could help it establish an ethics policy and a better process to deal with internal allegations.

After she spoke, chair Tom Galloway said the board does not hear from delegations promoting businesses and suggested to Donovan that the service has a procurement policy for hiring.

In an interview after the meeting, Donovan said she expected the response she received.

"The policing culture is extremely resistant to change," she said.

"If they truly want to represent the community they serve, something needs to change. They need effective oversight and better governance."

Donovan said she wasn't trying "to pitch her business" but rather is trying to improve police culture.

"It's a huge struggle to get police on board," she said.

Donovan said she will visit other police boards, but "if the police is not interested in applying ethical standards, then I'll focus on the corporate world."

In July, Donovan released a 93-page report outlining how local police and other police services intimidate, bully and harass their employees who try to lodge internal complaints.

Donovan said officers who complain are treated unfairly and targeted by their superiors.

Wednesday's address was the second time she publicly spoke to the police board. In May 2016, she spoke to the board as an officer and supported Sgt. Brad Finucan who was charged with criminal harassment.

She said he was treated unfairly by detectives and evidence was withheld.

At his trial last year, Finucan pleaded guilty to harassment and illegal gun possession. He received an absolute discharge on the gun charge and a conditional discharge on the count of harassment against a woman, who is currently an officer with Waterloo Regional Police.

lmonteiro@therecord.com (mailto:lmonteiro@therecord.com) , Twitter: @MonteiroRecord

by Liz Monteiro (/waterlooregion-author/Liz-Monteiro/a5427c0a-db30-4dc3-8f41-9f6f2d8f80bc/)

Liz Monteiro can be reached via Twitter **@MonteiroRecord (https://twitter.com/MonteiroRecord)**

Email: **lmonteiro@therecord.com (mailto:lmonteiro@therecord.com)**
Facebook (https://www.facebook.com/waterlooregionrecord) **Twitter (https://twitter.com/MonteiroRecord)**

Tags: **News (/waterlooregion-news/)** - **Local (/waterlooregion-news/local/)**, **News (/waterlooregion-news/)**

TAB 9

Submissions of **Kelly Donovan**

Safer Ontario Act, 2017 (Bill 175)

Thursday February 22, 2018
Committee Room 151
Main Legislative Building

TABLE OF CONTENTS

TAB A	Systemic Misfeasance in Ontario Policing and the Coordinated Suppression of Whistleblowers
TAB B	List of emails to which the Report was sent on July 17, 2017
TAB C	Comments from the public on the release of the Report
TAB D	Reply from Hon. Ralph Goodale, August 11, 2017
TAB E	Reply from Hon. Marie-France Lalonde, September 13, 2017
TAB F	Reply to Hon. Lalonde from Donovan, September 22, 2017
TAB G	Letter from Ontario Civilian Police Commission, March 6, 2017
TAB H	Letter from Ontario Independent Police Review Director, Mar. 29, 2017
TAB I	Email from Ombudsman of Ontario's Office, May 3, 2017
TAB J	Human Rights Tribunal of Ontario Deferral, February 17, 2017
TAB K	Letter to Hon. Yasir Naqvi from Donovan, January 8, 2018

This submission was prepared for debate before the Standing Committee on Justice Policy regarding Bill 175 and is intended to support the presentation by Fit4Duty™ Founder and President Kelly Donovan who resigned from policing in Ontario in 2017 after she was disciplined by her police Chief for speaking up about internal misfeasance in 2016.

REPORT OF SYSTEMIC MISFEASANCE IN ONTARIO POLICING AND THE COORDINATED SUPPRESSION OF WHISTLEBLOWERS

BY

KELLY DONOVAN

© 2017

EXECUTIVE SUMMARY

This report of systemic misfeasance in Ontario policing and coordinated suppression of whistleblowers was prepared to give a voice to the thousands of police officers across the country who have fallen victim to legislation that disproportionately empowers those who have risen through the ranks and allows transparency to be subjective and perfunctory promises of accountability.

This report will provide insight into current legislation governing municipal police officers in Ontario and point out deficiencies. As government officials prepare revisions to legislation it is imperative that all stakeholders are heard.

The Royal Canadian Mounted Police (RCMP) have received plenty of media attention recently with reports released by the Civilian Review and Complaints Commission for the RCMP[1]. What has been pointed out by people like Lesley Bikos, ex-police officer and current PhD student, is that the culture is no different at other Canadian and Ontario municipal police services.[2] As the RCMP Workplace Harassment report points out, over the past decades there has been no shortage of reports, internal and external reviews, studies and surveys examining the RCMP and making recommendations for organizational reform.[3] Despite the time, energy, and expertise that has been dedicated to resolving these problem, the RCMP and its senior leaders are resistant to meaningful change.[4] Even more recently, a class action lawsuit was filed against the Waterloo Regional Police Service for gender discrimination, sexual harassment and sexual assault. As much as the police chief denies the allegations and the legitimacy of the suit itself, one of the plaintiffs was a Superintendent up until April, 2017, and has publicly stated that while he was in charge of the human resources department he raised many of those same issues and was ignored.[5] According to the Waterloo Regional Police Service, they take these allegations seriously. The service claims to have progressive policies, procedures and training to ensure that any such allegations are dealt with in accordance with the law.[6] Who is the public supposed to trust?

There have also been media campaigns by police services promoting their progressive mental health policies, which they say are in the interests of their members and promoting healthy workplaces. The Waterloo Regional Police Service recently promoted their Post-Traumatic Stress Disorder (PTSD) Prevention Plan, (something all police services in Ontario were required to submit), in the Waterloo Record[7]. Part of this plan is to provide outreach to its members who are away from work "due to positive or challenging

---

[1] https://www.crcc-ccetp.gc.ca/en/newsroom/crcc-releases-report-workplace-harassment-rcmp
[2] "It's not just the RCMP: Police culture is toxic," Lesley Bikos, Contributed to the Globe and Mail, May 17, 2017.
[3] Ibid. note 1.
[4] Ibid. note 1.
[5] http://kitchener.ctvnews.ca/lawsuit-launched-against-wrps-over-sexual-assault-harassment-discrimination-1.3439341
[6] http://www.wrps.on.ca/news/wrps-police-services-board-and-wrpa-respond-class-action-suit
[7] "Waterloo police's PTSD prevention plan focuses on education and early intervention," by Samantha Beattie, Waterloo Chronicle, July 6, 2017.

circumstances."[8] Services, such as the Waterloo Regional Police, never disclose how often officers who are off work on the advice of their doctors are often forced back to work, or that in some cases of PTSD the symptoms are brought on by operational stress caused by management. Even when the Workplace Safety and Insurance Board (WSIB) approves a claim for PTSD, the police service will pay lawyers to appeal that decision. What appears to be a supportive and healthy environment on the surface is in some cases highly toxic and in contributing to the deterioration of some police officer's mental health.

It has long been understood that the culture in policing needs to evolve to accommodate expectations of not only the public but also the changing demographic enlisting in policing. Improving diversity in policing is not only about recruiting talent it is also about retaining it. Police services have a responsibility to be representative of their communities and yet consistently struggle with meeting this objective; specifically, with retaining female police officers.

Case studies presented herein are derived from public documents and represent the mere tip of the iceberg of the collateral damage that has occurred in policing across Ontario and even Canada.

This report would not have had to be prepared if legislation allowed for true transparency and accountability. When legislation undergoes changes, it is necessary in the interest of the public that the issues identified in this report be addressed to improve fiscal and ethical responsibilities of police services.

While we wait for legislative changes, there is Fit4Duty™. To show your shareholders, the public, and your employees that integrity, accountability and transparency are important to you and your organization, you can contact Fit4Duty™ to start building your anti-corruption programme. Fit4Duty™ will heighten your Ethical Standard™.

Copyright © 2017 by Kelly Donovan. Kelly Donovan is available for speaking engagements, training, policy development, and whistleblower programs for both government and corporations. For more information visit www.fit4duty.ca.

[8] *Supra* note 7.

TABLE OF CONTENTS

INTRODUCTION **6**
AUTHOR AND ACKNOWLEDGEMENTS 10
PREFACE 13

CHAPTER 1: POLICING THE POLICE **14**
CONSTITUTIONALITY OF THE PSA 14
HISTORY OF COMPLAINTS SYSTEM 15
CURRENT LEGISLATIVE STRUCTURE 19
WHO CAN COMPLAIN? 20
DEFICIENCIES IN LEGISLATION 22
Ministry of Community Safety and Correctional Services *22*
Ontario Civilian Police Commission *22*
Office of The Independent Police Review Director *22*
Police Services Board *23*
SERVICE POLICY 23
Complaints *24*
Ethics *25*
Transparency *25*
OVERSIGHT REVIEW 26

CHAPTER 2: ISSUES **28**
CHANGING THE CULTURE 28
PARA-MILITARY 31
SECRECY 33
Open and Transparent? *35*
ETHICS 37
SUSPENSIONS 38
DISCRETION 40
Double-Standard *47*
UNION REPRESENTATION 48
MISFEASANCE 49
London *50*
Ottawa *52*
Toronto *53*
Waterloo *54*
HARASSMENT/BULLYING 55
Calgary *56*
Ottawa *56*
Waterloo *57*

CHAPTER 3: WHISTLEBLOWERS **59**
WHISTLEBLOWER LEGISLATION 60
Federal *60*
Provincial *62*
WHISTLEBLOWERS: COLLATERAL DAMAGE 67
ONTARIO 67
Ontario Provincial Police *67*
Cornwall *68*

Hamilton 70
Orangeville 71
Peel Region 72
Waterloo 74
CANADA 78
RCMP 78
Edmonton 80
Halifax 82
Montreal 83

CHAPTER 4: CHANGE 84
IT STARTS WITH THE BOARD 84
Increase Overall Impartiality 86
Increase Accountability 87
Culture Change 87

CHAPTER 5: LEGISLATION 89
SECTIONS OF THE PSA RELATING TO RESPONSIBILITY, POWERS AND DUTIES 89
Office of The Independent Police Review Director 89
Ontario Civilian Police Commission 89
Police Services Board 90
Special Investigations Unit 91

INDEX OF OFFICERS, POLICE SERVICES AND REPORTS 92

INTRODUCTION

Policing has undergone some major changes in recent years and even more change looms on the horizon. Public pressure is building for police leaders to live up to their promises of transparency and accountability.

In order to maintain transparency and accountability to all communities of Ontario, Acts and Regulations governing police services need to be clear and concise, with no room for interpretation or inconsistency. For the public to trust the judicial system, the system has to treat all participants the same; the public and police alike. The Acts and Regulations need to make **every** police officer accountable upon taking their oath of office as well as giving protection to officers from what can be best described currently as a culture of internal bullying. Changes to legislation are required to ensure that protections are built into the legislation to make the complaint procedure and disciplinary action against officers fair, impartial and expedient. By doing this, police officers have trust in the process, the public have trust in the police, and officers do not live in fear of arbitrary prosecution that can last for years and cost taxpayers across the province millions of dollars. Preventing this would make police services more accountable to the taxpayer and would allow more of police services' budgets to be allocated for use in everyday policing rather than wasting it in legal matters.

The level of supremacy afforded to Ontario's chiefs of police under the current Police Services Act, R.S.O. 1990, c. P.15 (hereafter known as the PSA), places an exorbitant amount of trust in the personal integrity of the chief since there are no legislated mechanisms in place for complaints to be made regarding the conduct of the chief from his or her subordinates within the same service and the chief has full control over what information is publicly released. It is the responsibility of the Police Services Board to monitor the performance of the chief of police and yet all communication from the service to the Board is channeled through the chief for approval.

Despite the recent attention given to civilian oversight of police there have been statutes in place for years that not only allow for complaints from members of the public but also allow for escalation of disputes arising from the disposition of a complaint. The public complaint process needs to be more accountable and transparent to the public, but at this point only fine tuning is required. Justice Michael Tulloch's report, released to the public on April 6, 2017[9], addressed many of the public and the police communities' concerns. However, since every police officer in Ontario has sworn an oath of secrecy, the internal dealings of police services have been protected. A large majority of police officers have been exposed to some form of unethical or corrupt behaviour within their police service and have not reported the behaviour for fear of reprisal. A very small number of police officers have chosen to report the behaviour and have been forced out of the profession.

A portion of this report focuses on police whistleblowers and the desire of police leaders to 'shoot the messenger' rather than face the underlying issues. There are also many

[9] The Report of the Independent Police Oversight Review, The Honourable Michael H. Tulloch, 2017.

cases of misfeasance to intimidate, bully and harass employees who have filed Human Rights or workplace harassment complaints or have simply fallen out of favour.

Ultimately, the chief of police has full discretion to decide which police officers to prosecute, and which police officers not to prosecute. In addition to work-related discipline matters, a chief of police can also choose to criminally investigate and charge a police officer. The cases cited here suggest that these decisions are not made consistently or according to the principles of justice.

In addition to Tulloch's recommendations to improve transparency and accountability of the public complaints process, there need to be legislative changes that favour transparency and equal treatment of all people. Most of the cases referenced in this report are derived from legal documents and published media and all are sourced throughout. Here in Canada officers have been subjected to searches of their residences and wiretaps of their personal phones – not because they were the subject of serious criminal investigations, but because they reported corruption or filed harassment complaints against superior officers. It's no surprise to politicians that police business is expensive. As one Toronto City Councillor put it, the $1 billion Toronto Police Service budget is "out of control."[10] However, when taxpayers learn that police services are directing resources to handle personal vendettas as opposed to community directed crime prevention and enforcement initiatives, the public must demand more transparency and internal oversight. If change does not come for ethical reasons; then change should absolutely come for financial reasons.

The problems identified in this report are not isolated to Ontario; they are happening all over the Country. Police officers are not provided an impartial judicial process and are investigated by officers who are promoted if the outcome is favourable to their superiors or whose careers are stalled if the outcome is not favourable. What results are cases that may not have resulted in any charge at all against a civilian, are turned into homicide-scale investigations costing the taxpayers hundreds of thousands of dollars. In the rare cases when the officer has the means of seeing a criminal trial through to acquittal, there are law suits settled in silence by police services. This report does not suggest that there won't be times when a police officer must be investigated for serious misconduct or criminal behaviour, only that all people of Ontario must be measured by the same scale of justice, tried by the same impartial body and not receive any inherent protections due to profession or rank.

This is also not a problem faced only by police services. As is illustrated in the case studies contained herein, neither the Ontario Civilian Police Commission, Office of the Independent Police Review Director nor the Ministry are willing to truly address the intertwined and unilateral hierarchy that exists in the justice system. Even when an officer can afford to defend their case all the way to Divisional Court and challenge the apparently biased decisions made by the involved organizations, decisions are always made in the interest of preserving trust in the judicial system. Historically, there has been a reluctance

[10] "Council passes 2016 budget with 1.3% property tax hike," CBC News, February 17, 2016.

by the courts to admit, or even investigate, the possibility of misfeasance in police administration.

Aside from the financial impact of this misfeasance, why should this issue be of public concern?

The public depend on police officers to show up for work every day, mentally and physically fit for duty. More attention is being paid to first responders suffering from PTSD due to the nature of their jobs. What the public do not know is that at times it is the operational stress an officer is facing that causes them to deal with PTSD symptoms. In some cases, the internal issues created by management can leave effects that last far longer than the difficult calls for service. Denise Revine worked as a civilian for the RCMP for 33 years and experienced PTSD after blowing the whistle on the RCMP pension scandal, see page 78. The number of officers off on sick-leave is not a figure that is regularly reported to the public, yet those numbers are staggering and continue to increase. If more and more officers are coming off the road for mental health reasons, and some of that is attributable to operational stress caused by misfeasance, then this absolutely becomes a matter of public concern.

What makes matters worse and another way the system is failing police officers is the lack of support from police associations. When a police officer has a complaint about another officer or a malignancy within their service, their only option is to file a grievance. However, if that grievance involves the conduct of other members of the same association they lose the support of the association who does not want to be seen as assisting a complaint against one of their own. This renders the association redundant for that police officer who is trying to do the right thing. Without the support of their association (as Inspector Steven Patrick Dolan of the Peel Regional Police learned), the officer can no longer proceed with their grievance and becomes the black sheep, see page 72. Despite this fact, the Waterloo Regional Police Service recently responded to allegations of systemic and institutional gender-based discrimination and harassment, sexual harassment and sexual assault made in a class action lawsuit by stating that the "Police Services Act provides for a grievance/arbitration system pursuant to the collective agreement and would have been the appropriate means to deal with the allegations."[11] Any reader can conclude that, since the officers' association is named in the class action lawsuit, there must be more than a shred of evidence that the association did not support these women when their issues came to light.

For the most part, these 93 pages will introduce you to the brave men and women who have done nothing but try to do their jobs to the best of their abilities and were simply unwilling to turn a blind eye or participate in the abuses of power that have occurred in policing for years. Unfortunately for the public, most of them have since left the profession.

[11] WRPS, Police Services Board and WRPS Respond to Class Action Suit, Media Release, June 1, 2017.

Almost all of the issues discussed in this report could have been prevented with better internal oversight by police services boards and transparency to the public. The report concludes with recommendations to improve transparency and accountability.

It's a mad world when a person is too ethical to stay a police officer.

Acronyms used throughout this report:

OIPRD – Office of the Independent Police Review Director
OCPC – Ontario Civilian Police Commission
SIU – Special Investigations Unit

AUTHOR AND ACKNOWLEDGEMENTS

In 2008, I was working as a banker when I witnessed collusion by police officers in the handling of allegations against one of their own. I've always believed that police officers need to be objective and maintain the highest level of integrity because of the responsibility entrusted to them by society. After all of the experiences I have had in life and all of the difficult lessons I have learned, I knew I would make a good cop. I believed the best way to change the culture in policing was from within. In 2010, I became a police officer.

It wasn't until 2015, that I witnessed misconduct during multiple internal investigations at my own police service and I soon learned that the issue was systemic. I witnessed police officers sweep allegations under the rug, violate internal policy, if they were about a favourable officer and I saw good, hardworking officers be humiliated and non-criminal allegations be stretched into homicide scale criminal investigations for officers who were not favourable. I became determined to address the mishandling of internal investigations and deficiencies in police legislation. I began my journey by addressing my police services board with my issues, since I had learned that my service does not permit members to file internal complaints. I was subsequently disciplined, constructively dismissed, my issues were not adequately addressed, and I began to research just how often police services silence whistleblowers. I attempted to have the OCPC investigate my service for changing internal policy to no avail. I attempted to have the OIPRD investigate officers who conducted a negligent investigative review to no avail. I complained to the Human Rights Tribunal for the reprisal action taken against me and the Tribunal refused to intervene. I went as far as asking the Office of the Ombudsman to examine the systemic issues and to date, no oversight body has chosen to exercise their legislated authority and investigate. From the time I reported the issues to my Board (May, 2016), to the date of my resignation in June, 2017, the service has been more interested in attacking my credibility than acknowledging that these problems exist and show a true desire to improve.

In the 1970's, widespread corruption was uncovered in the New York Police Department, much to the credit of whistleblowers. Had it not been for those brave few officers who spoke up, internal issues would not have been exposed.

I spoke with Justice Michael Tulloch regarding my case and the systemic issues I uncovered and was extremely pleased to see that many of them were transformed into recommendations in his final report. Although, historically, report recommendations have not entirely been adopted into legislation. After a year of constructive dismissal, and more

recently a medical leave from work due to stress and PTSD resulting from a shooting incident while I was a recruit at the police college, I have come to the difficult conclusion that my attempts to affect change from within have been in vain. I have chosen to leave the policing profession in order to provide my services directly to police services boards, other government agencies and corporations. I know firsthand what a police officer stands to lose when they choose integrity over loyalty, and I will do everything in my power to ensure that both become synonymous.

Despite advice I received from my supervisors, lawyers, colleagues and even family that this is "just the way policing is, and always has been" I am unable to turn a blind eye to the misfeasance and I am determined to change the culture, improve accountability and ensure that policing continues to recruit and retain the best of the best. I still believe that policing can be one of the best careers out there. In my short policing career of only 6 years I saw very qualified, confident and intelligent women come and go because they refused to remain in the toxic environment, impenetrable to change; that is policing. I also saw women be promoted and yet do nothing from their positions of power to improve the system for those beneath them.

I conducted extensive research, outside of my employment as a police officer, and located public documents detailing the history of the differential treatment of police officers and inefficiencies and inadequacies in the apparent oversight bodies.

Justice Tulloch has recognized the need to have training provided to police services boards from an independent and impartial source, as well as a whistleblower program for those reporting misconduct.

For this reason, I created **Fit4Duty™** which will become **The Ethical Standard™** for police services boards and corporations when it comes to transparency, accountability, training, ethics and community mobilization. **Fit4Duty™** will also provide an independent whistleblower program to police services, government agencies and private corporations. What differentiates the **Fit4Duty™** whistleblower program from any other program is that we will not only collect the anonymous reports from your employees, we will also investigate the allegations to attempt to substantiate them. If these reports were sent back to employees paid by the organization to investigate (which occurs in most whistleblower programs), then there is little impartiality and the integrity of the entire system is compromised.

Over 2017 and 2018, I will tour the province of Ontario making presentations to police services boards and offering my services which will include; speaking engagements, training, policy development and evaluation, community outreach, quality assurance and whistleblower programs. Through **Fit4Duty™** I will train police services board members to be knowledgeable and effective and raise the standard of police governance and community mobilization. To me, having integrity is always doing what's right even when no one is watching. I believe that by exposing the issues in this report, police services board members will better understand the importance of internal oversight. By taking initiative to address these issues the Board will regain the trust of police officers and

taxpayers. This is a crucial time for legislative changes, and it is equally important that legislators understand the ongoing cost of inadequate oversight in policing.

As stated multiple times throughout this report, police officers are often prosecuted for discussing any police issues with anyone outside of the police service. As such, I will not name those police officers who have given me moral support and encouragement throughout this process; you know who you are. I do not represent any police service or association and none of the information in this report was obtained using police resources. Despite this fact, I fully expect there to be a smear campaign against my new initiative and to be harassed by certain members of police services for having released this report. My hope is that attempts to discredit me as I move into a new career will fall on deaf ears.

I dedicate this report to the memory of my mother who, before her death in 2004, encouraged me to always stand up for myself and what I believe.

Kelly Donovan
www.fit4duty.ca - The Ethical Standard™

I modified a quote from Chris Kyle's autobiography (American Sniper)
to what I believe is accurate for policing:

Police officers are the sheepdogs of the world,
sent to protect the sheep from the wolves,
but they do not reach the top by being sheepdogs.
They must be capable of being the wolf.

The Runaway, 1958

PREFACE

It is not for the leaders of police services that men and women continue to be committed to the profession and protect you and I. It is the passion one has to serve his or her community and that is not challenged in this report. There are thousands of outstanding police officers across Ontario whose conduct is not addressed in this report as it does not need to be. It is their dedication and commitment that is keeping this ship afloat.

CHAPTER 1: POLICING THE POLICE

CONSTITUTIONALITY OF THE PSA

Police officers hold the power to deprive persons of their fundamental rights and charge them according to law. When a police officer abuses their authority against a member of the public, there are several checks and balances, in the form of civilian agencies, to adjudicate the lawfulness of the officer's conduct. The public have several avenues to lodge a complaint against the police. Those avenues are discussed and illustrated, starting on page 19.

In the case of the arrest, detention and charging of a police officer, there are no means of independent oversight. Police officers have historically been denied their right to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal.[12] Arguments have been made on many occasions that the PSA violates fundamental rights of police officers and the courts have successfully defeated those arguments by relying on the integrity and objectivity of the chief of police, (or designate). When a police officer is charged by their chief of police, for a PSA offence, it is the chief who chooses the prosecutor and judge (hearing officer). It has been said that this process has been used to rid the force of officers who are unsuitable.

The courts have never recognized the inherent bias that exists when the person in charge of the proceeding has an interest in the protection of the reputation of themselves and their institution. If there was no bias in the current PSA, then hearing officers hired by police services who acquit officers would be selected to oversee just as many proceedings as those who convict officers. There have been no studies to examine this statistic and the suggestion is that by affording chiefs of police this discretion, certain hearing officers are not as popular as others.

The objectivity of the PSA proceeding process has been compared to that of surgeons and physicians. However, the courts have failed to address one major difference. When a doctor is tried before a tribunal of the College of Physicians and Surgeons they have the ability to appeal disciplinary decisions to Divisional Court[13]. This system allows a doctor the opportunity to be tried before a body that is independent of their profession, their appeal is adjudicated in the judicial system. From the time a police officer is accused of an offence to their highest possible level of appeal, all of the participants in the process are members of the judicial system; a police officer is never given the opportunity to have their case heard by a member of the medical profession, as an example. Each participant in the process has a vested interest in the preservation of the reputation of the judicial system and as such there is no way to tell if decisions are made impartially, or to protect that reputation.

---

[12] *Constitution Act, 1982, Section 11(d).*
[13] *Regulated Health Professionals Act, 1991, S.O. 1991, c. 18, section 70(1).*

In 2012, Canadian whistleblower Edgar Schmidt, former general counsel in the Legislative Services Branch of the Department of Justice, served his own Ministry with a statement of claim for acting unlawfully by failing to properly review the constitutionality of draft legislation. Schmidt alleges that he had been responsible for ensuring, through pre-enactment examinations, that new legislation conformed to the Bill of rights. Schmidt alleges that what had been happening is that the burden of disciplining state law-making has virtually entirely been up to the citizen.[14]

Schmidt's whistleblowing becomes relevant because it uncovers questions regarding what provisions were in place when the Police Services Act came before the House of Commons. Did the first Police Services Act have to be "manifestly" inconsistent with the Charter or Bill of Rights? Or, did it have to be "likely or even almost certainly" inconsistent with the Charter in order to be declared not constitutionally compliant? Before any level of court considers an argument for or against the constitutionality of the Police Services Act, Schmidt's allegation that the Attorney General may not have acted lawfully by failing to properly review the constitutionality of the draft legislation prior to enactment should be addressed. Schmidt's case is scheduled to be heard in 2017.

Schmidt, like many other whistleblowers contained in this report, was suspended without pay the day after he brought about his lawsuit against the Ministry. Because Schmidt is not a police officer his case is not detailed in the Whistleblower section of this report.

> *"There is a valuable role for the state but I think citizens need to be vigilant and be aware that the institutions that they create, particularly the state institutions that they create, sometimes abuse the powers that are entrusted to them."*
>
> - Edgar Schmidt[15]

HISTORY OF COMPLAINTS SYSTEM

Without detailing the full extent of the history of the handling of complaints against the police, I will highlight the history since 1990 when the Police Services Act[16] was passed. Over the next 15 years many reports and reviews were conducted to examine the human rights issues and overall effectiveness of the current complaints process.

Even as far back as 1992, the issue of the handling of internal complaints of misconduct has been debated. The mandate of the 1992 Report by the Ontario Civilian Commission on Police Services was:

---

[14] "The whistleblower," Roderick MacDonell, Canadian Bar Association National, November-December, 2013.
[15] *Supra* note 14.
[16] *S.O. 1990, c.10.*

> *"...to examine the administration of the Metropolitan Toronto Police Force as it relates to internal investigations into allegations of wrongdoing by members of the force."*[17]

The Inquiry panel considered whether the management, supervision and enforcement of policies and procedures for handling alleged wrongdoing by officers of the Metropolitan Toronto Police Force were adequate in light of the need for:

- accountability to the community;
- vigilance in the maintenance of high standards of professionalism and integrity of policing;
- fairness in the exercise of authority; and
- openness to public scrutiny.

The Inquiry revealed serious mismanagement on the part of the Metropolitan Toronto Police Force in the handling of alleged misconduct by members of the force. The evidence put before the Inquiry revealed that *(excerpt)*:

- In an effort to rid the force of an officer who was considered unsuitable, expediency has taken precedence over principle.
- Accountability for police discipline and civilian review has been compromised.

The role of Internal Affairs is crucial in maintaining public trust in the police. An excerpt from the American Law Enforcement Accreditation Manual states:

> *"The internal affairs function is important for the maintenance of professional conduct in a law enforcement agency. The integrity of the agency depends on the personal integrity and discipline of each employee. To a large degree, the public image of the agency is determined by the quality of the internal affairs function in responding to allegations of misconduct against the agency or its employees."*[18]

The primary aim of the Report was to prevent a recurrence of the mismanagement revealed by the evidence given to the Inquiry. The inquiry made 24 recommendations to the Metropolitan Toronto Police Services Board, Chief and Solicitor General of Ontario. Recommendation 23 reads:

> *"The Solicitor General of Ontario should implement an educational program for members of Police Services Boards across Ontario to ensure that they are apprised of their authority and responsibilities."*

It is unknown if the recommendations of the Inquiry were implemented at Metropolitan Toronto Police Services (now Toronto Police Service), or elsewhere.

---

[17] Report on an inquiry into administration of internal investigations by the Metropolitan Toronto Police Force, The Ontario Civilian Commission on Police Services, August 1992.
[18] *Supra* Note 17.

In 1996, Rod McLeod, Q.C., was asked to review civilian oversight of police in Ontario. Shortly after the McLeod report was released came Bill 105; 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.*[19] However, the numbering of other Parts of the Act remains unchanged.

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 indicated a concern for the lack of independence in the investigative process, stating:

> *"The lack of an investigative process independent of the police is regarded as a significant impediment in regard to public confidence in the system."*[20]

It was in 2004 that the Honourable Patrick J. LeSage was mandated by the Ontario Government 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. The current structure became what it is now based on the recommendations included in the LeSage Report released in 2005.[21]

The Standing Committee on Justice Policy held public sessions in 2007 to discuss proposed changes to the PSA, Bill 103, (*the Independent Police Review Act*). The late Mr. Peter Kormos, NDP MP Niagara Centre, a member of the Standing Committee on Justice Policy at the time, expressed concerns over the lack of oversight of the oversight bodies themselves. Despite Kormos' concerns, echoed by many who attended the public sessions on January 30, 2007, and January 31, 2007, section 97 remained in the proposed Bill 103, which states:

> PSA, s. 97. The *Ombudsman Act* does not apply to anything done under this Part. 2007, c. 5, s. 10. (Regarding Part V).

Kormos had also expressed concern regarding the prohibition of a police officer from making a complaint against another member of the same service in the public debate held on January 30, 2007. Kormos asked:

> *"Why can't a police officer complain to the director about the conduct of another police officer in that same service?... Why would you bar that officer access to the independent director, the arm's-length director? If a police officer has concern about, let's say, a malignancy within his own police service, surely the independent arm's-length director is a suitable destination for that concern if, in fact, the concern is about a malignancy that could well interfere with, impede or obstruct that police*

---

[19] 1st Sess., 36th Leg., Ontario, 1997 (assented to June 26, S.O. 1997, c.8) [hereinafter Bill 105]
[20] https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/LeSage/
[21] *Supra* note 20.

officer's complaint."[22]

Mr. Graham Boswell, counsel, policy division for the Ministry of the Attorney General (at the time), responded by stating that the OPP was pursuing whistleblower protection and other municipal police services would have policy to address internal complaints.[23] However, it has never been a requirement for police services in to develop and maintain policy of accepting internal complaints. Therefore, if a police service chooses to exclude members of the service from being a complainant of internal misconduct, current legislation would allow the complaint to be suppressed, and some have. Without a legislated process by which a police officer can make a complaint and ensure the complaint is adequately addressed, there will continue to be differential treatment of cases of internal misconduct.

Since the changes to legislation that were intended to improve public confidence in policing, we have not seen a significant change. Canadians were 79% confident in police in 2000[24], and 76% of Canadians had either a great deal or some confidence in the police in 2013.[25]

In 2016, the Honourable Justice Michael Tulloch was tasked with conducting a review of oversight of police in Ontario. Contained in the Order of Council, approved on October 19, 2016, and of particular interest is the following excerpt:

"Mandate

1. The Independent Reviewer shall conduct a review and make recommendations on how to:
    a. Enhance the transparency and accountability of the police oversight bodies, while preserving fundamental rights;"[26]

The report was released to the public on April 6, 2017, and is detailed on page 26.

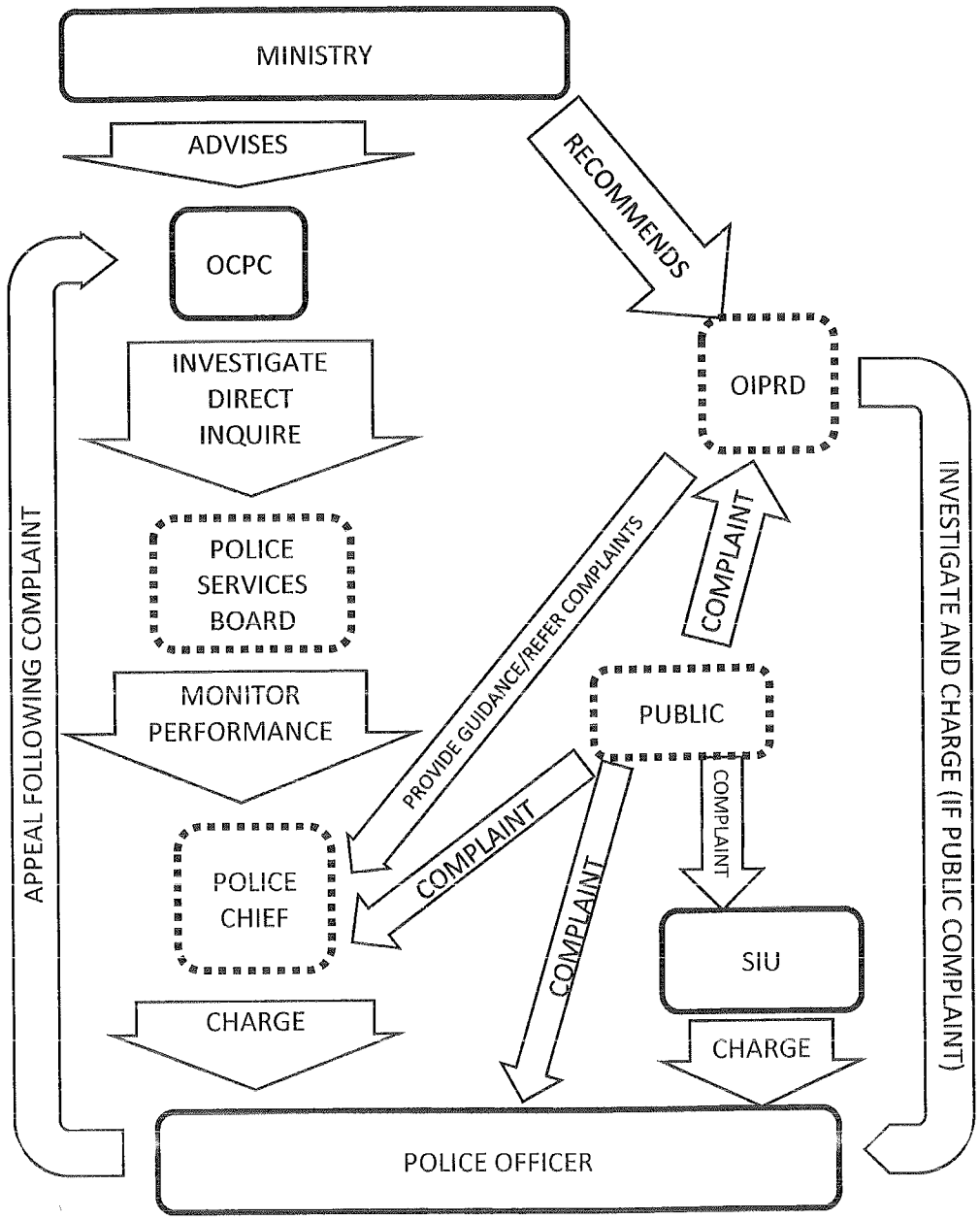
Unfortunately, Justice Tulloch was not tasked to review the transparency and accountability of police services themselves, only the oversight bodies.

---

[22] Legislative Assembly of Ontario, Second Session, 38th Parliament, Official Report of Debates (Hansard), Tuesday 30 January, 2007, Standing committee on justice policy, Independent Police Review Act, 2007.
[23] *Supra* note 22.
[24] Research Brief – Public Confidence in the Police in Canada, 1981-2000: Evidence from the World Values Survey, Tamara Candido, Senior Analyst Strategic Policy and Planning Branch, Royal Canadian Mounted Police.
[25] Spotlight on Canadians: Results from the General Social Survey Public confidence in Canadian institutions, Adam Cotter, StatsCan.
[26] http://www.policeoversightreview.ca/orderincouncil.pdf

CURRENT LEGISLATIVE STRUCTURE

(Regarding oversight of police officer conduct)



= Eligible to make a complaint against an officer under Part V, Police Services Act

Figure 1: The above graphic aims at illustrating that the only avenue available to a police officer to escalate a concern is the OCPC, and only after a disciplinary decision. The public have the most opportunity to complain about police and the police can be charged by many involved parties.

WHO CAN COMPLAIN?

Depending on where the complaint originates, there are either several or very few ways to complain about the police in Ontario. As illustrated in the previous page's diagram, the agencies with the most independence are the Office of the Independent Police Review Director (OIPRD) and the Special Investigations Unit (SIU). As noted in this section, police officers do not have access to the OIPRD, unless their complaint relates to the conduct of a police officer from another police service, and even then, complaints can be refused by the OIPRD.

The public have always depended on civilian oversight to ensure that complaints about the police are investigated objectively and transparently. The public want to know that if it is alleged that a police officer has behaved egregiously, they will be held accountable, regardless of their fraternity. Current legislation only requires transparency of the handling of a complaint if it originates with a member of the public. The next section will discuss specific deficiencies in legislation.

Public:
A member of the public has the broadest range of options to make a complaint against the police. In addition to making a complaint, a member of the public is protected against harassment, coercion or intimidation as a result of having filed a complaint,[27] and has legislated ability to escalate a refusal to investigate a complaint. A member of the public can complain in the following ways:

- directly to a police officer, including the Chief of police;
- to the OIPRD;
- to the OCPC, if it relates to the disposition of a complaint under Part V of the PSA;
- to the SIU

Police Officer:
A police officer has very limited means of making a complaint against the police. A police officer has no legislated protection against harassment, coercion or intimidation and no means of appealing decisions made by the police service in relation to a complaint. A police officer can complain in the following ways:

- to the OIPRD if the complaint relates to the conduct of a police officer at a different police service, and even then, the OIPRD can refuse to investigate
- as permitted, based on their service's policy

Chief of Police:
Chiefs of police have the authority to make a complaint about the conduct of a police officer employed by his or her service, other than the deputy chief. In addition to this blanket authority, a chief of police can also make a complaint:

- to the OCPC, if it relates to the disposition of complaint under Part V of the PSA;
- to the SIU

[27] Police Services Act, R.S.O. 1990, c. P.15, Section 79(1).

Police Services Board:
The Police Services Board (PSB) is made up of typically the head of the municipal council, one (or more) person(s) appointed by the council and one (or more) person(s) appointed by the Lieutenant Governor. The composition of a PSB depends on the size of the municipality and is laid out in legislation. A judge, justice of the peace, police officer and a person who practices criminal law as a defence counsel are ineligible to be members of a board. The Police Services Board can:

- choose to initiate an investigation into the conduct of the chief of police or deputy chief of police
- request the OCPC investigate the conduct of a police officer, a chief of police or member of the Board

OIPRD:
The Review Director is appointed to provide civilian oversight of the complaints process. The Director cannot be a current or former police officer, although investigators for the OIPRD can be former police officers. In addition to the Review Director having the authority to initiate its own investigation into the conduct of a police officer, the Review Director:

- can request the OCPC investigate the conduct of a police officer, a chief of police or member of the Board
- must refer complaints regarding the conduct of the chief of police or deputy chief of police to the Board for investigation

OCPC:
Members of the OCPC are appointed by the Lieutenant Governor in Council. The Commission can, on its own motion, investigate the conduct of a police officer, a chief of police or member of the Board.

Ministry of Community Safety and Correctional Services:
The Minister can, on its own motion, request the OCPC investigate the conduct of a police officer, a chief of police or member of the Board.

DEFICIENCIES IN LEGISLATION

With regard to complaints of misconduct of a police officer, including the Chief of police, below are some deficiencies in legislation that restrict transparency and accountability. For excerpts from the PSA regarding the responsibilities, duties and powers of the agencies below, see Chapter 5 (page 89).

Ministry of Community Safety and Correctional Services
No legislated accountability (under PSA):

- Does not require police services to maintain policy on ethics
- Does not specify how police services are to conduct internal investigations
- Does not require police services to maintain policy on internal complaints
- Does not specify what information must be made public by the police service
- Will not investigate or conduct inquiries from public or police officer complaints, will only conduct inquiries or investigations on its own motion[28]

Ontario Civilian Police Commission
No legislated accountability:

- Ombudsman Act does not apply to complaint proceedings under PSA
- Will not investigate or conduct inquiries from public or police officer complaints, will only conduct inquiries or investigations on its own motion[29]
- Does not have its own standard of ethics
- Does not define conflict of interest

No appeal process:

- Must request Judicial Review at Divisional Court

Office of The Independent Police Review Director
No legislated accountability:

- Ombudsman Act does not apply to complaint proceedings under PSA
- No change in accountability whether Director takes on investigation or refers it back to the subject police service of the initial complaint
- Does not conduct investigations into conduct of chief of police or deputy chief of police
- No standard of ethics
- No definition of conflict of interest
- Police officers cannot make a complaint of misconduct against another member of the same service

No transparency:

- Documents produced during a public complaint investigation are inadmissible in civil proceeding

Poor appeal process:

---

[28] *Dolan v. Ontario (Civilian Commission on Police Services), 2011 ONSC 1376*, para 101.
[29] *Supra* Note 28.

- If a public complainant is not satisfied with the outcome of their complaint, they can ask the Board to review the decision only
- When the OIPRD refuse to investigate a complaint from a police officer the only appeal is Judicial Review at Divisional Court

Police Services Board
No legislated accountability:
- Ombudsman Act does not apply to complaint proceedings under PSA
- In the absence of legislated standards, no requirement to establish policy on ethics or conflicts of interest (other than pecuniary)
- Not required by legislation to deal with complaints brought to the Board by members of the public or police
- No representation at Board level by members of police service other than Chief

No transparency:
- Despite being responsible for the provision of adequate and effective police services in the municipality, the information presented to the Board is redacted by the Chief

SERVICE POLICY

In addition to the laws that are in place, police officers must follow the directives and policies established by their police service or they are insubordinate and can be charged with offences under the PSA. The government sets out what policies need to be maintained by police services, although the legislation is vague, basic and allows for inconsistencies from service to service.

An excerpt from the PSA, (more detail in Chapter 5), regarding a Board's responsibility to maintain policy is as follows:

31. (1) A board is responsible for the provision of adequate and effective police services in the municipality and shall,

(c) establish policies for the effective management of the police force;[30]

The Minister of Community Safety & Correctional Services specifies what policies the police service shall provide in Police Services Act Ontario Regulation 3/99.

Those policies are broken down into the following subcategories:
- Crime Prevention
- Law Enforcement
- Victims Assistance
- Public Order Maintenance
- Emergency Response Services

[30] *Police Services Act, R.S.O. 1990, c. P.15.*

- Administration and Infrastructure

As is evident in the dozens of reports and inquests that have been done over the years focusing on police training in de-escalation, change in policing waits for Ministerial direction and as the Ombudsman pointed out in "A Matter of Life and Death" released on June 29, 2016:

> *"The Ministry of Community Safety and Correctional Services has the power, opportunity and duty to address these problems. Yet thus far, it has mostly taken a hands-off approach."*[31]

Unless police services are explicitly directed or legislated to establish a policy, inconsistencies will remain and change will come at the discretion of the chief of police or police services board.

Complaints

Section 34 of the Police Services Act Ontario Regulation 3/99 (under Administration and Infrastructure) requires the establishment of procedures for the investigation of complaints. Since specific requirements are not provided in this Regulation, different services have very different procedures.

For example, York Regional Police has a procedure for Public Complaints and a separate procedure for Sworn Misconduct Management. The YRP Sworn Misconduct Management procedure section C. 2. States:

> *"All members are responsible for reporting incidents of potential misconduct involving other members to their immediate Supervisor."*[32]

Similarly, Peel Regional Police Service has a procedure on Complaints Against Police which contains the following:

> *"Section M. 1. All matters which could become the subject of an internal investigation shall be reported immediately through the appropriate chain of command, unless to do so would prejudice the investigation."*[33]

There are police services that do not have a procedure that would allow a member to make a complaint about the misconduct of other members; only members of the public. Even the services who do have these procedures, they have not accounted for a complaint relating to the conduct of the officer's supervisor, or even the chief. These procedures are written in such a way that discretion is afforded to senior management with no appeal process, allowing complaints to be suppressed, with no means of appeal.

---

[31] The Ombudsman Report: A Matter of Life and Death, Paul Dubé, June, 2016.
[32] York Regional Police Service, General Procedure; Sworn Misconduct Management, Issue Number AI 330.
[33] Peel Regional Police Directive; Complaints Against Police, Issue Number I-B-101 (O).

Despite the Board being responsible for oversight of the police service, they may not be aware of internal dealings when issues have been suppressed.

This is just one example of the inconsistencies.

Ethics

When it comes to ethics in policing, most police services rely on a police officer's Oath of Office to be the benchmark of ethical conduct, and do not have internal policy addressing ethics.

In 2012, the Ottawa Police Service (OPS) recognized a need for service procedure on Ethics and developed its Ethics Program.[34] The OPS program was highlighted at the 2016 Canadian Association of Police Governance Conference. Since then other police services' Boards have expressed an interest in following suit, yet many services still do not have procedures or policy on Ethics. The OPS should be applauded for its leadership in developing a program that addresses the issues of ethics in policing. However, on its face, the OPS program resonates the importance for members to remain loyal to the service. The OPS program does not specifically outline a process for a member to report unethical conduct either protected or anonymously. When the OPS program was rolled out to its members by way of booklet, costing taxpayers $6,700, Ottawa Police Association President Matt Skof was quoted as saying:

> *"...if the members don't believe decisions are being made ethically, that's the problem."*[35]

There are other police services in Ontario who have implemented policies on ethics, although it is not a requirement under the PSA. At the September, 2016, meeting of the Waterloo Regional Police Services Board, Chair T. Galloway questioned if an ethics policy "should be on the radar" and the Chief "indicated that he would take this under advisement and report back at some future date."[36] There is no mention of ethics in Board minutes from that date to the date of this report.

Transparency

The PSA currently provides public transparency of matters relating to the OIPRD, OCPC and SIU. Other than Freedom of Information legislation, there are limited requirements in the PSA to encourage police service transparency.

The Ministry requires police services to report to the Board on matters such as use of force, suspect apprehension pursuits, complaints, etc. There are no parameters as to how these reports are to be completed and precisely what information needs to be contained in the report. Therefore, as with every other aspect of policing, the discretion

---

[34] Ottawa Police Service Ethics: Honour, Courage, Service.
[35] "Police ethics guide trashed: source," Kelly Roche, Ottawa Sun, May 29, 2014.
[36] Minutes, Regional Municipality of Waterloo Police Services Board, September 14, 2016, page 7.

is afforded to the chief of police by whom all reports are filtered before they are released to the Board. A quick survey of annual board reports will show that there is no consistency service to service regarding precisely what data is released to the public.

When it comes to the release of police service business to the media, only the chief of police or their designate is permitted to communicate to the media. As with other policies, different police services have difference policies on what is divulged to the media; either limiting transparency or violating the privacy of the officer. For example, the Hamilton Police Service and Halton Regional Police Service always issues a press release when one of its officers is charged, regardless of the severity of the charge or if another police service did the investigation. Ontario Provincial Police will only issue a public release when one of its officers is charged and OPP led the investigation. [37]

For police services to be truly transparent, the decision to release information should be made by someone who does not have an interest in its secrecy and who can objectively identify matters of public interest. Otherwise, transparency will never exist if the holder of the information can withhold anything unfavourable.

OVERSIGHT REVIEW

In April, 2017, Justice Tulloch's report was released to the public.[38] Justice Tulloch identified that many aspects of policing could be reviewed and potentially improved, such as hiring practices, training, performance evaluation, promotion, internal discipline and external oversight. Tulloch's mandate was to examine only Ontario's external police oversight.

Since April, 2016, Tulloch engaged 1,500 individuals in 17 public consultations and over 130 private meetings. Tulloch made 129 recommendations to the Attorney General, Honourable Yasir Naqvi, to improve transparency and accountability in police oversight.

Below is a list of Tulloch's recommendations that, if incorporated into legislation by the Attorney General, will contribute to solving some of the issues identified in this report:

- Recommendation 4.20: The Ombudsman should have jurisdiction over all three police oversight bodies;
- Recommendation 7.9; The Ministry of Community and Correctional Services should review the process for members of a police service to make internal complaints to ensure there are effective whistleblower protections;
- Recommendation 7.14; The "public interest" ground for screening out complaints should be removed or, if retained, legislatively defined;
- Recommendation 7.20; Within five years, the OIPRD should be the sole body to investigate public conduct complaints;

[37] "What happens when police officers face criminal charges in Ontario?" Nicole O'Reilly, Hamilton Spectator, August 17, 2015.
[38] *Ibid.* note 9.

- Recommendation 7.22; Over the next five years, until the OIPRD is able to conduct all public conduct complaint investigations, the OIPRD should be able to refer complaints to police forces for investigation. During this interim period, the OIPRD should be solely responsible for laying disciplinary charges and should have the authority to order further investigation or to take over an investigation conducted by a police force;
- Recommendation 7.23; The OIPRD should be solely responsible for investigating complaints against municipal chiefs of police, the OPP Commissioner, and their deputies;
- Recommendation 8.1; Independent public complaints prosecutors who work at the Ministry of the Attorney General should prosecute public complaints. After the OIPRD lays a disciplinary charge, the independent public complaints prosecutor should be given carriage of the file;
- Recommendation 8.3; The OCPC should conduct all first instance hearings of public complaints;
- Recommendation 8.4; Internal complaints should be governed by the Police Services Act. Consideration should be given to what role, if any, the OCPC should have in the internal disciplinary process and how the internal and public disciplinary processes interact;
- Recommendation 12.1; The Ministry of Community Safety and Correctional Services should establish selection criteria for police services board appointees.

The Ontario Superior Court of Justice has dismissed applications for judicial review by police officers because there is a presumption of impartiality on the part of a judicial decision-maker, (the chief of police). Interestingly, following Justice Tulloch's public consultation period he concluded the following:

> *"Chapter 8, Paragraph 13. There is broad consensus from both the public and the police that an adjudicative process where the chief of police chooses both the adjudicator and the prosecutor is not fair and does not meet the appearance of fairness test. Although the Divisional Court has said the existing regime complies with the Canadian Charter of Rights and Freedoms, it is not ideal. There can be no serious argument that the current process appears free from bias and completely impartial."*
>
> *"Chapter 8, Paragraph 18. Some members of the public noted that having the chief of police choose the prosecutor created a perception of bias. They believed that prosecutors may be unduly influenced by chiefs to produce certain results because they serve at their request."*

CHAPTER 2: ISSUES

CHANGING THE CULTURE

For decades, it has been recognized that the police culture is to blame for many of the roadblocks to change and little has been done about it. Those in policing are entrenched in the culture and at times are out of touch with the perception and expectation of the public. When external reviews or inquiries are conducted, and recommendations are made, they are often ignored by the policing community who give little weight to the opinions of civilians on police issues. The police are often frustrated with what they perceive as a lack of understanding by members of the public and the public are frustrated with the lack of empathy and self-criticism in the policing community.

In the 1992 Report by the Ontario Civilian Commission, the Inquiry succinctly put it this way:

> *"It is unfortunate that the Internal Affairs unit has chosen, in the final analysis, to defend its actions as "totally proper, totally correct and totally legal". As we have already noted, Internal Affairs demonstrated skill and thoroughness in the gathering of evidence in the Junger and Whitehead cases. But, as has been documented throughout this report, its subsequent performance was anything but perfect.*
>
> *The attitude of Internal affairs, as expressed in its final submission, seems to be that its members have learned nothing from this Inquiry, and have nothing to learn.*
>
> *That is an attitude that has to change.*
>
> *All police officers must be cognizant of their duty to the public. But officers who handle investigations into alleged wrongdoing by members of their own force must be especially sensitive to the need to be fair, open and accountable and to demonstrate the highest standards of integrity and professionalism.*
>
> *Our hope is that this Inquiry will lead to a more responsible and accountable police force and Police Services Board. But that will only happen if those involved are willing to accept criticism, recognize that errors were made and make changes."*[39]

It is not a topic for debate; there absolutely is a fraternity in policing, although it affects everybody differently. The public perception is that police officers are always going to be protected by other police officers because of this kinship. If that was the case, there would be no police officers charged by their own. The truth is, and if you survey officers who have been or are repeatedly charged by their police service, an officer's sheltering will depend on 4 things:

---

[39] *Ibid.* note 17.

1. The officer, (their history with the service/their gender/their race/their sexual orientation)
2. The political advantages/disadvantages of prosecuting the officer
3. The political advantages/disadvantages of not prosecuting the officer
4. The desire of the police service to promote the officer

The decision to charge a police officer with either criminal or misconduct charges rests solely with the chief of police (or their designate) and there are no legislative bounds for those decisions, only appeal processes once the damage has been done. To charge any person with a criminal offence, a peace officer must have reasonable grounds:

> "A set of facts or circumstances that would satisfy an ordinary, cautious, and prudent person that there is reason to believe an offence has been committed and which goes beyond mere suspicion."

It is common practice in policing that an investigator, in deciding whether or not there are reasonable grounds for any action contemplated, must review all the evidence, inculpatory as well as exculpatory, and then decide if these facts satisfy the interpretation. Rarely are police officers under investigation interviewed and given the opportunity to present exculpatory evidence, prior to the establishment of grounds for arrest.

It is widely accepted in the policing world, (yet never discussed for fear of reprisal), that some investigators have been ordered to render a specific outcome in an internal investigation, regardless of the evidence. Whether or not grounds exist for a criminal charge may not be the deciding factor in a case against a police officer if there is personal motivation or even fear of Crown prosecutors appearing to favour the officer.

There is no independent and external oversight in the process of deciding whether or not charges are warranted against a police officer. Instead, there are officers who are charged, acquitted, and eventually sue the police service. Notwithstanding the negative publicity, the cost to taxpayers and misuse of resources for this abuse of process is significant and concerning.

There are enough stories to fill several novels of officers who have received favouritism because of their profession, if only those stories could be told. Every police service has a little black book of incidents involving senior management that, had it involved a member of the public, would have been handled very differently. As much as we expect our police officers to respect their duty to the public, most officers will not arrest or charge the very person who will decide their future career path. Police officers receive a very generous salary for the dangerous work they do and will retire on a very comfortable pension; this is no secret. Most police officers remain silent about anything that could result in discipline or even conflict simply to protect their livelihood, and not at all because of a "brotherhood." However, corruption doesn't change whether a police officer is accepting pay to turn a blind eye to misfeasance by colleagues or criminal behaviour by a known drug dealer; it's still corruption.

In cases where a police officer does report serious misconduct or criminal behaviour by another police officer they are often prosecuted, sometimes suspended and have to pay a lawyer tens of thousands, if not hundreds of thousands of dollars. At the end of their ordeal, their professional reputation is quashed and they either choose to leave the profession or are bullied out by colleagues and supervisors who now see them as a "rat."

So, police officers are given a choice at some point throughout their career. Most police officers will choose to perform their duties to their own level of integrity and not be bothered by the conduct of management, continue to receive their $90,000-$100,000(+) per year salary and work up the ranks. This choice will lead to much higher paid positions of Sergeant, Staff Sergeant, Inspector, or maybe even Chief. Over a 30-year career, this figure, and fringe benefits, are irreplaceable for someone with a high school education.

Below is a list of salaries and taxable benefits for 2016 for the Chiefs of the ten largest police services in Ontario, in ascending order:

- Hamilton Police Chief Eric Girt; $236,121.77 (Chief since May, 2016) and $9,979.13 in taxable benefits
- Durham Regional Police Chief Paul Martin; $247,274.20 and $1,240.83 in taxable benefits
- OPP Commissioner Vincent Hawkes; $268,428.16 and $369.96 in taxable benefits
- York Regional Police Chief Eric Jolliffe; $272,696.60 and $12,545.50 in taxable benefits
- Halton Regional Police Chief Stephen Tanner; $277,968.91 and $19,010.88 in taxable benefits
- Ottawa Police Chief Charles Bordeleau; salary of $281,511.93 and $12,149.54 in taxable benefits;
- Peel Regional Police Chief Jennifer Evans; $283,349.20 and $18,905.52 in taxable benefits
- Waterloo Regional Police Chief Bryan Larkin; $283,984.69 and $13,289.94 in taxable benefits
- Niagara Regional Police Chief Jeffrey McGuire; $295,922.99 and $34,433.88 in taxable benefits
- Toronto Police Chief Mark Saunders; $332,511.59 and $2,677.12 in taxable benefits

For comparison, the Mayor of Toronto John Tory was paid $184,666.04 and $1,378.28 in taxable benefits, and even the Premier of Ontario Kathleen Wynne was paid less than the Chiefs listed above earning $208,974.00 and $384.33 in taxable benefits.[40]

If, upon completion of this report, the reader has difficulty understanding why such a large community of police officers would remain silent about such serious issues, please revisit this section and perform the calculations of what a successful career in policing is worth, versus the cost of disobedience. The police culture is bred by individuals who do not

[40] https://www.ontario.ca/page/public-sector-salary-disclosure-2016-all-sectors-and-seconded-employees

want to take any action that could disrupt their financial security and opportunity for future wealth. Unfortunately, those who do not tolerate the culture become labelled, their careers stalled or worse, they are bullied out of the profession entirely. A police officer should never have to make such a choice.

PARA-MILITARY

The perpetuity of the policing culture has been tolerated since it is perceived as quasi-military. Although, even due obedience in military law requires soldiers to be critical of orders given, obeying only those orders they believe, honestly and reasonably, are lawful. Military law has been dramatically civilianized since the days of court martialing with corporal punishments. Like all public bodies the military has evolved. Here in Ontario, police officers are often charged with insubordination under the PSA and disciplined for being critical of their superiors or service.

In 2013, Toronto Inspector Richard Hegedus was acting unit commander at 33 Division. Toronto Constable Kevin Drake investigated a motor vehicle collision involving a police cruiser and civilian vehicle. Drake concluded that the civilian driver was at fault and completed the official Ministry of Transportation Motor Vehicle Collision Report. Shortly thereafter, Hegedus ordered Drake to change that finding and conclude the police officer was at fault. Drake refused to do so because he did not believe that to be true. As a result of this alleged insubordination, Drake was charged with misconduct and the matter went to a police disciplinary hearing. Drake was found guilty at the PSA tribunal, and he appealed to the Ontario Civilian Police Commission (OCPC). The OCPC overturned the finding of guilt and found that Hegedus had ordered a subordinate to falsify an official record, placing Drake in the position of knowingly making a false statement and, arguably, committing an act tantamount to Deceit.[41] Despite this finding by the OCPC, one year later, Hegedus was promoted to the position of permanent Hearing Officer for the TPS disciplinary tribunal.

In October, 2016, Toronto Police Constable Adam Lourenco filed a motion to have Hegedus removed as hearing officer in his PSA proceeding, citing Drake's case and the reasonable perception of bias. Lourenco's lawyers, Peter Brauti and Lawrence Gridin, stated "the appointment of Hegedus to a prestigious position as the sole permanent hearing officer, so soon after he had apparently committed serious misconduct which the TPS took no steps to investigate, is itself likely to bring discredit upon the police service." Lourenco's PSA case involves the controversial arrest of four teens in Toronto in 2012 and has been ongoing for 5-years. Even counsel for the four complainants in the discipline proceeding supports the spirit of Lourenco's motion, which raises larger questions about the inherent lack of independence involved in police discipline proceedings.[42]

---

[41] Drake and Toronto Police Service, 2015 ONCPC 5

[42] "Fellow cop wants hearing officer removed from Neptune Four case," Wendy Gillis, The Star, October 31, 2016.

When the Standing Committee on Justice Policy met on February 1, 2007, to vote on amendments to Bill 103, (*the Independent Police Review Act*), the late Mr. Peter Kormos, NDP MP Niagara Centre, was quoted as saying:

> *"A whole lot of things have transpired since the origins of policing based on a military or a quasi-military model: due process; natural justice; the expectation of everybody that an adjudication is going to be conducted by somebody who's neutral and impartial. Police officers have that right when they are the subject matter of a complaint and when their incomes, their careers, their reputations are at stake."*[43]

The invincibility and immunity afforded to police chiefs in Ontario is unprecedented and archaic even when compared to the stalwart US Military. In 2016, reprisal was the "number one allegation" that the inspector general's office investigated and a growing percentage of the cases were substantiated.[44] The Uniform Code of Military Justice, Subchapter XI, allows any member of the armed forces to complain to any superior commissioned officer if they believe themselves wronged by their commanding officer, and who, upon due application to that commanding officer, are refused redress.[45]

In Ontario, if a police officer alleges reprisal their complaint is adjudicated by the same people against whom the complaint relates, (if it is investigated at all). There is typically no appeal process which allows complaints of this type to be suppressed within the administrative structure of the police service. Historically, even when the officer's complaint is examined by an arm's length agency, (such as the OCPC, Human Rights Tribunal, or Divisional Court), the complainant is not provided equal benefit of the law and those agencies refuse to get involved in what they see as an employment matter.

As far back as 1963, the Committee on the Judiciary, United States Senate, has been examining the Constitutional Rights of Military Personnel. The 1963 report addressed several issues such as; Negotiated Pleas, Non-judicial Punishment, Records, Right to Counsel, and Confinement.

At that time, the Air Force had not utilized a procedure for negotiated guilty pleas in courts-martial. The Air Force pointed to the danger that a conviction based on a guilty plea might be attacked on the grounds that the plea was improvident or that the accused had been pressured into pleading guilty, a sentiment that has been shared by some police officers in Ontario who have been charged criminally and investigated by their own service. Judge Homer Ferguson agreed and said "there is a great temptation to take a lighter sentence, rather than contest guilt even though the accused does not believe he is guilty."[46]

---

[43] Legislative Assembly of Ontario, Second Session, 38th Parliament, Official Report of Debates (Hansard), Thursday 1 February, 2007, Standing committee on justice policy, Independent Police Review Act, 2007.

[44] "Army Says Some Misconduct Trends Are Increasing," Lolita C. Baldor, Associated Press, December 16, 2016.

[45] 10 U.S. Code § 938 – Art. 138. Complaints of wrongs

[46] "Constitutional Rights of Military Personnel," Summary Report of Hearings by the Subcommittee on Constitutional Rights of the Committee on the Judiciary, United States Senate, 1963.

SECRECY

Since no one inside a police service is allowed to discuss any matter connected with the service without proper authority[47]; the chief of police has full control over the level of transparency that exists. Every single police service around the province will say they are transparent and accountable to the public. As access to certain documents becomes available, the public are learning those statements have been highly subjective.

Canadian Freedom of Information legislation did not come into effect until 1983.

Sweden not only gave us the world's first Ombudsman, it also created the first freedom of information legislation in 1766.[48] Sweden is currently ranked fourth on Transparency International's Corruption Perceptions Index 2016 with a score of 88, (0 being highly corrupt and 100 very clean). Canada is currently ranked ninth with a score of 82.[49]

Even with a 217-year head start, Sweden has not significantly improved their Corruption Perceptions Index rating over that of Canada. One can easily deduce that lack of transparency and accountability in government may be a problem we cannot legislate our way out of. Even since 1983, our information statutes still tend to allow for multiple loopholes and opportunities for governments to dispute and delay access to information.[50]

> *"Openness facilitates accountability; secrecy defeats it. Knowledge is power. Those who have it can hide. Those who lose control of it cannot hide. If facts are known, decisions and actions can be judged and actors can be called to account. Openness therefore advances moral and ethical government. It also promotes honesty and enables the rule of law to apply."*[51]
>
> - André Marin, Former Ontario Ombudsman

The 1992 Report of the Ontario Civilian Commission on Police Services states:

> *"Secrecy is inimical to our justice system. Law enforcement is an important part of that system. It is a matter of public concern how police forces handle criminal and serious disciplinary matters that involve their own members, who are sworn to serve and protect the public.*
>
> *Those who are responsible for the quality of policing must be accountable to the public. Our whole system is predicated on accountability. The Chief of Police is accountable to the Police Services Board and through the Board to the community.*

---

[47] *Police Services Act, Ontario Regulation 268/10, section 2(1)(e)(iii).*
[48] http://open.canada.ca/en/idea/enhancing-whistleblower-protection
[49] Transparency International Corruption Perceptions Index 2016, www.transparency.org.
[50] *Ibid.* note 48.
[51] *Ibid.* note 48.

> *The Police Services Board is responsible for providing civilian monitoring of the force and setting policies for its operation. Because of this obligation to monitor and because police investigate allegations against their own members, expectations for scrutiny by the Police Services Board, as representatives of the community, are high."*[52]

In 2014, The Toronto Star began the Breaking Badge Investigation into the handling of internal discipline matters by police services. What had been believed to be a transparent and formal process was found to be very secretive. Star reporters Jesse McLean and Jayme Poisson found that from 2010 to 2015, 640 Peel Regional Police officers, roughly 30% of the force, had been sanctioned under the secretive (informal) system, some multiple times.[53] The OPP, a force three times the size of Peel, informally disciplined almost the same number of officers over that time period. During the investigation, Toronto, Durham and York Region police refused to even say how many of their officers have been disciplined for internal matters under the informal process. The OPP, Peel and Halton released the numbers.[54] The disciplinary decisions received detailed the officer's alleged misconduct and, if guilty, the penalty. As a whole, the decisions provide a look never seen before at a system insiders and critics say isn't working. The Star analyzed thousands of pages of decisions, finding patterns of misconduct across police services as well as disparities in how certain forces punish officers for the same type of offence. [55]

One Peel officer, Shehab Balh, was informally disciplined seven times in four years and even charged criminally, (those charges were withdrawn). Balh told the Star he felt the force was using "progressive discipline" to push him out of the service. Balh resigned from Peel police:

> *"Manipulated discipline and internal hearings for the disliked officers and uncontested promotions and advancements for the well-liked officers has nothing to do with good or bad policing. That is why I left,"* Balh said.

What McLean and Poisson learned, through their investigation, was that although informal discipline was reserved for benign employer-employee matters, it was being applied to much more serious offences. According to Toronto police, the informal system allows the force to efficiently deal with misconduct that is serious, but not necessarily so serious that it warrants public airing in a formal hearing. The price of secrecy is not cheap. According to Inspector Peter Callaghan, a prosecutor for Toronto police's disciplinary hearing, "The officer is willing to agree to a much higher penalty than they get in the tribunal to settle it informally."

---

[52] *Ibid.* note 17.
[53] "Serious police discipline cases often handled in secret: Star investigation," Jesse McLean and Jayme Poisson, The Star, January 11, 2016.
[54] *Supra* note 53.
[55] "Hundreds of officers in the Greater Toronto Area disciplined for 'serious' misconduct in past five years," Jesse McLean and Jayme Poisson, The Star, September 19, 2015.

The informal process also allows the force to discipline officers when they may not feel they have a reasonable chance of getting a guilty verdict at a disciplinary hearing, police told the Star. [56] The Province of Ontario Ministry of Attorney General Crown Policy Manual states that when considering whether or not to continue the prosecution of a charge the first step must be to determine if there is a reasonable prospect of conviction. Randy Henning, President of the Durham Regional Police Association told the Star that some officers are faced with swallowing an "exorbitant" penalty for not-so serious misconduct without even seeing any of the evidence against them.[57]

There have been high-profile cases, such as that of Dameian Muirhead, York Regional Police, that were tried at a hearing, during which the Chief was quoted in media articles stating that the preference would have been to resolve the issue by way of informal discipline but Muirhead refused. Exercising one's right to a hearing to examine evidence should not mean the stakes change, however, the publicity of the actions taken by the service against the officer seems to worsen the jeopardy for the officer involved.

Open and Transparent?

In March, 2013, Durham Regional Police Chief Mike Ewles seemed more concerned over a leak of information to the Toronto Star than the conduct of an off-duty officer after leaving a pub and driving his vehicle into a ditch.

Police said the off-duty officer called an on-duty officer to pick him up at a location near the accident. Two of The Star's sources familiar with the incident said the on-duty officer was working on a local RIDE check. That officer drove him to downtown Oshawa. Ewles referred to the off-duty conduct as an internal discipline matter, and the sharing of the information with the media was a "clear breach" of the service's directives that "can't be tolerated."

Toronto lawyer Clayton Ruby, a strong advocate of freedom of the press, said the police misconduct in the case underlines a "complete double standard" in how the force treats its staff in a vehicle accident compared to the handling of other drivers and the public should know about it. Another Toronto lawyer, James Morton, said he thinks the public should be entitled to know about details of breaches by officers, it would instill more public confidence in a force's fairness and impartiality. Morton noted the case suggests the need of more protection for police whistleblowers.[58]

In July, 2015, an off-duty Durham officer was charged with impaired driving after rear-ending a vehicle causing minor injuries to two of the occupants. The officer's name was released to the media and he was assigned to administrative duties pending the case's outcome.[59]

---

[56] *Ibid.* note 53.
[57] *Ibid.* note 53.
[58] "Durham police seek source of information leaks," Tony Van Alphen, The Star, March 18, 2013.
[59] "Durham cop charged with impaired driving in off-duty crash," Jeremy Appel, Toronto Sun, July 21, 2015.

In November, 2015, a member of the Durham fraud unit was charged with impaired driving and failing to report an accident after his vehicle struck a tree and the canine unit and police helicopter were called in to attempt to locate him. The information and officer's name was released to the media.[60]

In December 2015, an off-duty Durham officer was stopped by another Durham officer conducting RIDE checks and was charged with impaired driving and exceeding blood alcohol level of 0.08. This information, and the officer's name, was released to the media. The officer was assigned to administrative duties pending the resolution of the charges against him.[61]

The December 2015 incident was the fourth-time Durham officers were charged with impaired driving in months. In a Global News article, Durham Regional Police Service spokesman Dave Selby said "anytime we charge any of our employees with a criminal charge we make sure we issue a media release, so that we're ***open and transparent***."[62]

So, who decides what police business is in the public interest and what is not?

The Ontario Civilian Commission on Police Services stated in 1992:

> *"It is a matter of public concern how police forces handle criminal and serious disciplinary matters that involve their own members, who are sworn to serve and protect the public."*[63]

Despite the Commission's statement in 1992, for the next 25 years the extent of information released by a police service to the public has remained the discretion of the chief of police.

In 2015, the Chief of the Waterloo Regional Police Service released a personal email sent by Constable Craig Markham to the organization's director of legal affairs. The Chief told reporters the letter was an example of why police chiefs should be given the option of suspending officers without pay. The content of the letter clearly brings disrepute to the policing profession, however, was addressed and intended only for the eyes of the service's director of legal affairs. Markham responded by telling CTV News the email was "private" and "never intended to be made public." Markham stated he sent the email out of frustration since he had been denied the opportunity to return to administrative duties "numerous" times during his three-year suspension.[64] The decision to publicize the letter had nothing to do with public safety and was done following Markham's dismissal from

---

[60] "Off-duty Durham cop Scott Robertson charged with impaired driving after vehicle crashed into tree," Port Perry Star, November 24, 2015.
[61] "Off-duty Durham Regional Police officer charged with impaired driving," The Canadian Press, December 4, 2015.
[62] "Off-duty Durham cop charged with impaired driving, 4th since July," Adam Miller, Global News, December 4, 2015.
[63] *Ibid.* note 17.
[64] "Email to police lawyer never meant to be made public, Markham says," CTV Kitchener, July 9, 2015.

the service and unsuccessful appeal. The Chief used an internal service document to garner support for an Ontario Association of Chiefs of Police position with the Ontario government. If a police officer had used an internal document to garner political support they would have been disciplined. This internal letter was used once again in April, 2017, this time by police services board Chair Tom Galloway in support of the political position of the Ontario Association Chiefs of Police, which violates his oath to remain impartial.

Chapter 3 examines what happens when a police officer releases or reports information and is not afforded the same protection as a chief of police or member of a police services board.

ETHICS

Provincial public servants have designated ethics executives, under the Public Servants of Ontario Act, who are responsible for determining and addressing conflicts of interest. The Conflict of Interest Rules for Public Servants (Ministers' Offices) And Former Public Servants (Ministers' Offices)[65] goes a long way in defining prohibited conduct. Although, even with concise legislation, Chapter 3 discusses how an alleged wrongdoer can remain anonymous and free from discipline for taking reprisal action against a complainant. There is little to deter the conduct listed in the Regulation and protect whistleblowers.

There is no designated ethics executive for municipal police officers in Ontario.

There is also no requirement for police services to maintain policy on ethics, as explained in Chapter 1.

The training that is provided to police officers in Ontario on ethics is extremely basic and unrealistic, and in some cases provided to officers by a member of the service with a questionable or even scandalous past – '*do as I say, not as I do.*' In the simplest of terms, officers are trained to have a very rigid set of ethical rules and to never deviate since the most minor deviation could lead to corruption. For example, officers are to never accept a free coffee. In an officer's first week on the job, they learn that the training provided around ethics is not what is practiced. The scale of ethical conduct that they once saw as black and white becomes as grey as their comfort level allows. For the most part, the officer's commitment to any kind of code of ethics is left up to their own personal level of integrity.

Once out of training and on the job, officers quickly learn to follow the lead of more senior officers and fit-in. It is at this early stage in an officer's career that the policing culture is embedded. They don't want to be labeled as a "rat" so they turn a blind eye to little dealings such as accepting gifts or violating traffic laws by their peers. A trainee will not last long with a police service if they report their coach officer for accepting a free coffee in their first week on the job.

---

[65] *Public Service of Ontario Act, 2006, O. Reg. 382/07.*

In 1994, during the Mollen Commission[66] involving NYPD corruption, Michael Dowd articulated the ethical dilemma best when he was questioned about what it meant to be a "good" police officer:

> *"Being good is a cop that would never give up another cop. A cop that if he witnesses something go down, he's 100% behind anything a cop does, no matter what it is."*

Michael Dowd may be considered "one of the dirtiest cops in New York City history," but his testimony rings true when you learn the fate of the whistleblowers in Chapter 3. If Dowd did not perfectly articulate the police culture then why is it that police services are prosecuting those who speak up about misconduct of other officers? In 2014, the story of corruption at the 75th Precinct was documented in "The Seven Five."

In 1992, the Defense Personnel Security Research Center (PERSEREC) began the Police Integrity Study. The objective was to determine if characteristics indicative of public trust betrayal could be assessed through personality tests already being used by law enforcement agencies. The study proved that there was a relationship between the subjects' Psychopathic Deviance scales and violations later on in their careers. Some police services in the United States of America still use pre-screening personality tests during candidate selection. The study also found there was a need for professional and departmental integrity standards to be clearly established and consistently administered at all levels of an organization.[67]

SUSPENSIONS

The sole discretion for suspending a police officer rests with the chief of police. The Ministry does not stipulate when an officer should or shall be suspended, leaving a broad spectrum of decisions to suspend throughout the province. There are no established parameters of when the suspension of a police officer is required in the interest of public safety. Pending changes to the PSA could see chiefs of police having the ability to suspend police officers without pay, perhaps as arbitrarily as those decisions are being made today.

There are provincial statutes that allow chiefs of police to suspend officers without pay, although those statutes are written in such a way that the police officer has several opportunities to present evidence in their defence and challenge allegations prior to the decision to suspend without pay. The British Columbia Police Act, allows a chief of police to suspend a member without pay once adequate investigation has been conducted and challenged by the subject member and it is clear that there is the prospect of conviction of serious misconduct or criminal activity.[68]

---

[66] Formerly Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department, chaired by Milton Mollen, 1994.
[67] "Police Integrity: Use of Personality Measures to Identify Corruption-Prone Officers," PERSEREC, PERS-TR-97-003, September, 1997.
[68] *Police Act, RSBC 1996, Chapter 367.*

Suspending an officer takes a body off the road, no matter how you look at it. Obviously, there are times when an officer may have to be reassigned during the course of an investigation, but the decision to suspend officers is discretionary.

In recent years, as the role of police chiefs is increasingly politicized, the Ontario Association Chiefs of Police (OACP) have been on a campaign to garner support for unpaid suspensions.

On June 25, 2014, the OACP approved Resolution 2014-02 calling upon the Government of Ontario to allow unpaid suspensions of police officers.[69]

To give this resolution some perspective and to help the reader understand the breadth of discretion afforded to chiefs of police, in 2013, following the shooting death of Sammy Yatim in Toronto, Constable James Forcillo was placed on administrative duty. It was not until a jury found him guilty of attempted murder in 2016 that Forcillo was suspended with pay.[70]

In October, 2014, Ontario Provincial Police Constable Jamie Porto was traveling 133km/h in a 50km/h zone in an unmarked police cruiser when he crashed into a civilian vehicle causing the young male driver bodily harm. Porto was charged and convicted of dangerous driving causing bodily harm. He has since appealed that conviction. During the prosecution, Porto was not suspended.

In May, 2014, London Police Service Constable Mike Sladek was arrested for off-duty conduct, allegedly uttering a threat to cause death. Sladek was immediately suspended with pay. Despite Sladek's acquittal in criminal court on December 16, 2015, he remained on paid suspension (almost three years later) while he was investigated for PSA offences, see page 50.

The opposition by police associations to the position taken by the OACP has not been effective in informing the Government and the public the impact such a decision would have on the police officer community. This report aims to illustrate the lack of independent oversight, policy and procedure involved in internal investigations and discipline. As Kormos said best, the income, career and reputation of every police officer is at risk.

In 2016, the CBC reported that Toronto Police had 14 members on suspension, the Ontario Provincial Police (OPP) had 29, Ottawa had 6 and Windsor had 1.[71] Not coincidentally, the chiefs of Toronto and OPP (Commissioner) are both directors for the OACP, and the chief of Ottawa is the President of the OACP.

---

[69] http://www.oacp.on.ca/Userfiles/Files/NewAndEvents/Resolutions/Resolution%202014-02_Final.pdf
[70] "Forcillo suspended with pay after guilty verdict," Shawn Jeffords, Toronto Sun, January 25, 2016.
[71] "At least 50 police officers currently suspended with pay in Ontario," Mike Crawley, CBC News, January 28, 2016.

Instead of examining the reasons why police chiefs choose to suspend police officers or the effect of suspensions on public safety, the media coverage has centered on the cost to taxpayers. The very individuals who control the number of officers currently suspended with pay are ensuring that the cost to taxpayers is so great there is no other solution than to allow unpaid suspensions.

DISCRETION

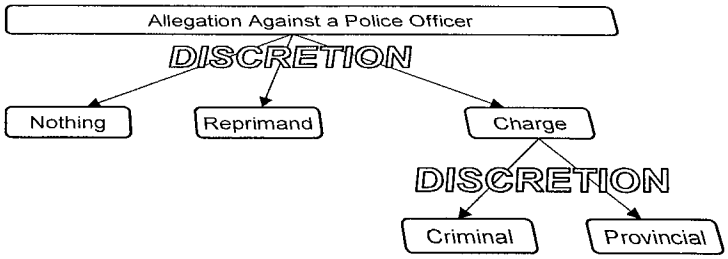


Figure 2: The above diagram shows the decision process taken by a Chief (or their designate) in deciding the outcome of an internal investigation where there is a finding of wrongdoing. The same process takes place during any interaction the police have with the public (in most cases). It is a basic illustration of the discretion afforded to police.

Discretion is the freedom to decide; in general terms.

From *Baker v. Canada (Minister of Citizenship and Immigration)*[72]:

> *"The concept of discretion refers to decisions where the law does not dictate a specific outcome, or where the decision-maker is given a choice of options within a statutorily imposed set of boundaries...*
>
> *...Though discretionary decisions will generally be given considerable respect, that discretion must be exercised in accordance with the boundaries imposed in the statute, the principles of the rule of law, the principles of administrative law, the fundamental values of Canadian society, and the principles of the Charter."*

If a police officer is charged with a PSA offence (provincial) the matter is overseen by a Police Services Act Tribunal. The statutory power of decision is conferred upon the Polic Services Act tribunal by the Law Society Act.[73] As such, the tribunal, along with a feder or provincial court, are adjudicative bodies and have an obligation to maintain pul confidence in the administration of justice.

The Crown Policy Manual sets out how criminal charges are to be handled by the and is accessible to the public on the Attorney General's website, thus enhancing

---

[72] *[1999] 2 SCR 817.*

[73] Law Society Act, R.S.O. 1990, c. L.8, Part 0.I, Section 1(1)(b).

confidence in the operation of the criminal justice system. Crown counsel is expected to exercise their discretion in accordance with overall priorities in the Manual. Notwithstanding the importance of discretion, it is also necessary in the public interest to have uniform prosecution policies applicable across the province.[74]

Most times, when there is conflict between the public and the police it is due to a disagreement over the use of discretion; the criticism of decision-making.

In the case of the SIU, the statutorily imposed boundaries are fairly strict; either it is decided that an officer has committed a criminal offence, or not. Although, having said that, it is still the Director of the SIU who decides if he or she believes the threshold of a criminal offence has been reached. The public are always made aware when the SIU have invoked their mandate and are investigating an incident. If the public learn that the SIU has decided not to charge an officer in a situation where the public perception is that charges are warranted, the public can influence political pressure. In 2008, public pressure resulted in the Ombudsman report; "Oversight Unseen."

The public push for more transparency and accountability in the police oversight bodies is what lead to the Independent Police Oversight Review in 2016, led by Justice Michael H. Tulloch. The public perception is that discretion is used far too often in favour of police officers and objectivity and impartiality is lost when police investigate police. Despite all of the reviews that have occurred over the years and the government's attempts to improve transparency and accountability, police services themselves have remained invincible and fairly immune to criticism; especially from within.

Under the current legislative structure, the public can find out when a police officer has been:

- charged by the SIU;
- tried at a PSA hearing;
- charged by the OIPRD;
- charged criminally or provincially for on-duty or off-duty conduct, where the officer's chief of police authorizes the release of information.

If a member of the public makes a complaint either directly to the OIPRD, or the complaint is referred to the OIPRD, the statistics are recorded in the OIPRD Annual Report. Although the OIPRD does retain and conduct some investigations of misconduct, the majority are referred back to the police service to which the complaint relates for investigation. A brief analysis of the data for the period from April 1, 2014, to March 31, 2015, shows that public complaints result in findings of misconduct much more frequently at some services than others. Below are the ten largest police services in Ontario, and the percentage of substantiated misconduct complaints from the public per total number of sworn members.[75]

---

[74] The Royal Commission on the Donald Marshall Junior Prosecution; the Canadian Law Reform Commission Working Paper entitled Controlling Criminal Prosecutions; the Attorney General and the Crown Prosecutor; The 1998 Report on Proceedings involving Guy Paul Morin

[75] Office of the Independent Police Review Director Annual Report 2014-2015.

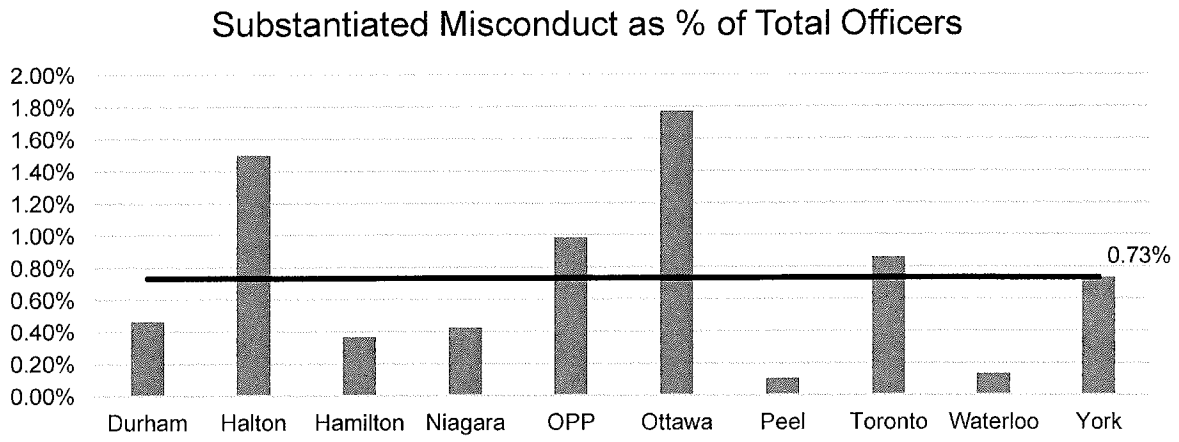


Figure 3: These are the substantiated public complaints represented as a percentage of total officers at the service during the reporting period, April 1, 2014, to March 31, 2015, OIPRD Annual Report.[76] Average = 0.73%.

According to the figures for this time period, and based on complaints from the public, officers were more than ten times more likely to commit misconduct at Halton or Ottawa than Peel or Waterloo. Obviously, the Province does not have misfit police services, so why the inconsistency?

No studies have been done to attempt to examine a police service's inclination to charge, or even investigate its own member. In some cases, members are charged, in others they are not. The public's perception is that because of the "brotherhood" that exists, all police officers have a certain level of protection; that when they make a complaint it is not investigated impartially. But, it is clear from the chart above that not all officers are protected and not all behaviour is protected, and some Chiefs handle those complaints differently.

What has never been examined or reported to the public is how discretion is applied internally; this would greatly improve the public confidence in police. Figure 3 shows only complaints made by members of the public to the OIPRD. When we look at complaints initiated internally by the Chief of Police, it is a different story.

For the time period above, April 1, 2014, to March 31, 2015, the OIPRD determined that out of the 37 public complaints of misconduct against a Waterloo Regional Police Service (WRPS) officer, only 1 complaint was substantiated. Although, the WRPS reported that between January 1, 2014, and December 31, 2014, (slightly different reporting periods), there were 21 substantiated complaints of misconduct, (for that time period there were 21 Chief's Complaints). This means, 36.2% of all complaints of misconduct were initiated by the Chief (21 out of 58), and 95% of the substantiated complaints were initiated by the Chief (20 out of 21).[77] Historically, the Chief of the WRPS initiates a large majority of the total complaints of misconduct (34% in 2013 and 61% in 2012).

---

[76] *Supra* note 75.
[77] Waterloo Regional Police Services Board, Professional Standards, Annual Report: 2014 Complaints Statistics.

Other police services such as Halton reported that in 2014 there were 17 Chief's Complaints versus 69 total complaints from the public, (19.8% of total complaints were initiated by the Chief).[78]

Ottawa reported that in 2014, 183 out of 392 complaints were Chief's Complaints (46.7%). In 2015, an even larger percentage were Chief's Complaints (50.6%), and these figures include policy or service complaints. Ottawa does not report how many of these complaints were substantiated versus unsubstantiated in their annual report.[79]

Peel Regional Police does not report the breakdown of misconduct investigations that resulted from Chief's Complaints on their website, although as listed in the section starting on page 33, Peel have internally disciplined roughly 30% of their workforce over a 5-year period.[80]

It is difficult to determine a reasonable percentage of Chief's Complaints versus public complaints, although one has to question why officers at one service would be more likely to be disciplined than officers at another service.

It is plain to see that there is inconsistency between police services when it comes to internal discipline. Using the above data, in 2014, the WRPS had only 1 substantiated complaint of misconduct from a member of the public, yet 20 of the 21 Chief's Complaints were found to be substantiated. This explains why the public may be satisfied with the level of service provided by the police service at a time when officer morale is at an all-time low. Not to say some of these complaints were not warranted, however, as you will see in Chapter 3, many officers find themselves the subject of a complaint for reasons other than their compliance with a code of conduct.

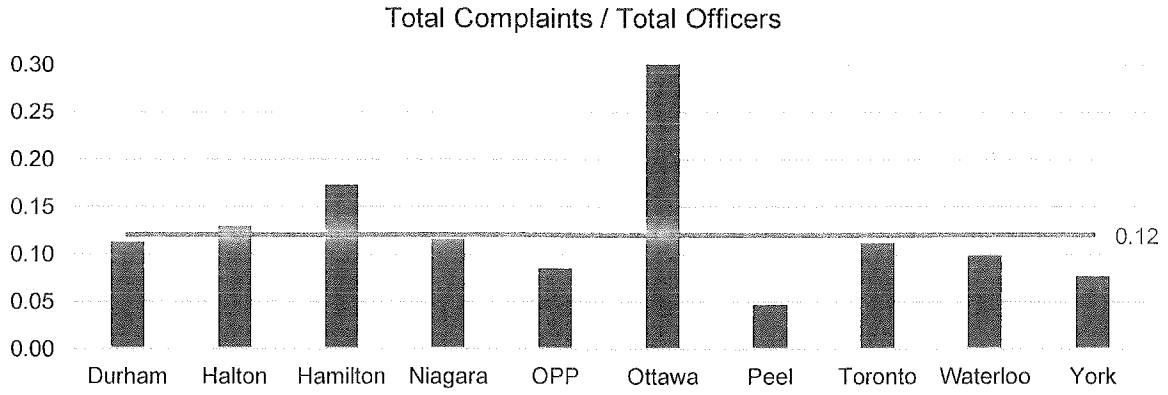


Figure 4: These are the total complaints represented as a percentage of total officers at the service during the reporting period, January 1, 2014, to December 31, 2014. Average = 0.12.

[78] Halton Regional Police Service, Annual Report 2014.
[79] Ottawa Police 2015 Annual Report.
[80] *Ibid.* note 53.

If you look at total complaints received by a police service, (and these numbers include whatever is reported as "total complaints" by the service in their annual report), the average is about 1 complaint for every 8 officers. Ottawa is the anomaly with just about 1 complaint for every 6 officers. Again, these may or may not include Chief's Complaints and they also include all of the unsubstantiated complaints.

Peel Regional Police is low in both Figure 3 and Figure 4, while Ottawa Police is high in both Figure 3 and Figure 4. No police oversight body has ever delved into the problem of inconsistency service to service. As noted in the investigation by The Star, Peel Regional Police was one of the services with the highest percentage of officers disciplined "informally" as opposed to formally, (almost 1 complaint for every 3 officers).[81] So, the figures reported to the public may not be a true reflection of what is really happening within.

The services with a high number of complaints (Figure 4) and a high proportion of substantiated public complaints (Figure 3) would tell us that not only does the public complain about those officers more, but that a larger majority of those complaints are found to be substantiated, (Ottawa). Similarly, some cities may complain about their police service more often, but they are less often substantiated complaints, (Hamilton). This may indicate a problem with officer behaviour, or it may indicate a difference in how internal investigations are conducted by each service.

So, why should the public be concerned about the discretion exercised by police services when it comes to misconduct?

For starters, a PSA hearing (meaning a police officer is charged with misconduct offences under the PSA and is afforded their right to a fair and open hearing), could cost taxpayers over $150,000.00.[82] Because of this, officers are often advised that penalties will increase if a matter is not resolved informally. There have been many officers who have chosen to fight their cases, been found guilty at a PSA tribunal and are later acquitted by the OCPC on appeal - although this process can take years and cost officers in excess of $100,000.00 in legal fees, not to mention the reciprocal cost to taxpayers. Even though officers are afforded the opportunity to be heard in a "fair and impartial tribunal," many choose to save themselves the legal expense and accept whatever is put before them informally, whether guilty or not, since seeing an allegation all the way to appeal can be financially crippling.

If police officers were only being charged and prosecuted for the most egregious offences, then the public would trust that taxpayer dollars were being spent wisely to ensure police officer conduct remained in check with expectations. However, at some police services officers are tried for such trivial acts as not completing their notes properly, failing to pay a parking ticket, sending a personal fax from work or even reporting misconduct of other officers. Is a PSA prosecution really the most efficient use of police resources in these

[81] *Ibid.* note 53.
[82] "Timmins police hearing cost $150,000," Len Gillis, The Sudbury Star, August 24, 2016.

cases? It was identified as far back as 1992 that internal affairs departments lacked accountability when it came to internal investigations of misconduct.[83]

What is most concerning being that some police services are using informal discipline to handle allegations of criminal behaviour by their members, which is not intended to be disclosed to the public. There simply is no consistency.

Police Chiefs (or their designate) have the authority to decide which officers to prosecute. Perhaps it's time that this discretion was analyzed and criticized to not only to save money but also to improve the morale and trust of police officers in the very system they are sworn to uphold.

In 2011, York Regional Police Constable Dameian Muirhead was dispatched to a rural property to investigate allegations of domestic abuse. Party-goers refused to identify themselves and Muirhead moved a leather jacket on the seat of a motorcycle so that he could see the licence plate. The jacket fell to the ground and Muirhead refused to pick it up. During the interaction, Muirhead was the subject of racial comments made by attendees at the party. The owner of the jacket filed a formal complaint over Muirhead's refusal to pick up the jacket with the OIPRD.[84] The owner of the jacket was offended when Muirhead ignored his request to "Pick up my (expletive) jacket!" The OIPRD initiated investigation resulted in two PSA charges against Muirhead although the York prosecutor charged Muirhead with three PSA offences. Gerry McNeilly, head of the OIPRD, sent a letter to York Chief Eric Jolliffe regarding the third charge stating that those concerns ought to have been the subject of a Chief's complaint and a separate investigation.[85]

In 2012, while Dameian Muirhead was facing the disciplinary issues, his wife Chantal Muirhead began to feel harassed by her supervisor.

In May, 2013, after Dameian Muirhead attempted to subpoena the Chief to testify at his PSA proceeding, the York Regional Police Association withdrew their financial support of his PSA proceeding because the case was considered "systemic." One of Muirhead's lawyers stated due to the fact "that Dameian seeks to interrogate his persecutors has ruffled the association's feathers."[86] Later that month, the matter was put to a vote before the York Association who voted in favour of restoring legal funding of the PSA proceeding.

In January, 2014, for reasons not explained, the Chief said York's command team has decided it was "no longer in the best interest" of the service, the community or the complainant to continue with proceedings against Dameian Muirhead. The Chief said

---

[83] *Ibid.* note 17.
[84] "York police chief's testimony sought at racially charged police hearing," Peter Edwards, The Star, May 21, 2013.
[85] "OIPRD raises concern about racism-related charges facing York police officer," Staff, Torstar News Service, May 1, 2013.
[86] "York police association axes legal funding for officer in racially charged discipline hearing," Staff, Torstar News Service, May 22, 2013.

that he would have preferred to have dealt with the citizen's complaint informally with a written reprimand, but Muirhead refused.[87]

In July 2014, the workplace harassment investigator submitted her report and findings to the York police in the Chantal Muirhead matter. A month later, the service forwarded the report to Chantal Muirhead with a cover letter which stated that the service's harassment review committee agreed with the findings – that harassment had indeed taken place. The investigator found that the supervisor had engaged in "name-calling" using profanity, made "derogatory" comments about Chantal's work performance, spread "malicious" rumours about her personal life and did so with another supervisor in a "non-private" setting. The supervisor also made informal inquiries to Pearson Airport and Canadian Border Services Agency (CBSA) about Chantal's whereabouts. The service committee's recommendations were for Chantal and her supervisor to engage in mediation.[88]

On March 6, 2017, the Toronto Sun reported that a "Morale Survey" of the Toronto Police Association show 68% of respondents feel "overall morale is negative. Up 18% from the December 2016 survey."[89] According to Mike McCormack, (Association President), 20 officers left in early 2017 to pursue other employment, and in all of 2016, 29 officers left for other jobs. Other police services in the province have completed internal surveys, although if the results are unfavourable, the results are not released to the public. Research shows that most police officers in the province are experiencing the same diminishing enthusiasm for the job; which is very dangerous for police services with an aging complement and struggling recruiting efforts.

Another prevalent abuse of discretion by police Chiefs occurs when a whistleblower is prosecuted. An officer's Oath of Secrecy is to protect information that is trusted to the police in the administration of justice. However, when a subordinate officer reveals information that is unfavourable to the administration, the Oath of Secrecy is used as a means to prosecute the whistleblower for not remaining loyal to their employer and their Oath. It is extremely rare when allegations made by a whistleblower are properly investigated. What occurs most often, (and is illustrated in the case studies starting on page 67), is that the member brave enough to allege misconduct by officers of equal or higher rank is punished and jurisprudence is massaged to deny their fundamental rights by all involved agencies whose reputation relies on the continued secrecy of the allegations.

Without a truly independent and politically impartial body to which police officers can complain, there are no checks and balances for the exercise of authority and discretion entrusted to police leaders.

---

[87] "Charges against York police officer Dameian Muirhead dropped," Robyn Doolittle, The Star, January 13, 2014.
[88] "York Regional Police officer harassed by her superior," Jim Rankin, The Star, October 12, 2014.
[89] "Low morale prompts exodus of officers: Toronto Police Association," Joe Warmington, Toronto Sun, March 6, 2017.

Double-Standard

In June, 2016, Constable Lindsy Richardson, Ottawa Police Service, filed a workplace harassment complaint against Acting Superintendent Paul Johnston, in charge of the professional standards section which investigates officer misconduct. The bulk of the complaint alleged unethical and bullying workplace behaviour by Johnston, as a supervisor, toward Richardson. Within the workplace harassment complaint, Richardson also alleged two particular incidents between November 2015 and February 2016 that would be considered misconduct under the PSA. Since Richardson cannot bring a complaint of misconduct to the OIPRD, the Chief of the Ottawa Police Service would have to launch a Chief's complaint to have the misconduct properly investigated.

In August, 2016, Chief Charles Bordeleau made the determination that there were no grounds for a Chief's complaint into the conduct of Johnston. Johnston and Bordeleau were both students in the same recruit class when hired as police officers. Numerous officers of the Ottawa Police Service felt that, on the optics of their decades-long friendship alone, an outside organization should be assigned to investigate the allegations of misconduct.

The Ottawa Police Association brought attention to a clear "double standard" when it comes to the actions of police brass compared to that of their lower-ranking counterparts.

Rank-and-file officers of the Ottawa Police Service circulated a petition to express a vote of non-confidence in the leadership of Chief Charles Bordeleau.[90]

In September, 2016, Bordeleau asked the Ontario Provincial Police to probe misconduct allegations against a senior officer. Bordeleau had heard concerns from officers and their union that the decision to not subject Johnston to an internal affairs probe should be reviewed. Only after all of this had occurred, Bordeleau is quoted as saying:

> *"Given the attention related to this file, both internally and externally, I think it is important that we ensure as much transparency as possible in this process."*[91]

Even when a police service seeks the investigative abilities of a neighbouring police service, to attempt to satisfy impartiality, it is not always achieved. Every police officer knows that throughout one's career they'll spend weeks camped out at the police college, getting to know other officers from other services. Friendships and connections are made. There is no way to ensure complete impartiality service to service even when a fair, full and impartial review is required. As you will see in Chapter 3, when police services need to silence whistleblowers and other police services become involved, those services are selected by the Chief.

---

[90] "Police chief declines to investigate misconduct allegations against officer in charge of internal affairs," Shaamini Yogaretnam, Ottawa Citizen, August 16, 2016.
[91] "Chief reverses decision, senior officer will be subject to misconduct probe," Shaamini Yogaretnam, Ottawa Sun, September 9, 2016.

UNION REPRESENTATION

The PSA legislates labour relations for policing in Ontario. Police services with at least 50% of their members belonging to an association can bargain for remuneration, pensions, sick leave credit gratuities, grievance procedures and certain working conditions.[92]

Each association has their own constitution and can decide how they treat all other matters. Without surveying all Ontario police associations, the specific differences in constitutions cannot be explained, however, most associations agree that on-duty conduct that results in criminal or PSA charges against an officer will be defended by the association. Most associations make the distinction that if an officer is charged for off-duty conduct they will pay for their own defense. The irony is that police services are quick to charge officers with PSA offences for off-duty conduct even though the conduct of the officer must be connected to the occupational requirements for a police officer or the reputation of the police force.[93] In those situations, the officer does not have a blank cheque signed by the association to defend themselves; they are most often on their own.

Regardless of whether the charges have any basis, the officer's financial resources will most often determine their innocence or guilt. An officer may accept a guilty plea and penalty within the first few months of a PSA investigation for the sole purpose of saving thousands in legal fees. In the case of criminal charges, an early guilty plea could save the officer more than $100,000.00. It is naïve and parochial to assume that a police officer charged with a criminal offence has the right to a fair and public hearing by an independent and impartial tribunal. Without the support of their association, officers who are charged for off-duty conduct tend to make decisions based on their family's financial resources as opposed to the legitimacy of the charges.

When police whistleblowers have reported misconduct of other officers, associations have the ability to choose to not support the officer; which happens most often. As opposed to being critical of allegations or conduct, associations remain neutral and will not support the whistleblower.

Just as each association is different in their constitutions and priorities, they also have differences in strength of leadership and presence in the media. Some associations have maintained an oppositional stance, vocal with media, while others play a more passive role mediating relationships between the police service and their members. Some police associations in the province have stood behind police whistleblowers and supported requests of oversight bodies to investigate conduct. However, the courts have proven time and time again that the rigidity of current legislation does not allow for internal oversight, even if a whistleblower has the support of their association.

Police associations can file grievances with the police service on behalf of a member, or regarding a general issue affecting many members. However, police associations can

---

[92] *Police Services Act, R.S.O. 1990, c. P.15, Section 119(3).*
[93] *Police Services Act, R.S.O. 1990, c. P.15, Section 80(2).*

choose when to file a grievance with the police service on behalf of a member and a member cannot file a grievance without the support of their association. All decisions by the Ontario Police Arbitration Commission are posted to their website.[94] It does not take long to find decisions that exemplify the inefficiencies and superfluousness of the current labour relations structure. The only currently legislated manner in which a police officer can file a complaint is through a grievance, and only if the association supports the complaint.

As an example, in the matter of Thunder Bay Police Services Board and James Mauro[95], Mauro had filed two grievances against the Board with the support of his association. The nature of the grievances was Mauro being refused the opportunity for promotion. The association settled those two grievances, but obtained no remedy for Mauro. Mauro was not satisfied that no remedy was sought and he therefore filed his own grievance. Since legislation does not permit a member to file a grievance, the arbitrator appointed dismissed the grievance. Some mediator profiles on the site Mediator Dates[96] shows fees as high as $1,500.00 for a half day and $500 per hour thereafter. The expense of the arbitration process is shared among the parties.[97] If police services were able to resolve disputes prior to the need to involve a mediator, this would also save time and money.

MISFEASANCE

"...overarching unconstitutional action of the police..."
"...breach of procedural fairness, natural justice and fundamental justice."

Nothing in this report suggests that police officers should not be subjected to legitimate investigations into their conduct. What the following case studies show is that there are systemic issues that are costing the public and police officers millions of dollars and could be eliminated if matters could be brought before an independent adjudicator.

The Crown Attorney has a fiscal responsibility to the public to not proceed with a case where the prospect of conviction is low. However, time and time again, police officers are charged, acquitted and the legitimacy of the investigation is called into question by Justices. Despite some officers receiving financial indemnification by way of civil lawsuit, their reputation undoubtedly suffers irreparable harm and in most cases, their professional careers end. Taxpayers are left funding the bill on behalf of the police service and the public are left confused, not knowing who to trust.

Despite police leaders preaching transparency and accountability, police officers are often charged with PSA offences for legitimately questioning or criticizing leadership, or are harassed and bullied for alleging discrimination.

---

[94] Policearbitration.on.ca
[95] Ontario Police Arbitration Commission decision 09-012.
[96] www.mediatordates.com
[97] Police Services Act, R.S.O. 1990, c. P.15, Section 122(3.7).

The current police culture and the nonfeasance by the oversight bodies are the root causes for this collateral damage.

London

On June 16, 2012, members of the St. Thomas Police Service were called to an address in that City regarding a domestic dispute between London Police Service (LPS) Constable Chad Power and a female officer, who was also employed with the LPS. The following day, June 17, 2012, members of the St. Thomas Police Service were called a second time to the same address as a result of a further domestic problem between Power and the same female officer. Power was allegedly disrespectful, unprofessional, condescending and aggressive towards the St. Thomas police officers. Power was arrested and charged with forcible entry and mischief under $5,000 contrary to the Criminal Code of Canada. Those charges were withdrawn within a month.

In 2013, the LPS commenced a criminal investigation into the potential involvement of Power into a break and enter incident, and possession of stolen clothing. At the same time, the LPS initiated an internal Professional Standards Unit (PSU) investigation into the conduct of Power. The LPS decided that the two investigations would be conducted separately, yet that notion was abandoned from the outset as the investigators collaborated on each other's investigations almost immediately.

The PSU investigator monitored the criminal interview of Power and assisted the criminal investigator with preparing the information to obtain a search warrant on the residence of Power. At the conclusion of the search warrant, the criminal investigator reported his findings to the PSU investigator. During Power's compelled PSA interview with the PSU investigator, Power was ordered to produce emails to the criminal investigator. The PSA interview was later shared with the criminal investigator.

During the investigation, Power revealed that he had purchased the stolen clothing from someone on the online site "kijiji.com." Power declined to fully comply with some orders given over the course of the investigations, fearing he was being ordered unlawfully to incriminate himself in the aid of the criminal investigation.

On August 31, 2012, Power was convicted of neglect of duty and discreditable conduct and demoted to 2nd Class Constable for a period of 6 months.

On April 18, 2013, Power was found guilty of one count of discreditable conduct in relation to the June 17, 2012, incident in St. Thomas. On September 13, 2013, the Hearing Officer imposed a penalty of the forfeiture of 48 hours [6 days'] time off, and a written letter of apology to the Chief of Police for the St. Thomas Police Service.

On December 23, 2013, the OCPC ordered a stay of the August 31, 2012, PSA proceedings against Power citing that the error by the Hearing Officer amounted to a breach of procedural fairness, natural justice and fundamental justice.[98]

In July 16, 2014, Power appealed the penalty issued September 13, 2013, to the Commission and the penalty was reduced to 24 hours [3 days'] time off and the letter of apology.[99]

Constable Mike Sladek of the London Police Service was accused in 2014 of two criminal offences and investigated by his own service. Sladek was placed on paid suspension. On August 15, 2015, during his lengthy criminal trial that cost him over $140,000.00, a *voir dire* took place during which all of the evidence obtained during the execution of a search warrant of his residence was excluded due to the legality of the officers' conduct and breaches of Sladek's Charter Rights. Honourable Justice Glenn was quoted as saying:

> *"Police must not unilaterally augment their powers of search by deciding that an article named in a search warrant can be deconstructed into smaller parts.*
>
> *Further, fair and accurate reporting by the police following the execution of the warrant to the justice who issued the warrant forms a crucial part of the check and balance of the intervention of the state into the privacy interests of the individual. While search warrants issued by a justice under s. 487 give special authority to the state to search for and seize specific items located in specific places at specific times, their equally important function is to set limits on the extent of the State intrusion. Providing misleading reports to a justice undermines the justice's ability to assess compliance with the search warrant. Any one of these missteps has the potential of undermining the rights of the individual and in turn, eroding public confidence in the justice system and bringing the administration of justice into disrepute.*
>
> *However, these were exactly the missteps that occurred in this case. I do not condone the actions of the officers in this case and I wish to distance the court from any suggestion of approval.*
>
> *In spite of the considerations that would have favoured the inclusion of the evidence produced by the execution of the search warrants, given the concerns raised by the overarching unconstitutional action of the police, all evidence that was produced pursuant to the searches that took place on May 7, 2014 will be excluded."*[100]

---

[98] *Power v London Police Service, 2013 CanLII 101392 (ON CPC).*
[99] *Constable Chad Power and The London Police Service, 2014 CanLII 100624 (ON CPC)*
[100] *R. V. Sladek, 2015, ONJC 467.*

As the trial progressed and more and more inconsistencies and discrepancies were discovered, the Crown Prosecutor, (one designated for cases involving police officers), refused to drop the case against Sladek; even after Justice Glenn's ruling above.

Sladek was acquitted in 2015 yet remained on a paid suspension for another 2-years until he could be informally disciplined. Despite his complaints to the London Police Professional Standards Branch, no charges were ever laid against the officers who committed misconduct while executing the search warrant at his residence, provided misleading reports to a justice or provided false testimony.

Sladek did not receive any financial support from his Association.

It is unknown at this time how much it cost taxpayers to prosecute Sladek, (in addition to his salary for 3-years while on paid suspension, despite his acquittal).

Ottawa

In 2009, Constable Paul Heffler, Ottawa Police Service, returned to patrol after spending 8 years in the Intelligence/High Risk section. Heffler began using the service's new records management system to maintain his notes, (which he says was done by many officers and known to his supervisors). Heffler's notetaking was investigated by professional standards and Heffler was advised no charges would be laid.

In 2013, Heffler sent a service-wide email addressing the need for traffic safety vests in cruisers and a better patrol shift schedule to assist with the transition out of night shifts. A week later, Heffler was advised he was being charged for his improper notetaking, (despite the conclusion of the previous investigation). Heffler was convicted at a PSA hearing for insubordination and neglect of duty for his improper notetaking and was demoted for 3 months to 2nd class constable.

In March, 2016, Heffler sent a mass email to all Ottawa Police users challenging the Ottawa Police Service Chief's leadership. Heffler stated in his letter that the force suffers from an "inbred system of self-promotion." Heffler made claims that actions by senior leaders at the service are affecting patrol officer morale. In reference to an internal "phantom ticket" probe, Heffler stated:

> *"Your ghost warning investigation isn't a symptom of corrupt cops, it's a symptom of a corrupt system."*

In June, 2016, Heffler was advised he was once again under investigation for his notetaking and transferred to work the front desk at his division. Heffler successfully challenged the transfer with a workplace harassment complaint and was returned to patrol.

Heffler was late for a court appearance following a night shift and as a result was transferred off patrol once again. With the help of the OPS workplace harassment

representative, Heffler was once again reinstated to patrol. In eary 2017, Heffler was convicted of neglect of duty, for being late for court, and surrendered 8 hours pay.

Heffler said he was made a "scapegoat" because he criticized the administration by internal email. Heffler stated:

> *"Ironically, I have become a perfect example of this treatment. I was charged, not for losing cases or being corrupt, or any other worthy purpose. I was charged as a vindictive act."*[101]

Toronto

In June, 2016, Sergeant Jamie Clark, Detective Sergeant Steven Watts and Detective Sergeant Donald Belanger of the Toronto Police Service broke ground when they filed a lawsuit against the Crown. Their allegations included that the Crown knew there was "compelling evidence" that allegations against them were "complete lies and fabrication," yet took no action.[102] The three senior officers say they took action against the Crown to restore their reputations. They say they were wrongly condemned in court for police brutality. The lawyers for the officers were quoted as saying:

> If it weren't for negligence by the Crown, *"the resulting irreparable damage to the officers' livelihood and reputation never would have occurred."*[103]

The officers allege that when the claim was made by the accused in a criminal trial that he had been beaten by the officers the Crown withheld evidence that could have exonerated them and did not even have the officers testify, despite calling them as witnesses for the trial.

Superior Court Justice Julie Thorburn reduced the sentence of the accused because of the "police brutality" in the case and that the Crown Attorney, Sheila Cressman, made no effort to challenge their accounts. In 2013, the accused appealed his conviction and a new Crown Attorney was assigned to the appeal, Amy Alyea. The officers allege that they attempted to tell the new Crown that an "egregious mistake had occurred," but "she took no steps to investigate further."[104]

In December, 2013, the Court of Appeal threw out the conviction and harshly denounced the officers for using beatings and threats to get confessions out of suspects, and as Chief Bill Blair stated Ontario's top court only got one side of the story. Blair was quoted as saying:

---

[101] "Officer challenges police chief in internal mass email," Shaamini Yogaretnam, Ottawa Citizen, March 15, 2016.
[102] "Three senior Toronto officers sue Attorney General in rare case," Wendy Gillis, News reporter, Shanning Kari, Special to the Star, June 24, 2016.
[103] *Supra* note 102.
[104] *Ibid.* note 102.

> *"Quite frankly, I don't understand why that decision was made. The officers were anxious to testify but were not afforded the opportunity to do that by the Crown Attorney."*[105]

The SIU investigated the matter twice and did not find any wrongdoing by any of the officers.

Waterloo

In September, 2012, Constable Jeremy Snyder, a 13-year member of the WRPS, was arrested for sexual assault by the WRPS for an off-duty incident. Snyder was immediately placed on paid suspension. In January, 2014, after an eight-day criminal trial, Justice Kim Carpenter-Gunn emphatically acquitted Snyder, repeatedly questioning the credibility and motives of his accuser. The WRPS had charged Snyder with discreditable conduct under the PSA.[106] Following the decision at Superior Court, that charge was dropped. The entire ordeal cost Snyder $90,000.00 and led to his financial demise. Snyder had been on paid suspension for 2-years and did not receive any financial assistance from his association.

Snyder submitted an internal complaint and requested a Chief's complaint regarding the criminal investigation started in 2012. At that time, WRPS internal policy allowed for a complaint to be brought by a member of the service through the chain of command. Snyder did not receive a response to his request. Shortly after, the WRPS internal policy was changed to no longer allow members of the service to file complaints.

Snyder filed a lawsuit against the WRPS for $2M for negligent investigation.[107]

In January, 2016, Snyder was once again charged criminally by the WRPS for a domestic related, off-duty, incident, and once again placed on paid suspension.[108] Those charges were later withdrawn and Snyder entered into a peace bond. After a 10-month paid suspension, Snyder returned to work as a police officer. In January, 2017, Snyder pled guilty to discreditable conduct under the PSA and gave up 80-hours' pay.

Snyder's lawsuit is ongoing.

Snyder did not receive any financial support from his Association for the criminal matters brought against him by the WRPS.

---

[105] *Ibid.* note 102.
[106] "Defence lawyer blasts system after Waterloo Regional Police officer acquitted of sexual assault," Brian Caldwell, Waterloo Region Record, January 8, 2014.
[107] "Officer facing criminal charges is suing police," Waterloo Region Record, February 6, 2016.
[108] "New charges for WRPS officer previously acquitted of sexual assault," CTV Kitchener, published February 4, 2016.

It is unknown what the proceedings against Snyder have cost the Region of Waterloo, (in addition to the almost 3-year paid suspension he served and there was one less police officer on the road).

In January, 2015, Sergeant Bradley Finucan, a 26-year member of the WRPS, was arrested for domestic allegations by the WRPS, some dating back 2-years. One of the complainants was also a member of the WRPS, the other had recently resigned under questionable circumstances. Finucan was not interviewed prior to his arrest, and he was immediately suspended with pay. During his arrest, investigators obtained his personal cellphone from which the only real and objective evidence of the case was later retrieved. That cellphone contained evidence that contradicted allegations, and yet no charges were withdrawn. The WRPS maintained carriage of the investigation despite the obvious conflicts of interest.

Over the course of the next sixteen months, WRPS investigators went to great lengths to substantiate the criminal charges laid against Finucan. Despite Finucan's lawyer drawing the attention of the Crown Prosecutor, (the same Crown Attorney in the Sladek case), to significant evidence that contradicted the complainants' statements and called the allegations into question, the prosecution was determined to bring the case to trial.

In April, 2016, Finucan pled guilty to two charges, largely to prevent further financial ruin. As a result of all of the challenges Finucan has faced in the past four years, on his doctor's advice he took stress leave from his duty to sign-in at his division every work day. In early 2017, entering his third year of paid suspension, the WRPS forced him back to signing in so that they could compel him to be interviewed as part of their ongoing PSA investigation. Finucan filed a Human Rights complaint due to his treatment by the WRPS while suffering mental health issues, and the Tribunal allowed the WRPS to continue to prolong their PSA investigation and failed to intervene.

As of the date of this report, the WRPS have not prosecuted Finucan under the PSA (despite the 6-month limitation in the PSA), and he remains on paid suspension.

Finucan did not receive any financial support from his Association during his criminal matter.

It is unknown what the proceedings against Finucan have cost the Region of Waterloo, (in addition to his salary for the 31 months that he has been suspended, and there has been one less police officer on the road).

HARASSMENT/BULLYING

Some officers have been subjected to discipline or have had their constitutional rights violated for alleging harassment by other members of their service. For some, the reprisal has been sufficient to warrant their resignation from the profession.

Calgary

In 2013, Constable Jennifer Magnus had decided to stand up for other members as well as civilian staff who were trying to seek "equality and justice." Magnus and another officer went to former chief Rick Hanson with their concerns, which led to a human resources audit. Since that time, some of these members were told by their supervisors that nothing would be done if they filed a grievance while others were advised by the police union it would not take on blue-on-blue complaints.

In January, 2017, Magnus publicly resigned at a Calgary Police Commission meeting. Magnus, and other employees, say the culture of the service protects those who are involved in abusive behavior in the workplace.

Magnus' lawyer Rachel West stated:

> *"They cannot turn to the individual and say, 'Look, if you make a complaint, your complaint not only will not be heard, nothing will happen and this is a career-limiting move, do you really want to do this?' That can't be the culture."*[109]

Magnus told the Commission that speaking out about the service's workplace culture had led to her being branded a "chain jumper, challenging and not to be trusted."[110]

Ottawa

In 2013, a group of 10 officers working the Airport Unit for Ottawa Police Service started addressing issues of workplace bullying, under the Occupational Health and Safety Act, through their chain of command. In February, 2015, when nothing was done about their concerns internally, the officers attempted to file an official grievance, but could not garner the support of their union. In April, 2015, Constable Matt Clarke, Kelly Ryan and Sergeant Alex Bender were all transferred to different units. The reassigned officers complained to their union that they felt like they were being punished for speaking out about the bullying, but the association told them they did not have a legal basis to file the grievance.

In this case, the Ottawa Police Association said they negotiated for an investigation by a neutral investigator, but since the investigator would be chosen by management and the force would not disclose the findings, Clarke and Ryan refused to participate.

Ryan stated:

---

[109] "13 Calgary police officers to submit formal complaints about bullying at work," The Canadian Press, Winnipeg Free Press, February 21, 2017.
[110] "13 Calgary police employees file formal bullying, harassment complaints directly to police chief," Meghan Potkins, Postmedia News, February 21, 2017.

"I didn't sign up to be controlled and harassed and manipulated by management. Why would you do that to your own officer?"[111]

Waterloo

In 1989, Constable Rajiv Sharma was hired by the Waterloo Regional Police Service.

In 1995, Sharma was witness to an incident on the firing range involving the careless use of a firearm by another member of the tactical unit. As a result of this incident, Sharma and the other member were relieved from the unit. Shortly after, the other member was reinstated to the unit and Sharma was not. Sharma addressed the issue with his supervisor. From that point on, Sharma believed he was being treated differently because of his race and was targeted for discipline because he spoke up about the treatment he was receiving.

In 1997, Rajiv Sharma faced his first bout of PSA charges following a verbal argument he had with a former fiancée while on duty. Sharma was convicted of discreditable conduct and lost 20 hours' pay. Sharma was also charged with insubordination at that time, but was acquitted.

In 2004, Sharma was charged with neglect of duty, discreditable conduct, insubordination, corrupt practices and secondary activity. In concert with his second PSA hearing Sharma filed a complaint with the Human Rights Tribunal of Ontario alleging discrimination based on race. Sharma's complaint was dismissed by the HRTO in 2008.[112]

In 2006, Sharma requested a judicial review of his PSA proceeding and the alleged biases that he believed existed in the PSA hearing procedures. Sharma's request was dismissed. Following that, Sharma experienced a lengthy medical leave of absence. Upon Sharma's return to work in April, 2009, he alleges he was discriminated against when his pay was cut because he could not perform full duties.

In 2012, Sharma filed a new complaint with the HRTO.[113]

On September 5, 2012, a judicial authorization was granted by a Judge pursuant to Part VI of the Criminal Code to intercept private communications of Sharma for a period of four months, from September 5, 2012, to January 1, 2013.[114] Sharma was not notified of this authorization until approximately May, 2013. The notification Sharma received by mail did not indicate which police service was listening to his private conversations and for what purpose.

---

[111] "Ottawa police officers break ranks over 'tyrannical' staff sergeant," Judy Trinh, CBC News, January 30, 2017.
[112] Ontario Human Rights Commission file no. NRIX-68QRK5.
[113] HRTO File Number: 2012-10979-I.
[114] Department of Justice Canada File No. DOJ#F12-070/F12-089.

In May, 2013, the Human Rights Tribunal of Ontario dismissed some of Sharma's allegations against the Waterloo Regional Police Association and allowed some to proceed.[115]

In December, 2015, Sharma had applied to amend his HRTO application to include new allegations, including the violation of his privacy by way of interception of his personal communication by the WRPS. The HRTO dismissed the majority of Sharma's amendments to his ongoing application, including the allegation that the WRPS had requested the judicial authorization to intercept Sharma's personal communication. Mark Hart, Vice-Chair of the Tribunal, stated it was speculation that the WRPS had requested the authorization and Hart noted that Sharma had not requested a court order to obtain accurate information. The HRTO did not assist Sharma in obtaining a court order to determine whether the WRPS had used a Part VI authorization to intimidate or harass Sharma as a result of him exercising his rights under the Human Rights Code[116], although Supreme Court of Canada ruling *R. v. Hynes*[117], determined that an administrative tribunal (such as the HRTO) is a court of competent jurisdiction, and Hart was in a position to facilitate this investigation.

As time went on, Sharma became frustrated at how often the HRTO dismiss allegations of discrimination as opposed to investigate them. Sharma garnered public support to attempt to pressure the HRTO to finally proceed with his complaint of racial discrimination. In February, 2017, Sharma was notified by the HRTO that his application would proceed.

Sharma has not received any financial support from his Association and has spent over $100,000.00 defending his PSA matters and Human Rights Application.

It is unknown what the proceedings against Sharma have cost the Region of Waterloo.

---

[115] *Sharma v. The Regional Municipality of Waterloo Police Services Board, 2013 HRTO 722.*
[116] *R.S.O. 1990, c. H.19.*
[117] *2001 SCC 82.*

CHAPTER 3: WHISTLEBLOWERS

"Whistleblowing is generally consistent with the principles of open government and the public interest. In fact, they have served as a major catalyst in the drive towards openness and transparency."[118]

- André Marin, Former Ontario Ombudsman

Frank Serpico was the first well-known police whistleblower, thanks to the 1973 movie "Serpico" starring Al Pacino. Serpico's story became sensational since he was the first police officer to testify against another officer. In 1970, after only a 12-year career in policing, Serpico reported and exposed corruption in the New York Police Department.[119] Serpico became a marked man within the force. He received death threats for "ratting out" fellow cops. In 1971, he was shot in the face by a drug dealer during a police raid, a bullet lodged in his brain, leaving him deaf in his left ear. Serpico believed the department had set him up.

Serpico was assisted by Sergeant David Durk, who despite allegations made by the Mayor that Serpico was a "psycho who could not be trusted," was successful in having Serpico's allegations printed across the front pages of the *Times*. The Mayor was pressured into appointing an independent commission to investigate and what resulted was the Knapp Commission[120]; the Commission to Investigate Alleged Police Corruption chaired by Whitman Knapp.[121] The Commission concluded that corruption in the NYPD was endemic and institutionalized, reaching to its highest levels, even inside the police commissioner's office. The police commissioner, Howard Leary, was forced to resign. Following the ordeal, Serpico moved to Europe for the next 10-years as a recluse.

Richard M. "Richie" Roberts began working as Detective for the Essex County Prosecutor's Office in Essex County, New Jersey, in 1963. In 1976, Roberts was integral in the investigation, arrest, and prosecution of Frank Lucas, Harlem "drug kingpin." Roberts' investigation also uncovered police corruption connected with the drug trade.[122] In 2007, although criticized for its departure from the real story, the movie "American Gangster" represented the events.

In 1974, the exposure of the web of internal spies, secret surveillance, dirty tricks and cover-ups that led to the unprecedented resignation of President Richard M. Nixon, and to prison sentences for some of Nixon's highest-ranking aides, was the work of a whistleblower; "Deep Throat." In 1976, the blockbuster movie "All the President's Men" brought attention to the suspenseful late-night encounters between Bob Woodward and his source. Three decades later, in 2005, the identity of The Washington Post's secret

---

[118] "Whistleblower Protection vs. Government Confidentiality," André Marin, Ombudsman of Ontario, address to the International Conference of Ombudsmen, in Willemstad, Curaçao, June 14, 2011.
[119] http://www.biography.com/people/frank-serpico-9542108
[120] "David Durk: Another Lost Whistle-Blower," NYPD Confidential, November 19, 2012.
[121] https://en.wikipedia.org/wiki/Knapp_Commission
[122] https://en.wikipedia.org/wiki/Richie_Roberts

source was revealed by his family as Mark Felt, who was a pillar of the FBI. At the time, Felt knew that Nixon's administration was willing to use wiretaps and break-ins to hunt down leakers, so no amount of caution was too great in his mind. Felt's identity and reputation were protected by Woodward and Carl Bernstein, in what has become one of modern America's best-kept secrets.[123] Felt died in 2008, at the age of 95.

In 2009, after reporting that the 81st Precinct of the NYPD was using arrest quotas and fudging crime stats[124], fellow officers barged into NYPD officer Adrian Schoolcraft's home and hauled him off to a hospital where he was kept in a psychiatric ward for six days against his will.[125] He has been suspended without pay since that time. Schoolcraft's allegations were later substantiated and those involved were either disciplined or transferred.

In 2015, Schoolcraft settled his lawsuit with the NYPD for $600,000.00 and has an outstanding $50M suit against the city for his alleged unlawful detention at the hospital.

In 2013, after the largest leak of classified documents in U.S. history, Private Bradley Manning, (also known as Chelsea Manning), was sentenced to 35 years in prison. The verdict was based on several convictions, including violations of the Espionage Act. Civil liberties groups condemned the judge's decision, stating:

> *"When a soldier who shared information with the press and public is punished far more harshly than others who tortured prisoners and killed civilians, something is seriously wrong with our justice system. This is a sad day for Bradley Manning, but it's also a sad day for all Americans who depend on brave whistleblowers and a free press for a fully informed public debate."*[126]

Even though historical whistleblowers have drawn the public's attention to the lack of internal oversight and protection for those who report corruption, whistleblower legislation has done little to improve transparency and accountability in municipal policing.

WHISTLEBLOWER LEGISLATION

Federal

In 2004, Criminal Code of Canada section 425.1 made it a criminal offence for employers, anyone acting on behalf of an employer, or a person in a position of authority over an employee, to take disciplinary action, demote, terminate, otherwise adversely affect the employee's employment or threaten any of these things, in order to force the employee

---

[123] "FBI's No. 2 Was 'Deep Throat': Mark Felt Ends 30-Year Mystery of The Post's Watergate Source," David Von Drehle, The Washington Post, June 1, 2005.
[124] "NYPD whistleblower Adrian Schoolcraft settles suit for $600G," Rocco Parascandola, New York Daily News, September 29, 2015.
[125] *Ibid.* note 120.
[126] "Bradley Manning sentenced to 35 years in WikiLeaks case," Julie Tate, The Washington Post, August 21, 2013.

to refrain from providing information to law enforcement officials about the commission of an offence by his or her employer or by an officer, employee or director of the employer. This section also makes it an offence to threaten or retaliate against an employee who has already provided information. However, employees are only protected if they approach a person whose duties include law enforcement.[127] No consideration was given to a situation that may arise if the disclosure that must be made to law enforcement is regarding the actions of a member of a law enforcement agency.

The Public Servants Disclosure Protection Act (PSDPA), S.C. 2005, c. 46, came into force in Canada on April 15, 2007. This act applies to RCMP officers (and other Federal employees). An excerpt from the preamble is as follows:

> *"...it is in the public interest to maintain and enhance public confidence in the integrity of public servants; confidence in public institutions can be enhanced by establishing effective procedures for the disclosure of wrongdoings and for protecting public servants who disclose wrongdoings, and by establishing a code of conduct for the public sector; public servants owe a duty of loyalty to their employer and enjoy the right to freedom of expression as guaranteed by the Canadian Charter of Rights and Freedoms and that this Act strives to achieve an appropriate balance between those two important principles;"*

Under the PSDPA, it is the Office of the Public Sector Integrity Commissioner of Canada (the "Commissioner") that receives all incoming complaints of wrongdoing and decides which complaints to investigate. The Commissioner can refer allegations of reprisal to the Public Servants Disclosure Protection Tribunal (the "Tribunal") who can grant remedies in favour of complainants and order disciplinary action against persons who take reprisals.

The decisions of the Office of the Public Sector Integrity Commissioner of Canada (the "Commissioner") are posted to their website.[128]

Since 2011, there have been 13 cases that concluded in a finding of wrongdoing; some of them taking up to 5 years to resolve. In that same time period, the Commissioner referred 7 recipients of reprisals to the Tribunal for investigation. What is concerning to Canadian taxpayers is that most of the investigations before the Tribunal are settled prior to any disciplinary action taken against persons who take reprisals against whistleblowers. Therefore, the spirit of the legislation, to encourage transparency and deter reprisals against whistleblowers has been circumvented by agencies able to pay the price to avoid public prosecution. Not to say that whistleblowers who have legitimately been disciplined for simply acting ethically do not deserve financial restitution, but to treat a public process intended to deter reprisals in the same manner as civil litigation, the government essentially continues to insulate those responsible for the wrongdoing; making the legislation redundant.

---

[127] http://www.slaw.ca/2013/06/06/the-state-of-whistleblowing-in-canada/
[128] http://www.psic-ispc.gc.ca/

In *Wayne Roberts and Atomic Energy Canada Limited, Case #: T-2011-02*, Roberts initially made a report of wrongdoing through internal channels at Atomic Energy Canada Limited in 2007. In 2008, Roberts' employment was terminated following a performance review during which it was noted he had become a "source of conflict." In 2009, Roberts filed a reprisal complaint with the Commissioner. It wasn't until 2011 that the Commissioner decided to commence an investigation. Upon completion of the Commissioner's investigation, Roberts was referred to the Tribunal. In 2016, Roberts accepted a settlement and his application was withdrawn, (7 years after Roberts' initial complaint).

In *El-Helou v. Courts Administration Service, Cast #: T-2011-01*, El-Helou was referred by the Commissioner to the Tribunal for remedy for reprisal action taken against him, but only for those allegations not previously dismissed by the Commissioner. Despite the Tribunal's mission including to ensure the parties are treated fairly and impartially, legislation does not give jurisdiction to the Tribunal to assist recipients of reprisal where the decision to dismiss has already been rendered by the Commissioner.[129]

In 2016, Canada's current legal framework for whistleblowing was criticized by Transparency International Canada in its submission to "Canada's Action Plan on Open Government 2016-18." According to Transparency International Canada, the legislation is outdated and out of step with internationally recognized best practices. The most serious deficiencies were identified as the lack of protection for public sector whistleblowers and lack of coverage of the legislation.

One example of the shortcomings of the PSDPA is that the onus is on the whistleblower to prove that adverse actions were intended by the employer as reprisals: almost an impossible task.

Transparency International Canada also identified that none of Canada's whistleblowing laws contains adequate measures for preventing or halting reprisals in the first place, before the whistleblower suffers serious harm.

The PSDPA requires that the President of the Treasury Board conduct a five-year review of the legislation and report on the review to Parliament and the Senate. Since 2007, no review has been conducted.[130]

The PSDPA does not apply to municipal police officers in Ontario.

Provincial

Public Service of Ontario Act, 2006, S.O. 2006, c. 35, Sched. A, serves to establish procedures for the disclosure and investigation of wrongdoing in the public service of Ontario and to protect public servants who disclose wrongdoing from reprisals[131].

---

[129] *El-Helou v. Courts Administration Service, 2011-PT-01.*
[130] *Ibid.* note 48.
[131] *Public Service of Ontario Act, 2006, S.O. 2006, c. 35, Sched. A, (excerpt).*

It is the Integrity Commissioner of Ontario who receives complaints under the Public Service of Ontario Act. In 2015-2016, the Integrity Commissioner's office concluded 25 matters from public servants making disclosures of wrongdoing. Out of those 25 matters, only 8 were investigated. In the 17 abandoned matters, it was determined that the allegations could not possible reveal a "wrongdoing" as defined in the Act, the circumstances were outside the Office's jurisdiction or there was insufficient information for the Office to pursue the matter. There is also a growing number of complaints of reprisals against disclosers of wrongdoing. Although the Act prohibits any person from taking a reprisal against any public servant who makes, seeks advice about or cooperates with an investigation into the disclosure of wrongdoing, the Act does not give the Commissioner any jurisdiction to deal with reprisals, if they occur.[132]

None of the disclosure summaries posted to The Office of the Integrity Commissioner's website include any names of public servants alleged, or even found, to have committed wrongdoing.[133]

This Act does not apply to municipal police officers in Ontario.

In 2016, the Ontario Securities Commission (OSC) instituted the Office of the Whistleblower. The OSC recognized the need for employees of financial firms to have an ability to report wrongdoing without the fear of reprisal. The OSC even pays cash rewards for information that leads to enforcement action.

The OSC program, obviously, does not apply to municipal police officers in Ontario.

Canadian courts have done little to protect whistleblowers. In *Fraser v. P.S.S.R.B. 1985*[134], the Supreme Court observed that "the public interest in both the actual and apparent impartiality of the public service dictates a general requirement of loyalty on the part of the public servant to the Government of Canada, as opposed to the political party in power." Further, the Federal Court of Appeal, in *Anderson v IMTT-Quebec Inc. 2013*[135], emphasized that in order for employees to uphold their duty of loyalty and fidelity to the employer, they must exhaust all internal whistleblowing mechanisms before going public. Practically speaking, most employees would be unwilling to report their employer's misconduct to their immediate supervisor, thus, the actual quality of this protection as interpreted by the courts is questionable.[136]

---

[132] Office of The Integrity Commissioner of Ontario, Annual Report 2015-2016.
[133] http://www.oico.on.ca/home/disclosure-of-wrongdoing/disclosure-summaries
[134] *[1985] 2 SCR 455, 1985.*
[135] *2013 FCA 90.*
[136] "The Neglected State of Whistleblower Laws in Canada," Obaidul Hoque of Rochon Genova LLP, November 13, 2015.

In the Supreme Court of Canada case of *Merk v. International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 771*, Justice Binnie stated:

> *"Having a robust and transparent internal whistleblower protection policy will therefore protect the employer both in terms of early discovery of wrongdoing by its employees and in justifying taking disciplinary action against employees who breach confidentiality obligations and their duty of loyalty."*[137]

Police services in Ontario rarely venture outside of the guidelines provided by the Ministry of Community Safety and Correctional Services and enhance service policy beyond their requirements within the PSA[138]. There currently is no requirement for police services to maintain whistleblower protection policy.

Police services across the country rely on an officer's Oath of Secrecy to persecute whistleblowers. Police officers in Ontario must swear (affirm) to the following:

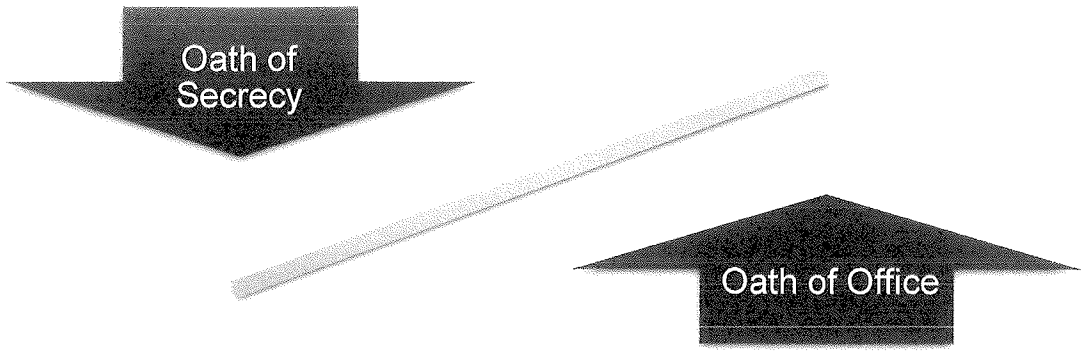
> *...that I will not disclose any information obtained by me in the course of my duties, except as I may be authorized or required by law.*[139]

Police whistleblowers are put in an extremely difficult position since they have also sworn or affirmed an Oath of Office, which in Ontario requires them to:

> *...be loyal to Her Majesty the Queen and to Canada, and to uphold the Constitution of Canada and, preserve the peace, prevent offences and discharge other duties faithfully, impartially and according to law.*[140]

---

[137] *[2005] 3 SCR 425, 2005 SCC 70*, at para 25-26.
[138] *Police Services Act, O. Reg. 3/99.*
[139] *Police Services Act, O. Reg. 268/10.*
[140] *Supra* note 139.



Police whistleblowing results when an officer is guided by their moral obligation to their Oath of Office and their duty to report. Every whistleblower chooses to respect their integrity in the face of fear of retribution.

In 1978, the Honourable R. Roy McMurtry wrote in the RCMP Gazette, no. 12, "Police Discretionary Powers in a Democratically Responsive Society":

> *"No one can tell an officer to take an oath which violates his conscience and no one can tell an officer to refrain from taking an oath which he is satisfied reflects a true state of facts."*[141]

In 2017, police whistleblowers are being prosecuted for bringing discredit to the profession by exposing internal wrongdoings and the suppressive powers of an officer's Oath of Secrecy are relied upon to perpetuate malignancies.

In most cases of police whistleblowing, an allegation is made by a member of the police service that another member has committed misconduct, or criminal acts. The chief of police then has a choice to make; do they properly and objectively investigate the allegations made, or do they prosecute the whistleblower?

Current legislation allows chiefs of police, who are vicariously liable for any internal wrongdoing, to allege misconduct by a whistleblower, and maintain full carriage over the disciplinary proceedings. Once an officer is alleged to have committed offences under the PSA, there are no independent bodies who are willing to intervene to protect the officer's rights. The officer is given an opportunity to defend allegations at a public PSA hearing, appeal to the OCPC and finally to a Divisional Court. This entire process can take years and come at a very high cost to both the officer and the police service, (and therefore, the municipality). In most cases where a plea was struck it was due largely in part to the officer's inability to continue to fund a defence. The pockets of the Ontario taxpayer are much deeper than any one individual police officer. In most cases of police whistleblowing the original allegations made by the whistleblower are rarely investigated;

---

[141] Public Prosecution Service of Canada, Part III Principles Governing Crown Counsel's Conduct, Chapter 11, 11.2.1 The Common Law Principle.

instead, the officer who tried to do the right thing ends up suffering harassment, retribution and irreparable mental, financial and psychological damage.

The Courts of Justice Act[142], section 137.1, prevents proceedings that limit freedom of expression on matters of public interest. However, it is left up to both parties to argue whether or not the matter in question is of public interest. To date, there is no public record of an attempt to dismiss a PSA proceeding that arose from an expression that relates to a matter of public interest. And, in most cases where a police chief uses prosecutorial means to silence a whistleblower, the officer's Oath of Secrecy is used as the overarching mechanism.

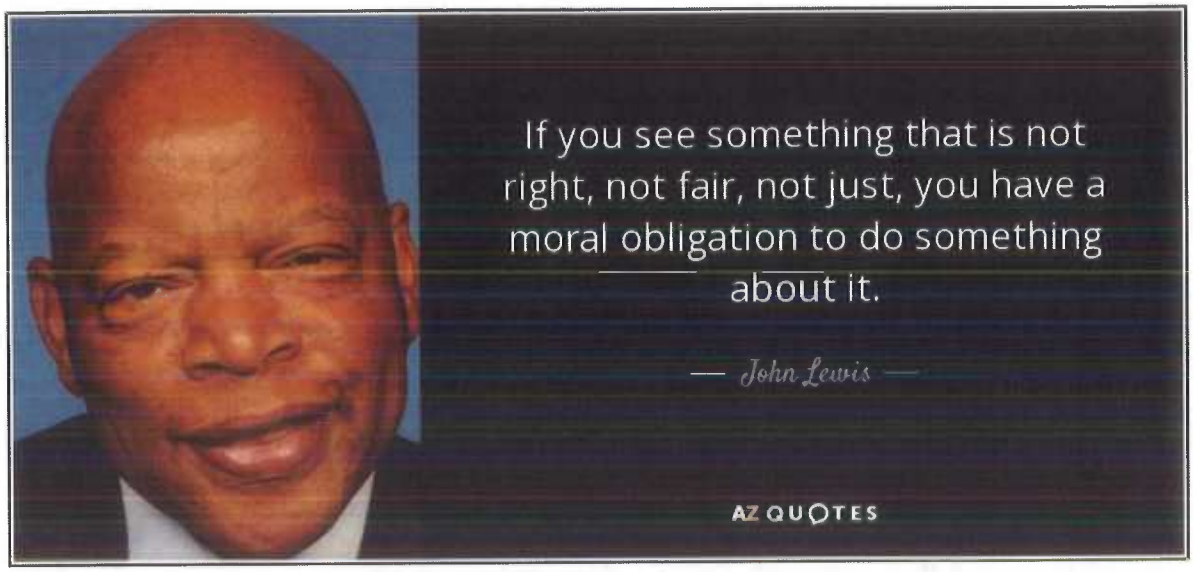
The municipal police whistleblower in Ontario has no choice but to consider the financial, emotional and psychological costs of exposing misconduct an occupational hazard. Police officers have a good, stable income and reliable pension. These are the most significant reasons most municipal police officers choose to turn a blind-eye to the misconduct and allow the abuses of power to perpetuate. Enough police officers have been prosecuted to date that those who remain are scared into silence.

It should be noted that, although Ontario does not have whistleblower protection for municipal police officers, Finland, (Transparency International's least corrupt country in the world[143]), also has no specific whistleblower protection system. Finland relies on its general principles of openness, transparency and accountability of public administration as the main guarantees against corruption. Finland does have a code of conduct for state officials focusing on traditional values such as equality, legality, responsibility and impartiality.[144]

---

[142] *R.S.O. 1990, CHAPTER C.43.*
[143] *Ibid.* note 49.
[144] https://blueprintforfreespeech.net/document/finland-overview

WHISTLEBLOWERS: COLLATERAL DAMAGE



The following cases outline situations when police officers have reported misconduct by other officers at the same police service or other participants in the justice system. In each of these incidents, the officer making the report is prosecuted as opposed to the alleged wrongdoer.

ONTARIO

Ontario Provincial Police

In 2010, Detective Constable Salvatore (Sam) Amormino of the Ontario Provincial Police began an investigation titled Project Savage. Eighteen months later, several charges were laid against three men for allegedly fraudulently delivering vehicles to the Congo for eventual use by a listed terrorist group. In April, 2012, Amormino testified at an eight-week hearing at the Ontario Motor Vehicle Industry Council with respect to the licences of two of the accused. At this hearing, the two accused were represented by a lawyer who also happened to be the husband of the Regional Deputy Crown Attorney who had previously been assigned to the case.

In November, 2012, the criminal charges against one of the accused were withdrawn. Amormino alleges there were no discussions with any police investigators prior to the withdrawal of charges.

In June, 2013, when the third accused returned from Lebanon a plea deal had been arranged and he paid a $300 fine.

Amormino complained about the withdrawal of the charges and what he perceived to be a conflict of interest. Amormino alleged that the criminal charges were dropped to protect

the Regional Deputy Crown Attorney and her husband against the consequences of obvious conflict of interest and, "in all likelihood a compromise of the investigation."

On August 7, 2013, Amormino was suspended "pending criminal investigation" and was barred from the Courthouse and Crown Attorney's office. By November 14, 2013, the OPP had concluded that there was no basis for criminal charges against Amormino.

However, in 2013, several Crown Attorneys involved in the case made "internal" complaints about Amormino to the Professional Standards Bureau of the OPP, including eight PSA offences.

On February 14, 2014, the allegations made by the Crown Attorneys came before an Adjudicator. On May 14, 2014, pre-hearing motions were scheduled for December, 2014, and the hearing was scheduled for January and February, 2015.

In September, 2014, OPP consented to adjourn the disciplinary proceedings for Amormino to pursue a Judicial Review. By December 14, 2015, the OPP ordered that pre-hearing motions commence. The hearing of the Application for Judicial Review was scheduled for December 7, 2015. As such, Amormino brought an application to Divisional Court to stay the disciplinary proceeding on the basis that the proceedings are retributive, have been brought in bad faith, in response to the Applicant's own complaints against a number of individuals, and to deflect attention from their own improper conduct.

On November 27, 2015, Justice M.A. Sanderson J. granted Amormino the stay until after the Application for Judicial Review had been heard and decided.

On December 7, 2015, Amormino asked the court to quash the disciplinary proceedings on the basis that the proceedings contravene his rights under the Canadian Charter of Rights and Freedoms, or as an alternative, stay the proceedings, or in the further alternative make an order requiring the OPP Association to fund counsel of his choice. Not only did Justices Gordon R.S.J, Molloy and Sanderson JJ. not quash the disciplinary proceedings, Amormino's application for judicial review was dismissed altogether.[145]

On September 22, 2016, Justices McLachlin C.J., Moldaver and Gascon JJ. dismissed Amormino's application for leave to appeal.[146]

A Freedom of Information request has been submitted and appealed to obtain the figure of what it has cost tax payers to prosecute Amormino as opposed to investigate his claims impartially and objectively. As of the date of this report, the OPP have not provided the requested, public information.

Cornwall

---

[145] *Amormino v. Police Services Board (OPP) et. al. ONSC 7718.*

[146] Detective Constable Salvatore Amormino (OPP) v. Police Services Board (OPP), et al., 2016 CanLII 61674 (SCC)

In 1993, 11-year police officer Perry Dunlop learned about an allegation of sexual assault that was made against a Father at his Parish and a probation officer.[147] Dunlop discovered that there had been no criminal investigation into the matter due to a financial settlement in the amount of $32,000.00 paid by the local Roman Catholic Archdiocese. Dunlop felt obligated, under his Oath of Office, to report the matter to the Children's Aid Society to protect the safety of other children. Dunlop provided a copy of the victim's statement to the Children's Aid Society. Dunlop was charged under the Police Services Act for discreditable conduct, and two counts of breach of confidence.

In January, 1995, Dunlop was successful in having these charges stayed, and the Police Complaints Commissioner appealed, yet was not successful due to the duty to report to Children's Aid Society for police officers.

What happened over the next 6 years drove the family to uproot and move from Ontario to British Columbia. Initially, police were reluctant to lay any criminal charges. This was when Dunlop began to lose trust in the judicial system. Dunlop collected a series of victim statements in his own time and presented the Ontario Provincial Police with the explosive evidence. These statements alleged the existence of a widespread pedophile "clan" in the Cornwall area comprised of many leading citizens. Shortly after, the OPP formed Project Truth. As of January, 2001, Project Truth had resulted in 115 charges laid against 21 men.[148] In 1996, Dunlop filed a lawsuit against several agencies and men, including two former Cornwall Police Chiefs for $1.2M in which he claims his whistle-blowing ruined his career. Dunlop's lawyer, Charles Bourgeois, stated:

> *"He can't go back to work because he's been ostracized by all the officers."*[149]

After 3 years of stress leave Dunlop did return to work, but found himself confined to a small, windowless office with a single computer and no telephone. In August, 1997, there was a report by one of the victims of sexual assault that several alleged abusers were conspiring to murder the Dunlop family.

It was in 2001 that Dunlop moved his family to British Columbia. Dunlop applied to join the RCMP and was turned down. It is alleged that the recruiting officer in Vancouver stated Dunlop was lacking "Integrity & Honesty."[150]

A Public Inquiry was launched into the OPP investigation (the Cornwall Inquiry) where Dunlop and his wife became the focus of blame for those accused.

On September 27, 2004, the Dunlop's were visited at their home on Vancouver Island at 7:10a.m. by the two Ontario Provincial Police (OPP) officers investigating Project Truth and served with a photocopy of an Order of Production, despite already turning over 11

---

[147] Centre for Free Expression, https://www.cfe.ryerson.ca/key-resources/lists/prominent-canadian-whistleblowers
[148] http://www.projecttruth2.com/Perry%20Dunlop.htm
[149] *Supra* note 148.
[150] Theinquiry.ca/perry-dunlop/

bankers' boxes full of documents to the OPP. The two OPP officers stayed in Vancouver for a week, at public expense. Dunlop feared that the OPP were going to execute a search warrant on his home or arrest him. Despite the family seeking refuge on Vancouver Island they continued to be harassed.[151]

In one local media article, one of the lawyers of a former priest accused of sexual assault was quoted as saying:

> *"I suggest to you, inspector," Neville told Hall [an OPP Det. Insp.], "that (Helen Dunlop's quote) is a complete, utter, bald-faced misrepresentation of what the document represented and what the Dunlops themselves knew."*[152]

In 2008, Dunlop was jailed for 7 ½ months for refusing to testify at the inquiry, saying he had lost confidence in the justice system.[153]

In December, 2009, (16 years after Dunlop first made his report), the Honourable G. Normand Glaude, Commissioner, released the Report of the Cornwall Inquiry in 4 volumes. The main theme in the Commissioner's recommendation was the requirement in policy at all involved police services and parishes to report alleged sexual assault against a minor.

To summarize how Dunlop feels about his initial disclosure he has this to say:

> *"I've been asked, 'Would you do it again?' And I always answer, 'Yes, absolutely'" says Mr. Dunlop, who is currently looking for work with the RCMP in B.C. "And then they sometimes ask me, "How do you feel?' And I tell them I feel that I've been shot down behind enemy lines. And that kind of says it all."*[154]

In 1999, the Vancouver Island Human Rights Coalition honoured the Dunlops with an award. In 2000, the Texas-based Southwestern Law Enforcement Institute gave Dunlop its Ethical Courage Award. In 2008, Dunlop was awarded the Golden Whistle Award for his service to Canada in pursuit of truth and accountability.

A Freedom of Information request has been submitted and appealed to obtain the amount of tax payer dollars that the City of Cornwall spent to prosecute Dunlop. As of the date of this report, they have not provided the requested information.

Hamilton

Constable Paul Manning immigrated to Canada from England and was hired by the Hamilton Police Service in 2005. After dealing with mental health issues and experiencing incidents on the job that led him to lose trust in the Hamilton Police and even

---

[151] *Supra* note 150.
[152] "Dunlop, Guzzo in inquiry spotlight," Trevor Pritchard, Standard-Freeholder, December 12, 2008.
[153] *Ibid.* note 150.
[154] *Ibid.* note 150.

uncover corruption, Manning turned to his police service for support. Manning was not given support to deal with his mental health issues and none of Manning's allegations of corruption were investigated. Manning notified then Chief De Caire in 2014 that he would be suing the service.

Soon after 21 officers stormed his house with a warrant alleging they had received an "anonymous tip" that he had a marijuana grow operation in his home. During the raid, they seized old notebooks Manning had kept from his undercover days which he planned to use as evidence in his lawsuit. No evidence of a marijuana grow operation was found.

Manning and his wife Sabrina filed a lawsuit in the summer of 2016 against the service for $6.75M.

A Freedom of Information request has been submitted and appealed to obtain the amount of taxpayer money that has been spent to prosecute Manning. As of the date of this report, the requested information has not been provided.

Orangeville

In 2010, the Orangeville Police Service charged Sergeant Curtis Rutt for insubordination and neglect of duty, under the Police Services Act, for his handling of a domestic violence complaint.

In December, 2010, Rutt released a 100-page report in which he alleged poor training and sloppy police work by members of the Orangeville Police Service. The report also called for an independent review and the suspension of the Chief. Rutt circulated his report to the Orangeville Police Services Board, Orangeville Town Council, the Ontario Civilian Police Commission, the Solicitor General and the Office of the Independent Police Review Director. In January, 2011, Chief Tomei announced a third-party review of Rutt's report would be conducted by Toronto Police. Following the release of this report, Rutt raised serious criticisms about the impartiality and thoroughness of the Toronto Police report; Rutt was not even interviewed as a key witness in this review.

Immediately following a finding of not guilty for the 2 previous PSA charges, Rutt was charged with an additional 4 charges as recommended in the Toronto Police review relating to his request for a Section 25 review. The review even contained a quote by Rutt that Rutt states was not even written by him. *"I had no consent. I had no knowledge of that. It was just put in."*[155] Peter Edwards, Star Reporter, was cited in the review as a witness to the investigation that led to charges against Rutt, although Edwards was not even contacted by the Toronto Police investigator.[156] Edwards went as far as contacting the other 2 journalists reported by Toronto Police to be witnesses; neither of them were contacted either. Chief Tomei reported that the Toronto Police review was fair. In regards

[155] "Orangeville police sergeant caught in lengthy disciplinary process," Peter Edwards, Star Reporter, March 19, 2013.
[156] *Supra* note 155.

to Rutt's allegations against the Orangeville Police Service, Chief Tomei was quoted as saying:

> *"I'm satisfied they were all without merit."*[157]

Rutt filed a complaint against the Orangeville Police Service with the Human Rights Tribunal of Ontario. The OPS requested the HRTO matter be deferred pending the outcome of his disciplinary tribunal, and it was granted.[158]

In August, 2013, as soon as Rutt received his paralegal licence from the Law Society of Upper Canada, he resigned from the OPS.

The entire proceeding cost the taxpayers of Orangeville a reported $ 596,294.46.

"I think it is deplorable the amount of public money squandered by this police service to prosecute me for simply requesting a long-needed overhaul on how police services are provided to our community," Rutt wrote in his letter of resignation.

When asked if he regretted writing or releasing his report, Rutt stated *"not at all."*[159]

Peel Region

Inspector Steven Patrick Dolan, Peel Regional Police (PRP), brought a complaint of misconduct of other senior members of the service to the Ontario Civilian Police Commission and requested the Minister of Community Safety and Correctional Services request the Commission to carry out an investigation.

Dolan alleged that he was targeted for harassment by a group of senior officers in the PRP from November, 2002, to 2007.

Dolan alleged that members of the senior officer group at PRP attempted to interfere with witnesses in a criminal trial in which he was a defendant. Dolan was ultimately acquitted.

Dolan alleged that members of the senior officer group at PRP prevented the proper investigation of allegations of a domestic assault against one of the members of the group.

When he refused to remain silent about the incident, he was charged with breach of confidence under the PSA. Those charges were ultimately withdrawn.

In 2007, Dolan commenced a civil action in which he advanced allegations of serious misconduct against the Board and the Chief, Acting Deputy Chief and Acting Staff Superintendent of the PRP. Dolan sought damages for breach of public duty or misfeasance in public office, malicious prosecution, conspiracy and intentional infliction

---

[157] "Rutt resigns, Police Act charges dissolved," Bill Tremblay, Orangeville Banner, August 30, 2013.
[158] *Rutt v. Orangeville Police Service, 2011 HRTO 1610.*
[159] "Orangeville Cop whistleblower resigns," Peter Edwards, Star Reporter, August 29, 2013.

of mental anguish. At that time, the Board took the position that a civil action was not the proper route, but that the matter should be addressed by way of a grievance under the collective agreement. During this time, the Peel Regional Police Association (PRPA) wrote to the Commission asking it to initiate an independent investigation of the allegations under s.25 of the PSA.

Dolan then abandoned the civil action in favour of the grievance route which was filed in January, 2008. In this same month, the Commission responded to the PRPA stating it had decided "not to take any action at this time."

In February, 2008, the Chief took the position that Dolan's documents did not constitute a proper grievance and refused to consider them. In this same month, the PRPA made a second request to the Commission that it conduct an investigation.

In May, 2008, Dolan sent the Commission two letters requesting an investigation.

In June, 2008, the Board took the position that Dolan did not have the capacity or standing to advance the grievances to arbitration.

In December, 2008, Dolan's lawyer wrote to the Commission requesting an independent investigation. In January, 2009, the Commission responded that they are not considering the request.

In February, 2009, with the support of the Senior Officer Association (SOA), Dolan requested the Minister appoint a conciliator. The Board objected to the appointment. In May, 2009, the Minister appointed a conciliator, and the conciliation was not successful.

In June, 2009, Dolan requested the appointment of an arbitrator. In this same month, Dolan's lawyer wrote the Minister requesting the Minister to request the Commission to investigate. The Minister responded in September, 2009, refusing to make a request to the Commission.

In October, 2009, the SOA withdrew their support of Dolan. On February 3, 2010, the Arbitrator ruled that Dolan could not arbitrate the issues without the support of the SOA and dismissed the grievances.

Finally, in May, 2010, Dolan initiated an application for judicial review and challenged the Commission's refusal to investigate; the Minister's refusal to request the Commission to investigate; and the Arbitrator's dismissal of the grievances.

On March 10, 2011, the Honourable Justice of the Ontario Superior Court of Justice Herman concluded that Dolan did not have standing to challenge the decisions of the Commission and the Minister and dismissed Dolan's application for Judicial Review. Dolan was ordered to pay legal costs of $6,000.00 to the Commission.[160]

---

[160] *Dolan v. Ontario (Civilian Commission on Police Services), 2011 ONSC 1376.*

Later in 2011, Dolan applied for judicial review of the Arbitrator's decision to dismiss his grievances. It was decided that Dolan had to be supported by the SOA, not the PRPA, since he is a senior officer. No consideration was given to the fact that the membership of the SOA was largely comprised of officers whose names had surfaced in Dolan's complaints of misconduct. Since the other members of the SOA were not interested in incriminating themselves by way of allowing Dolan's grievance and complaint to proceed their support was withdrawn. On November 22, 2011, the Superior Court of Justice of Ontario ruled to dismiss Dolan's application for judicial review of the Arbitrator's ruling and ordered he pay $4,000.00 in legal costs to the Commission.[161]

Dolan did not receive financial assistance from the Peel Senior Officers' Association and the entire ordeal cost him $200,000.00.

It is unknown what it cost the regional municipality of Peel to prosecute Dolan and suppress his allegations.

Dolan is no longer employed by the Peel Regional Police Service; he operates his own business. A Freedom of Information request was submitted and appealed to obtain the amount of tax payer dollars that were spent to prosecute Dolan as opposed to objectively investigate his allegations against other members of PRP. As of the date of this report, the requested information has not been provided.

Waterloo

In 2015, Constable Kelly Donovan, a 6-year member of the Waterloo Regional Police Service (WRPS), witnessed misconduct by senior investigators at the WRPS by not following service procedure and failing to properly investigate criminal allegations against members of the WRPS. Donovan began to research avenues to address complaints of internal misconduct. Donovan learned that the WRPS procedure on Complaints had been changed in April, 2014, to no longer allow a member of the service to make a complaint through the chain of command. Donovan learned from Constable Jeremy Snyder that he had submitted an internal complaint following his acquittal from criminal charges in January, 2014, and had never received a response. Donovan learned that although the WRPS had prohibited members from making internal complaints there were no adequacy standards established by the Ministry requiring the WRPS to maintain such policy.

Donovan consulted with other officers during her off-duty time and determined that several issues existed at the service with the lack of identification of conflicts of interest during investigations, lack of policy on ethics and conflicts of interest, and overall inconsistency in the manner in which the service exercises discretion and investigates allegations against its officers. Donovan extensively researched current legislation and determined that the only manner to address concerns with the police service was through

[161] *Dolan v. Ontario Civilian Commission on Police Services, 2011 ONSC 6720.*

the police services board. Donovan was aware that the Board is legislatively responsible for the provision of adequate and effective police services in the municipality.[162]

In May, 2016, Donovan addressed the WRPS Board by way of delegation regarding the inconsistencies in internal investigations.[163] Throughout the ten minutes that Donovan was allowed to speak the Board remained in public session, it is at the Board's discretion to enter into a closed session.[164]

A week later, Donovan was served with a Notice of Investigation for six PSA allegations, and directed by the Chief of the WRPS to no longer address the Board at future meetings. That same day, the Cambridge Times published an article about Donovan's delegation which stated that Chief Larkin assured the media "that the officer has a democratic right to vocalize her disapproval during the public session of the police board meeting."[165] Larkin also questioned Donovan's decision to address the civilian board stating there are many mechanisms within the force and the union to call for change. Larkin added that investigations are done by "exemplary" and high-calibre members with input from the Crown Attorney's office.[166]

Donovan sent an email to Board members to notify them of the reprisal action taken against her and was served with a second Notice of Investigation for doing so, including allegations of two further offences under the PSA. At that time, Donovan was ordered by the Chief to not communicate with members of the Board.

Donovan filed workplace harassment and human rights complaints immediately.

Donovan also filed a complaint with the OCPC regarding the change of service procedure by the WRPS to prohibit a member from making an internal complaint and regarding the conduct of members of the Board to suppress her complaints addressed in her delegation.

The WRPS hired a lawyer to complete the workplace harassment investigation. According to Donovan, this investigation was biased and did not objectively investigate her allegations or even deny them. The investigator focused much of her final report on the personal life of Donovan as opposed to Donovan's allegations of workplace harassment. The lawyer even stated in her report that Donovan was not a reliable witness because she deflected the questions regarding her personal life and attempted to refocus the interview on her allegations of harassment.

The WRPS contracted the York Regional Police Service (YRP) to conduct an investigative review of one of the criminal investigations cited in Donovan's delegation to

---

[162] *PSA, R.S.O. 1990, c. P.15, section 31(1).*
[163] "Officer criticizes detectives for improper investigation at police board meeting," Waterloo Region Record, May 5, 2016.
[164] *PSA, R.S.O. 1990, c. P.15, section 35(4).*
[165] "Local police officer accuses department of unfair discipline," Cambridge Times, May 11, 2016.
[166] Supra note 165.

the Board. Donovan was interviewed by the senior investigator from YRP and provided an extensive list of false statements made in court documents by WRPS investigators and victim, who was also a police officer. Donovan provided the YRP investigator with a list of exculpatory evidences that were known to investigators and which they failed to report in favour of the defendant.

In August, 2014, Donovan was made aware that the YRP report had been submitted to the WRPS, she therefore filed a request to obtain the report, pursuant to the Municipal Freedom of Information and Protection of Privacy Act, (MFIPPA).[167] Donovan received a refusal letter stating the WRPS did not have the report. Donovan filed an appeal with the Privacy Commissioner and the report was immediately disclosed.

The report only addressed one of several allegations reported by Donovan and that one allegation was proven to be accurate. Without conducting investigation into the remaining allegations brought forward by Donovan, the report concluded that the WRPS conducted a full, fair and transparent criminal investigation against the officer. Despite the subject officer being willing to participate in the review process, he was not contacted until after the report was submitted. Despite evidence of his willingness to participate in the review process, the investigator falsely stated in the report:

> *"...at the time of this report he has chosen not to participate."*[168]

The report revealed that the WRPS did not consult with a crown attorney before the officer was arrested but did consult with senior command, (included in this group of senior officers is an individual who was rumoured to have had off-duty contact with one of the victims in the case, and has since been removed from the subject officer's PSA investigation as a result of this conflict). Despite all of the obvious and apparent personal and professional relationships involved in the case, no conflict of interest was ever identified in the criminal investigation of the officer and no objective or impartial opinion was sought prior to the officer's arrest.

Despite numerous emails from the officer to the Crown Attorney on his case outlining evidence that contradicted the statements of the victims, the report quoted the Crown Attorney as stating:

> *"he spoke to the defense counsel many times through emails and phone calls and he was never advised of any issues that arose regarding the criminal case against [the officer]."*[169]

Donovan submitted a complaint to the OIPRD due to the bias, negligence and false statements of the senior investigator with York Regional Police.

---

[167] *R.S.O. 1990, c. M.56.*
[168] PSB Investigative Report, Waterloo Regional Police Service, PSB # INQ2016-017.
[169] *Supra* note 168.

Donovan's Human Rights Tribunal of Ontario (HRTO) complaint had been deferred in July, 2016, upon consent. In December, 2016, (upon completion of her workplace harassment investigation and investigative review by York), Donovan applied to have the HRTO matter resume. The WRPS objected and requested another deferral in order to prosecute Donovan under the PSA. Donovan cited several violations of her Charter Rights in her objection to the request by the WRPS, alleging that a deferral of her HRTO application is in essence permitting reprisal by the WRPS, further harassment and discrimination and denying her fundamental rights afforded to her by the Charter. In February, 2017, the HRTO delivered a decision to allow WRPS the continued deferral of Donovan's Human Rights complaint. The HRTO's decision did not address Donovan's allegations of violations of her Charter Rights or reprisal.[170]

On March 6, 2017, Donovan received a letter from the Commission regarding her complaint against the WRPS and the Board that stated:

> *"Your concern stems from the result of a change in Policy at the Waterloo Regional Police Service and the manner in which the Chief of Police and the Police Services Board have handled a complaint made by a member of the police service...*
>
> *The Commission, however, has decided not to commence an investigation into your complaint."*[171]

In March, 2017, the OIPRD concluded that it was not in the public interest to send Donovan's complaint of the senior investigator with York Regional Police for investigation. The decision stated:

> *"...this is an internal matter for you to address with your service and is not properly the subject of a public complaint."*[172]

Despite the Chief of the WRPS ordering Donovan to have no further contact with the WRPS Board, the OIPRD advised Donovan that if there are issues with the adequacy or scope of the review conducted by the senior investigator with YRP they are for her to "raise again with the Board."

Failing the intervention by any independent agency into her matter, Donovan remained the subject of a PSA investigation. The misconduct reported by Donovan to the Board has never been objectively and impartially investigated.

Donovan did not receive any financial support from her Association and since May, 2016, had been forced to work in a toxic environment, doing nothing but administrative duties at a desk in a basement office at headquarters with no daylight. As of June, 2017, Donovan chose to resolve all matters between herself and the WRPS in order to focus

---

[170] *Donovan v. Waterloo Regional Police Service, 2017 HRTO 221.*
[171] Letter dated March 6, 2017, by Joyce Mackey, Registrar, Ontario Civilian Police Commission.
[172] OIPRD Complaint Number: E-201611281450436483.

on starting her own business (Fit4Duty™) and moving on with her life. This ordeal cost Donovan over $10,000 in legal fees.

It is unknown what these proceedings cost the Region of Waterloo taxpayers. A Freedom of Information request has been submitted and appealed and this information is pending.

CANADA

RCMP

The RCMP Five

In the spring of 2003, Human Resource Director of the RCMP and 33-year employee, Denise Revine, was assigned an extensive budget review. It was then that Revine discovered how senior RCMP officials were misspending millions of dollars of members' pension funds and, it later turned out, insurance funds.[173] Revine compiled a massive file of evidence and turned it over to her boss, Chief Superintendent Fraser Macauley. Macauley attempted to have the evidence properly investigated only to be removed from his position and sent to the Department of National Defence, what he believed was a punitive secondment. RCMP Commissioner Giuliano Zaccardelli stated at a Commons committee that Macauley hadn't come forward soon enough, that it wasn't a punishment transfer, but for Macauley's own good "so he could learn from his mistake." Revine was sent packing, humiliated in public.

Retired Staff Sergeant Ron Lewis made several attempts to have the matter investigated within the RCMP and when those efforts failed Lewis then approached the Treasury Board, Auditor General and finally to MPs and the media.

Staff Sergeant Steve Walker assisted with the Ottawa Police Service's criminal investigation. Once interim Commissioner Bev Busson suspected she had been deceived about the extent of senior bungling on the pension file, she leapt in. Busson posted Hansard transcripts of every Commons committee hearing into the scandal on the RCMP's internal website for all members to read. Busson suspended deputy commissioner Barbara George, and relieved Paul Gauvin of his duties as chief financial officer.

Staff Sergeant Mike Frizzell was abruptly removed from the investigation as his lines of inquiry began to lead him to suspect senior RCMP management. Frizzell's laptop was wiped clean and backup copies of data "went missing."[174]

These officers have come to be known as the RCMP Five.[175]

---

[173] "High cost of whistleblowing," Tonda MacCharles, Ottawa Bureau, The Star, June 30, 2007.
[174] *Supra* note 173.
[175] *Ibid.* note 147.

What came next was *"years of RCMP foot-dragging, denials and career reprisals, three months of embarrassing parliamentary hearings and finally a damning report on the RCMP's mismanagement."*[176]

The five RCMP members were awarded the RCMP's Commissioner's Commendations, the force's top honour, for their perseverance in tracking misdeeds in the force's pension fund that revealed a "horribly broken" management culture out of step with the RCMP's own values of honesty and accountability, a special investigator concluded.[177]

As a result of the investigation, lawyer David Brown conducted an inquiry into the ordeal and recommended a complete overhaul of top management and RCMP culture in his report.[178] Regarding the cost to whistleblowers, Brown was quoted as saying the following:

> *"People who speak out often pay a significant personal price in terms of their peace of mind, their professional, social and family relationships, and their confidence in the future."*

As a result of the operational stress, Revine had to cope with what doctors told her was post-traumatic stress disorder.

The corrosive effect of facing his bosses' wrath and colleagues' doubts began to take a toll on Macauley's health, personal relationships and on his *"core beliefs in the organization."* It will affect him for the rest of his life, he says.[179]

Regarding Brown's recommendation Frizzell had this to say:

> Brown's recommendation was *"important to me personally,"* he admits, but adds *"it would have meant far more to me had my own organization looked into this and come to the same conclusion. This is basically vindication from a stranger who in, what, six weeks was able to figure all this out."*[180]

When asked if it was worth it, Walker replied:

> *"Unequivocally, the answer is yes because – to quote my dad – the right thing will always be the right thing. If we can help make positive change in this organization, it will be worth it in the long run."*[181]

Four years after the ordeal, Lewis quips that the whole thing has badly cut into his golf game,[182] (that's his personality, say his colleagues and friends).

---

[176] *Ibid.* note 173.
[177] *Ibid.* note 173.
[178] *Ibid.* note 173.
[179] *Ibid.* note 173.
[180] *Ibid.* note 173.
[181] *Ibid.* note 173.
[182] *Ibid.* note 173.

In 1999, Staff Sergeant Robert Stenhouse, who had extensive undercover experience, became frustrated with the lack of enforcement initiatives by the RCMP against the Hells Angels. Stenhouse disclosed RCMP media strategies for outlaw biker gangs to Yves Lavingne which appear in the book Hells Angels at War. Stenhouse was found guilty of discreditable conduct and ordered to resign. The RCMP External Review Committee found that the Force could not be expected to retain a member whose understanding of the obligations which the duty of loyalty entails was somewhat limited and did not appear to be trustworthy.[183] Stenhouse made an application to the Federal Court, asking that the Commissioner's decision be overturned. The Court concluded that:

> *"...the accumulation of the Commissioner's past involvements and actions"* in S/Sgt. Stenhouse's case *"cannot but give rise to a clear and obvious reasonable apprehension of bias" on the issues to be determined."*[184]

A court ruled his disciplinary hearing was unfair and ordered a new one which ruled he should be reinstated. In June, 2004, he was reinstated and then immediately suspended with pay.[185]

Stenhouse's career as an uncover officer was detailed on CBC's "The Fifth Estate," Episode 39, "Walk the Line."

Edmonton

In 1999, Detective Ron Robertson came forward with concerns that the Edmonton Police Service (EPS) had been infiltrated by organized crime. In January, 2000, it was revealed that the Alberta RCMP had been investigating allegations of biker infiltration into EPS for 7 years.

Robertson was alleged to have committed 15 acts of misconduct and faced a disciplinary proceeding.

In 2002, he brought a request for judicial review to the Court of the Queen's Bench of Alberta and was unsuccessful.[186]

In November, 2002, Robertson made an application to the Court of the Queen's Bench of Alberta to stay the disciplinary proceedings which were ongoing against him on the principles of natural justice, as applied to his circumstances, require that he be provided with funded counsel. Robertson's application sought to stay the proceedings until the EPS provided funded counsel to him. His application failed. *Robertson v. Edmonton (City) Police Service (#5),*[187] states:

---

[183] "Update: Decision of the Federal Court in the Stenhouse Case," Martin Griffin, Counsel, March 2004.
[184] *Supra* note 183.
[185] *Ibid.* note 183.
[186] *Robertson v. Edmonton (City) Police Service (#1), 2002 ABQB 368.*
[187] *2002, ABQB 988, para. 30.*

> *"There is no doubt that the disciplinary proceeding has serious implications for Detective Robertson's career as a police officer and his reputation in that role. As well, the economic ramifications of the proceeding and potential penalty are significant."*

In *Robertson v. Edmonton (City) Police Service (#6),*[188] Robertson made an application for a broad judicial review in relation to the investigation, charging, conduct of, prosecution of and privacy of a disciplinary hearing against him. Robertson alleged a reasonable apprehension that EPS Chief Wasylyshen and Superintendent Dibbs are biased. Robertson's application was dismissed and costs awarded to the EPS.

In 2004, Chief Wasylyshen (EPS) brought an application for an order sealing part of the record, a partial publication ban, and an order that part of the proceedings be held in camera.[189] The Honourable Mr. Justice Frans F. Slatter ordered a partial publication ban.

On March 26, 2004, (5 years after Robertson disclosed his findings), his application for judicial review was dismissed by Justice Slatter.[190]

On July 8, 2005, Chief Wasylyshen brought an application for costs against Robertson for 3 previous decisions of the Court.[191] The Chief was successful and Robertson was ordered to pay the costs of the EPS for those 3 matters. There is no evidence that matters proceeded any further.

It appears that Robertson chose to leave the profession following this decision.

It is unknown what it cost the City of Edmonton to prosecute Robertson all those years.

In 2010, Constable Derek Huff, Edmonton Police Service, witnessed colleagues use excessive force and injure a prisoner in handcuffs. Huff reported the incident to his Sergeant and nothing was done about it. Huff says he and his partner were branded as "rats" and were mocked and shunned. Huff said it got so bad he and his partner called for backup on the street and no one came. Huff said the ostracizing became so unbearable, he couldn't function at work. Two years after witnessing the alleged police brutality, Huff said he went to the Deputy Chief and revealed all, in a formal, written complaint. The complaint was sent to the Alberta Serious Incident Response Team (ASIRT), which investigates police misconduct. Huff went on stress leave. Even after the investigation into his complaint was completed, Huff was not advised of the outcome. Huff was ordered back to work and instead; he quit.

Huff stated:

---

[188] *2003 ABQB 188.*
[189] *Robertson v. Edmonton (City) Police Service (#8), 2004 ABQB 242.*
[190] *Robertson v. Edmonton (City) Police Service (#10), 2004 ABQB 519.*
[191] *Robertson v. Edmonton (City) Police Service (#11), 2005 ABQB 499.*

> *"I gave up. I sacrificed my career. I stood up for what's right, and I just got run out of the police service. I thought there is nothing else I could do. I lost."*

When Chief Knecht came on as EPS Chief, he promised to protect whistleblowers. He's now promising to take Huff's allegations seriously. Huff stated:

> *"I did absolutely nothing wrong. All I've ever wanted since day one was the truth – and it's finally coming out."*[192]

In 2013, the constable alleged to have used excessive force pled guilty to one count of discreditable conduct for pulling a man out of his cruiser, taking him into a school ground and beating him. The constable was demoted for one year. The presiding officer noted that the incident was "extremely serious" but that there were also several mitigating factors, including the fact that the officer was suffering from depression.[193]

In 2016, the EPS officers accused of excessive force were cleared. The hearing officer said:

> *"I find without any doubt that Mr. Huff's version of what happened did not happen."*[194]

Regarding his whistleblowing, Huff had this to say:

> *"I stood up for what's right, and I just got run out of the police service,"* said Derek Huff, 37. *"I still can't even really believe it."*

Halifax

In 1994, Bruce Brine, who had 22-years of policing, was awarded a governor-general's award for exemplary service. In 1995, he was demoted from his job as chief of the Halifax Ports Police after he made allegations that senior officials with the Canada ports police were getting kickbacks from the Hells Angels.[195]

Brine subsequently went on long-term disability for depression. In 1996, Brine filed a complaint with the Canadian Human Rights Commission, alleging he had been poorly treated by Ports Canada.

In 1998, the insurer stopped paying Brine disability benefits. In 1999, Brine declared bankruptcy.

---

[192] All information about Huff derived from "Former Edmonton cop Derek Huff blows whistle on brutality, corruption," Kathy Tomlinson, CBC News, September 27, 2013.
[193] "Edmonton's police owe the public far better than this," Matt Gurney, National Post, September 30, 2013.
[194] "Edmonton police officers cleared in beating of drug suspect," Bill Stadel, CBC News, July 20, 2016.
[195] *Ibid.* note 147.

The insurer in this case caused Brine a significant amount of suffering by alleging an overpayment of disability benefits and even once payments had stopped, continuing to issue him T4 slips for the income and claim he owed income tax on those payments. The insurer started legal proceedings against Brine in 2001, and Brine counterclaimed.

In 2004, Brine was awarded a $300,000.00 settlement by the Canadian Human Rights Commission, and was ordered to pay $210,000.00 of that to the insurer.[196]

Montreal

At the start of 2012, Inspector Jimmy Cacchione & Inspector Giovanni Di Feo first discovered a case of corruption within the Montreal Police. The two approached their supervisors and wrote a letter to internal affairs. The two men allege members of the force's internal affairs department embellish or fabricate evidence against lower-ranking officers who fall out of favour. Spurious investigations were then allegedly launched to obtain phone records and other surveillance warrants in order to intimidate colleagues. Montreal Police conducted wiretaps to obtain evidence they used as grounds for suspension of the two officers. They were suspended without pay in June, 2013.

In August, 2013, three Justices of the Court of Quebec ordered Montreal Police to continue to pay their salary until their appeal of the suspensions had been completed. In January, 2014, Quebec's Superior Court denied the officers' application to have their discipline proceedings stayed. Both officers eventually resigned.

As a result of the issues raised by these two officers, the Quebec government now believes:

> *"This serious information suggests that beyond certain files, there are also more systemic issues, notably involving the (Montreal police's) internal investigation practices."*[197]

It is not known how much has been spent by Montreal Police to attempt to have this problem go away since 2012.

---

[196] "Ex-Ports Canada Police chief in Halifax wins big disability settlement," Eva Hoare, Staff Reporter, The Chronicle Herald, July 4, 2014.
[197] "Quebec broadens probe into Montreal police force corruption allegations," The Canadian Press, February 24, 2017

CHAPTER 4: CHANGE

> Peelian Principle 7 – *"Police, at all times, should maintain a relationship with the public that gives reality to the historic tradition that the police are the public and the public are the police; the police being only members of the public who are paid to give full-time attention to duties which are incumbent on every citizen in the interests of community welfare and existence."*

Generally speaking, the opinions of the public are unanimous; change has to occur. Historically, the police hierarchy has been impenetrable to change and reliant on a military structure of leadership.

The Canadian Association of Police Governance, the Canadian Police Association and Police Association of Ontario all agree on many key issues, yet the police services themselves continue to operate status quo with little outside interference.

IT STARTS WITH THE BOARD

This chapter focuses on the important role, and legislated responsibilities, of police services boards. The police services board is the first stage of civilian governance over the police and without it there is no democracy.

Justice W. Morden highlighted the value of a civilian board in a report on the actions of the Toronto Police Service during the G20 summit.[198] Justice Morden stated:

> *"Police boards are the intermediary between the police and the public, acting as a conduit to receive and impart information, providing a forum to ensure public sentiment makes its way to the ears of law enforcers, and, ultimately, arbitrating interests in determining what is incorporated into the policies that guide the actions of the police."*[199]

Following recent reports and surveys it appears there is a disconnect between expectations of a police services board from the public's perspective and from the policing perspective.

The public's expectations were broadcast loud and clear throughout Justice Michael Tulloch's public consultation sessions and outlined in his report.[200] Justice Tulloch pointed out that some board members do not receive any form of training. Starting at paragraph 12.212, the report states:

---

[198] The Honourable John W Morden, *Independent Civilian Review into Matters Relating to the G20 Summit* (2012).
[199] *Supra* note 198.
[200] *Ibid.* note 9.

> *"And without the appropriate skills, knowledge, and understanding, they may lack confidence to govern independently from the police service…*
>
> Ensuring that every police services board member receives mandatory core training and ongoing training throughout their tenures *"will raise the capacity of boards to govern independently and hold police accountable within the communities they serve."*[201]

When the Ontario Association of Police Services Boards (OAPSB) surveyed their members in 2016 regarding the rewrite of the Police Services Act[202], respondents felt strongly that:

> *"The PSA must provide greater precision and clarity regarding the roles of Police Boards and Police Chiefs…"*

OAPSB members also agreed that their number one priority for the Provincial Government's PSA rewrite is:

> *"Strengthening Police Board Governance."*

So, which is it? Is the PSA not precise or clear enough? Or, do police services boards lack the capacity to govern independently and hold police accountable? Police leaders rely on the fact that police services boards cannot direct the chief on the day-to-day operations of a police service. However, if we defined the day-to-day operations as who they will arrest, how they will execute a search warrant, then yes… The police chief has much more experience and resources to make these decisions over a police services board. Every other issue, such as personnel, discipline, transparency, is the responsibility of the police services board, and that responsibility has to now be taken much more seriously than it has in the past.

When political allegiances are formed between a police services board and police service leadership, the ability to govern impartially and objectively is lost. Police Services Board members are representatives of the community responsible for oversight of the police service. Change can come from within; however, it will take strong leadership and knowledgeable and impartial advice.

In 2016, during Justice Michael Tulloch's pubic consultation sessions across Ontario, several members of the communities either did not know they were welcome to attend police services board meetings or felt too intimidated to attend. Videos and transcripts are available online for review.[203] Several police services boards across the province do not post meeting schedules to the police service website or any independent contact information at all. The public will not view the police services board as an independent

---

[201] *Ibid.* note 9.
[202] https://oapsb.ca/wp-content/uploads/OAPSB-Survey-Results.pdf
[203] www.policeoversightreview.ca

and impartial body when communication to board members is filtered through an office at the police department.

Increase Overall Impartiality

Police services board members have a Code of Conduct under the PSA.[204] Excerpt:

> *"Board members shall discharge their duties loyally, faithfully, impartially and according to the Act, any other Act and any regulation, rule or by-law, as provided in their oath or affirmation of office."*

It does not bode well for the policing community when members of their police services boards violate their code of conduct by failing to remain impartial on issues that divide the upper and lower echelon.

In April, 2017, Waterloo Regional Police Services Board Chair Tom Galloway openly supported a position taken by the Ontario Association of Chiefs of Police, saying the system of paid suspensions "has been abused."[205] The article acknowledged that the Chief of Waterloo is a "strong proponent of changing the law so that officers who are suspended after serious, egregious misconduct are not paid." The article fails to disclose that the decision to suspend at all rests with the chief of police and that if these decisions have been abused it has been by the chief and not the officers. As indicated in Chapter 2, these decisions are inconsistent and at times arbitrary. If the suspension of officers is costing municipalities millions of dollars across Ontario then police chiefs need to start substantiating their decisions to suspend and explain to their police services boards why there were no alternatives. If the goal is to achieve fundamental governance then the tough questions need to be asked.

For police services boards to accurately and impartially monitor the performance of the chief of police there needs to be policy in place to allow reporting from all levels of the police service and even community engagement. Whistleblower protection, as recommended by Justice Tulloch, would ensure that complainants are not deterred from making a report and unfavourable reports are not suppressed.

If the goal is to achieve impartiality in the adjudication of investigations of police officer conduct then the solution has to apply to every officer and every incident; whether criminal or disciplinary, on-duty or off-duty, constable or chief.

Justice Tulloch suggested that a public complaints prosecutor, appointed by the Attorney General, is the most impartial adjudicator of public complaints of police misconduct. If the decision is made to direct all public complaints to a public complaints prosecutor then all investigations of misconduct, whether resulting from a public complaint or an internal complaint need to be handled in the same manner; or the police lose trust in the process

---

[204] O. Reg. 421/97: MEMBERS OF POLICE SERVICES BOARDS - CODE OF CONDUCT

[205] "Waterloo Regional police board chair wants changes to suspensions with pay," Liz Monteiro, Waterloo Region Record, April 27, 2017.

that is intended to achieve impartiality. If this consideration is not made, police services will continue to use any available means to prosecute officers who have fallen out of favour; internal complaint and disciplinary action or criminal charge for off-duty conduct.

Increase Accountability

Without any means of internal oversight of police services, and with the protection of an officer's oath of secrecy, police management have full control over the level of secrecy that exists.

How can the public hold police management accountable for something they don't know?

In order for police services boards to effectively evaluate police organizational performance there needs to be a mechanism for reports to be made from inside a police service. These reports need to be made to a third-party completely independent of the police service, the police services board and the Ministry, (anyone with a stake in preserving the reputation of the judicial system). Only then can the public be assured that all complaints will be adjudicated objectively, regardless of rank or stature.

Members of the community need to know they are welcome at police services board meetings. An open-door policy needs to exist between a community and their police services board. As recommended by Justice Tulloch, this can be achieved through community outreach. After a quick survey of police service's websites, it is easy to determine that some police services boards do not even post contact information, let alone meeting schedules and locations. This needs to improve.

Culture Change

Board members can't be expected to change the personalities of police officers already on the job. What can be done is retaining and attracting the right people and assuring them a work environment that fosters honesty, integrity, accountability and respect. Culture change will not happen overnight.

If police services boards want to increase the gender and racial diversity at their police services, focus must also be placed on retaining that talent. In order to ensure retention, police services boards need to understand the internal issues, and address internal issues before they become the reasons good people leave.

Leadership

> *"The secret of change is to focus all of your energy, not on fighting the old, but on building the new."*
>
> - Socrates

Since 1968, recommendations have been made by the public to improve policing. Social advocacy groups have pushed for more accountability, transparency and equality in

policing. The policing community has stayed reactionary, waiting for direction from the Ministry.

Police services board members need to understand the history of criticisms of police governance in order to realize the pressure that has been building and the need to make positive changes now. Change is not about assigning blame it is about moving in the right direction. Justice Tulloch makes several specific recommendations for police services boards, much of which was echoed by OAPSB members in the recent survey.

It is now up to the Board to take action or wait for Ministerial direction. It is clear that since the Kerner Commission of 1968, the Report of the Race Relations and Policing Task Force of 1989, the Report by the Ontario Civilian Commission on Police Services of 1992, the recent Report into Workplace Harassment in the RCMP and many other relevant reports, that very little has changed in police culture and legislation despite the expectations of the public.

It is now up to the police services boards to take appropriate action to achieve their objectives. Fit4Duty™ is The Ethics Standard™ for training, policy evaluation and whistleblower programs to achieve many of the objectives stated in this report.

Together, let's start building the new.

CHAPTER 5: LEGISLATION

The following is excerpts from current PSA legislation regarding responsibility, powers and duties of the parties responsible for the oversight of police business.

SECTIONS OF THE PSA RELATING TO RESPONSIBILITY, POWERS AND DUTIES

Office of The Independent Police Review Director

S. 5 (1) For the purposes of this Part, the Independent Police Review Director may,

(a) establish procedural rules for anything related to the powers, duties or functions of the Independent Police Review Director under this Part;

(b) establish procedural rules and guidelines for the handling by chiefs of police and boards of complaints made by members of the public under this Part; and

(c) provide guidance to assist chiefs of police and boards in the handling of complaints made by members of the public under this Part. 2007, c. 5, s. 10.

S. 57. In addition to his or her other functions under this Act, the Independent Police Review Director may examine and review issues of a systemic nature that are the subject of, or that give rise to, complaints made by members of the public under this Part and may make recommendations respecting such issues to the Solicitor General, the Attorney General, chiefs of police, boards, or any other person or body. 2007, c. 5, s. 10.

S. 59 (1) The Independent Police Review Director shall review every complaint made to him or her by a member of the public under this Part, and shall determine whether the complaint is about the policies of or services provided by a police force or about the conduct of a police officer. 2007, c. 5, s. 10.
(2) Subject to section 60, the Independent Police Review Director shall ensure that every complaint reviewed under subsection (1) is referred or retained and dealt with in accordance with section 61. 2007, c. 5, s. 10.

Ontario Civilian Police Commission

S. 22 (1) The Commission's powers and duties include,

(a) if the Solicitor General advises the Commission that a board or municipal police force is not complying with prescribed standards of police services,

(i) directing the board or police force to comply, and

(ii) if the Commission considers it appropriate, taking measures in accordance with subsection 23 (1);

(b) conducting investigations with respect to appointing officials under the *Interprovincial Policing Act, 2009* under section 25;

(c) conducting investigations with respect to municipal police matters under section 25;

(d) conducting inquiries into matters relating to crime and law enforcement under section 26;

(e) conducting inquiries, on its own motion, in respect of a complaint or complaints made about the policies of or services provided by a police force or about the conduct of a police officer and the disposition of such complaint or complaints by a chief of police or board;

(e.1) REPEALED: 2007, c. 5, s. 6 (1).

(e.2) making recommendations with respect to the policies of or services provided by a police force by sending the recommendations, with any supporting documents, to the Solicitor General, the chief of police, the association, if any, and, in the case of a municipal police force, the board;

(f) hearing and disposing of matters referred to it by boards and appealed to it by police officers and complainants in accordance with Part V. R.S.O. 1990, c. P.15, s. 22 (1); 1995, c. 4, s. 4 (3); 1997, c. 8, s. 16 (1-3); 2007, c. 5, s. 6 (1, 2); 2009, c. 30, s. 44.

Police Services Board

S. 31 (1) A board is responsible for the provision of adequate and effective police services in the municipality and shall,

(a) appoint the members of the municipal police force;

(b) generally determine, after consultation with the chief of police, objectives and priorities with respect to police services in the municipality;

(c) establish policies for the effective management of the police force;

(d) recruit and appoint the chief of police and any deputy chief of police, and annually determine their remuneration and working conditions, taking their submissions into account;

(e) direct the chief of police and monitor his or her performance;

(f) establish policies respecting the disclosure by chiefs of police of personal information about individuals;

(g) receive regular reports from the chief of police on disclosures and decisions made under section 49 (secondary activities);

(h) establish guidelines with respect to the indemnification of members of the police force for legal costs under section 50;

(i) establish guidelines for dealing with complaints under Part V, subject to subsection (1.1);

(j) review the chief of police's administration of the complaints system under Part V and receive regular reports from the chief of police on his or her administration of the complaints system. R.S.O. 1990, c. P.15, s. 31 (1); 1995, c. 4, s. 4 (7); 1997, c. 8, s. 21 (1-3); 1997, c. 17, s. 8; 2007, c. 5, s. 9 (1).

Special Investigations Unit

s. 113 (5) The director may, on his or her own initiative, and shall, at the request of the Solicitor General or Attorney General, cause investigations to be conducted into the circumstances of serious injuries and deaths that may have resulted from criminal offences committed by police officers. R.S.O. 1990, c. P.15, s. 113 (5).

s. 113 (7) If there are reasonable grounds to do so in his or her opinion, the director shall cause informations to be laid against police officers in connection with the matters investigated and shall refer them to the Crown Attorney for prosecution. R.S.O. 1990, c. P.15, s. 113 (7).

INDEX OF OFFICERS, POLICE SERVICES AND REPORTS

A

Adam Lourenco, **31**
Adrian Schoolcraft, **60**
Alex Bender, **56**
André Marin, **33**, **59**

B

Bev Busson, **78**
Bradley Finucan, **55**
Bradley Manning
  Chelsea Manning, **60**
Bruce Brine, **82**
Bryan Larkin, **30**

C

Calgary Police, **56**
Canadian Association of Police Governance, **25**, **84**
Canadian Police Association, **84**
Chad Power, **50**, **51**
Chantal Muirhead, **45**, **46**
Charles Bordeleau, **30**, **47**
Craig Markham, **36**
Curtis Rutt, **71**

D

Dameian Muirhead, **35**, **45**, **46**
David Durk, **59**
David Foulds, **52**
Denise Revine, 8, 78
Derek Huff, **81**, **82**
Donald Belanger, **53**
Durham Regional Police, **30**, **35**, **36**

E

Edgar Schmidt, **15**
Edmonton Police, **80**, **81**
El-Helou, 62
Eric Girt, **30**
Eric Jolliffe, **30**, **45**

F

Frank Serpico, **59**
Fraser Macauley, **78**

G

Giovanni Di Feo, **83**
Graham Boswell, 18

H

Halifax Ports Police, **82**
Halton Regional Police, **26**, **30**, **43**
Hamilton Police, **26**, **30**, **70**
Honourable Patrick J. LeSage, **17**
Honourable R. Roy McMurtry, **65**

J

James Forcillo, **39**
James Mauro, **49**
Jamie Clark, **53**
Jamie Porto, **39**
Jeffrey McGuire, **30**
Jennifer Evans, **30**
Jennifer Magnus, **56**
Jeremy Snyder, **54**, **74**
Jimmy Cacchione, **83**
John Tory, **30**
Justice Michael Tulloch, **18**
  Tulloch, **6**, **7**, **10**, **11**, **18**, **26**, **27**, **41**, **85**, **86**, **87**, **88**
Justice W. Morden, **84**

K

Kathleen Wynne, **30**
Kelly Donovan, **74**
Kelly Ryan, **56**
Kerner Commission, **88**
Kevin Drake, **31**
Knapp Commission, **59**

L

Lindsy Richardson, **47**

M

Mark Felt, **60**
Mark Saunders, **30**
Matt Clarke, 56
Metropolitan Toronto Police, **16**
  Toronto Police, **7**, **16**, **17**, **30**, **31**, **39**, **46**, **53**, **71**
Michael Dowd, **38**
Mike Ewles, **35**
Mike Frizzell, **78**
Mike McCormack, **46**
Mike Sladek, **39**
  Sladek, **51**
Montreal Police, **83**

N

Niagara Regional Police, **30**

O

Ontario Association of Police Services Boards, **85**
OPP, **18, 26, 27, 30, 34, 39, 68, 69, 70**
Orangeville Police, **71, 72**
Ottawa Police, **25, 30, 43, 44, 47, 52, 56, 78**

P

Paul Heffler, **52**
Paul Johnston, **47**
Paul Manning, **70**
Paul Martin, **30**
Peel Regional Police, **8, 24, 30, 34, 43, 44, 72, 73, 74**
Perry Dunlop, **69**
Peter Callaghan, **34**
Peter Kormos, 17, 32
Police Association of Ontario, **84**

R

Rajiv Sharma, **57**
RCMP, **8, 61, 65, 69, 70, 78, 79, 80**
Report by the Ontario Civilian Commission on Police Services, **15, 88**
Report into Workplace Harassment in the RCMP, **88**
Report of the Race Relations and Policing Task Force, **88**
Richard Hegedus, **31**
Richard M. "Richie" Roberts, **59**
Robert Stenhouse, **80**
Ron Lewis, **78**
Ron Robertson, **80**

S

Salvatore (Sam) Amormino, **67**
Shehab Balh, **34**
Stephen Tanner, **30**
Steve Walker, **78**
Steven Patrick Dolan, **8, 72**
Steven Watts, **53**

T

Toronto Police Service
TPS, **16, 17, 31, 53**
Transparency International, **33, 62, 66**

V

Vincent Hawkes, **30**

W

Waterloo Regional Police, **30, 36, 42, 54, 57, 58, 74, 76, 77, 86**
Wayne Roberts, **62**

Y

York Regional Police, **24, 30, 35, 45, 46, 75, 76, 77**

jdickson.mpp@liberal.ola.org
mmantha-co@ndp.on.ca
tmcmeekin.mpp@liberal.ola.org
jsingh-qp@ndp.on.ca
vdhillon.mpp.co@liberal.ola.org
hmalhi.mpp.co@liberal.ola.org
dlevac.mpp@liberal.ola.org
bill.walker@pc.ola.org
jack.maclaren@pc.ola.org
rick.nicholls@pc.ola.org
mcoteau.mpp.co@liberal.ola.org
kwynne.mpp@liberal.ola.org
sylvia.jones@pc.ola.org
mcolle.mpp@liberal.ola.org
jeff.yurek@pc.ola.org
tnatyshak-qp@ndp.on.ca
sqaadri.mpp@liberal.ola.org
gcrack.mpp.co@liberal.ola.org
lsandals.mpp@liberal.ola.org
laurie.scott@pc.ola.org
ahorwath-qp@ndp.on.ca
pmiller-qp@ndp.on.ca
mtaylor-qp@ndp.on.ca
lisa.thompson@pc.ola.org
cfife-co@ndp.on.ca
michael.harrisqp@pc.ola.org
monte.mcnaughton@pc.ola.org
randy.hillier@pc.ola.org
steve.clark@pc.ola.org
dmatthews.mpp@liberal.ola.org
Psattler-qp@ndp.on.ca
mchan.mpp@liberal.ola.org
hjaczek.mpp@liberal.ola.org
bdelaney.mpp@liberal.ola.org
ddamerla.mpp@liberal.ola.org
csousa.mpp@liberal.ola.org
htakhar.mpp@liberal.ola.org
lisa.macleod@pc.ola.org
wgates-qp@ndp.on.ca
sam.oosterhoff@pc.ola.org
fgelinas-qp@ndp.on.ca
vic.fedeli@pc.ola.org
toby.barrett@pc.ola.org
kflynn.mpp@liberal.ola.org
JFrench-QP@ndp.on.ca
NDesRosiers.mpp@liberal.ola.org
ynaqvi.mpp@liberal.ola.org
ernie.hardeman@pc.ola.org
dinovoc-qp@ndp.on.ca
norm.miller@pc.ola.org
randy.pettapiece@pc.ola.org
jleal.mpp@liberal.ola.org
todd.smith@pc.ola.org
john.yakabuski@pc.ola.org
rmoridi.mpp@liberal.ola.org
bob.bailey@pc.ola.org
lberardinetti.mpp@liberal.ola.org
bduguid.mpp@liberal.ola.org
swong.mpp.co@liberal.ola.org
patrick.brownco@pc.ola.org
jim.wilson@pc.ola.org
jbradley.mpp@liberal.ola.org
ehoskins.mpp@liberal.ola.org
jim.mcdonellco@pc.ola.org
gila.martow@pc.ola.org
mgravelle.mpp.co@liberal.ola.org
jvanthof-qp@ndp.on.ca
gmurray.mpp@liberal.ola.org
tabunsp-qp@ndp.on.ca
cforster-qp@ndp.on.ca
ted.arnott@pc.ola.org
lorne.coe@pc.ola.org
dzimmer.mpp@liberal.ola.org
LGretzky-QP@ndp.on.ca
PHatfield-QP@ndp.on.ca
julia.munro@pc.ola.org
mkwinter.mpp@liberal.ola.org
lalbanese.mpp@liberal.ola.org
Adam.Vaughan@parl.gc.ca
Ahmed.Hussen@parl.gc.ca
Alex.Nuttall@parl.gc.ca
Ali.Ehsassi@parl.gc.ca
Andrew.Leslie@parl.gc.ca
Anita.Vandenbeld@parl.gc.ca
Anthony.Rota@parl.gc.ca
Arif.Virani@parl.gc.ca
Arnold.Chan@parl.gc.ca
Bardish.Chagger@parl.gc.ca
ben.lobb@parl.gc.ca
bev.shipley@parl.gc.ca
Bill.Blair@parl.gc.ca
Bill.Morneau@parl.gc.ca
Bob.Bratina@parl.gc.ca
Bob.Saroya@parl.gc.ca
Borys.Wrzesnewskyj@parl.gc.ca
brian.masse@parl.gc.ca
bruce.stanton@parl.gc.ca
Bryan.May@parl.gc.ca
info@cjc-ccm.gc.ca
carol.hughes@parl.gc.ca
carolyn.bennett@parl.gc.ca
Catherine.McKenna@parl.gc.ca
Celina.Caesar-Chavannes@parl.gc.ca
Chandra.Arya@parl.gc.ca
charlie.angus@parl.gc.ca
cheryl.gallant@parl.gc.ca
Cheryl.Hardcastle@parl.gc.ca
Chris.Bittle@parl.gc.ca
Chrystia.Freeland@parl.gc.ca
colin.carrie@parl.gc.ca
dave.mackenzie@parl.gc.ca
dave.vankesteren@parl.gc.ca
david.mcguinty@parl.gc.ca
david.sweet@parl.gc.ca
david.tilson@parl.gc.ca
dean.allison@parl.gc.ca
Deb.Schulte@parl.gc.ca
diane.finley@parl.gc.ca
Don.Rusnak@parl.gc.ca
Erin.OToole@parl.gc.ca

Filomena.Tassi@parl.gc.ca
Francesco.Sorbara@parl.gc.ca
Francis.Drouin@parl.gc.ca
Gagan.Sikand@parl.gc.ca
Gary.Anand@parl.gc.ca
Geng.Tan@parl.gc.ca
gord.brown@parl.gc.ca
guy.lauzon@parl.gc.ca
harold.albrecht@parl.gc.ca
Iqra.Khalid@parl.gc.ca
irene.mathyssen@parl.gc.ca
James.Maloney@parl.gc.ca
Jamie.Schmale@parl.gc.ca
Jane.Philpott@parl.gc.ca
Jennifer.OConnell@parl.gc.ca
John.Brassard@parl.gc.ca
john.mckay@parl.gc.ca
John.Nater@parl.gc.ca
John.Oliver@parl.gc.ca
judy.sgro@parl.gc.ca
Julie.Dzerowicz@parl.gc.ca
Julie.Dabrusin@parl.gc.ca
Kamal.Khera@parl.gc.ca
Karen.McCrimmon@parl.gc.ca
Karen.Vecchio@parl.gc.ca
Karina.Gould@parl.gc.ca
Kate.Young@parl.gc.ca
Kellie.Leitch@parl.gc.ca
Kim.Rudd@parl.gc.ca
kirsty.duncan@parl.gc.ca
Kyle.Peterson@parl.gc.ca
larry.miller@parl.gc.ca
Leona.Alleslev@parl.gc.ca
lisa.raitt@parl.gc.ca
Lloyd.Longfield@parl.gc.ca
Majid.Jowhari@parl.gc.ca
Marc.Serre@parl.gc.ca
Marco.Mendicino@parl.gc.ca
Marilyn.Gladu@parl.gc.ca
Mark.Gerretsen@parl.gc.ca
Mark.Holland@parl.gc.ca
Marwan.Tabbara@parl.gc.ca
Mary.Ng@parl.gc.ca
Maryam.Monsef@parl.gc.ca
michael.chong@parl.gc.ca
Michael.Levitt@parl.gc.ca
Mike.Bossio@parl.gc.ca
Mona.Fortier@parl.gc.ca
Nathaniel.Erskine-Smith@parl.gc.ca
Navdeep.Bains@parl.gc.ca
Neil.Ellis@parl.gc.ca
Omar.Alghabra@parl.gc.ca
Pam.Damoff@parl.gc.ca
Patty.Hajdu@parl.gc.ca
Paul.Lefebvre@parl.gc.ca
Peter.Fonseca@parl.gc.ca
Peter.Fragiskatos@parl.gc.ca
peter.kent@parl.gc.ca
peter.vanloan@parl.gc.ca
phil.mccoleman@parl.gc.ca
pierre.poilievre@parl.gc.ca
Raj.Grewal@parl.gc.ca
Raj.Saini@parl.gc.ca
ralph.goodale@parl.gc.ca
Ramesh.Sangha@parl.gc.ca
rob.nicholson@parl.gc.ca
Bob.Nault@parl.gc.ca
Rob.Oliphant@parl.gc.ca
Ruby.Sahota@parl.gc.ca
Salma.Zahid@parl.gc.ca
Scott.Duvall@parl.gc.ca
scott.reid@parl.gc.ca
Shaun.Chen@parl.gc.ca
Sonia.Sidhu@parl.gc.ca
Sven.Spengemann@parl.gc.ca
Terry.Sheehan@parl.gc.ca
tony.clement@parl.gc.ca
Tracey.Ramsey@parl.gc.ca
Vance.Badawey@parl.gc.ca
Yasmin.Ratansi@parl.gc.ca

The following is feedback that Kelly Donovan received following the release of her Report of Systemic Misfeasance in Ontario Policing and the Coordinated Suppression of Whistleblowers on July 17, 2017:

"Kelly I am very happy to hear of your honest report on policing."

"Love this! I hope this brings about change."

"Just wanted to say thank you to you. I got the courage to quit my job and report my boss. Your story inspired me to stand up to him."

"Good for you Kelly! Keep on fighting the good fight for all of us!"

"Watched your video and went through your site today. I love what you're doing to build accountability among police leaders and agencies."

"Hi Kelly - just saw your material and report - great work. I work in the whistleblower field a lot and know what happens to police whistleblowers. Good luck with Fit4Duty."

"You are embarking on some excellent work and your credibility comes out in spades. Let me know how an old Staff Sergeant with a story to tell can help. Keep going !"

"I saw your paper that you wrote. Absolutely excellent. You are 100% bang-on on what the truth of the pathetic state of policing is today. If you read my profile, you will understand my direction and why I too am leaving shortly. This all MUST stop. Congratulations on your hard brave work."

"FYI, I viewed your profile as I wanted to listen to your radio interview with CBC radio in relation to your report. You're very well spoken."

"I read the report - excellent work! Thank you for speaking up!"

"Great work Kelly. Yes please keep me in the loop. Let's face it...the problems are deeply entrenched in the culture. Policing is too much of a paramilitary occupation and nastiness is ingrained right from the start."

"read your 93-page report. Amazing, very well written!"

"I just finished reading your paper which was sent to me by a colleague. It is very timely and supportive of my current situation. Thank you for publishing such a good paper at this time in my life."

"Good for you!! Well written.. congrats I hope this is a huge step forward for you in your new career... I'm sure you'll sleep well every night coming home from a cause you can truly believe in."

"Congratulations and well done. You obviously know what you have ignited. If it's anything less than a firestorm then I will be surprised. It never fails to astound me how insulated majorities can fool themselves and believe that they are fooling everybody else as well. What you are doing has needed doing for a very long time. Hang in there, it will get rough."

"Excellent job speaking out. I can't stand people who sit quietly by. You are going to face a s**t storm, but they are ignorant people. Thank you for speaking up."

"Congratulations Kelly for having the courage to speak out, however, I am sorry it cost you your career like so many others. Anyone working at WRPS, or has a family member or friend working there, is fully aware that these practices have been standard operating procedure for years. Unfortunately WRPS is not alone. While the feds oversee the RCMP and the province oversees the OPP, there is no oversight into regional service behaviour as you have found out the hard way. The fact that the chief continues to deny, deny, deny, sends a clear message to the men and women on the front lines. Tow the line or you're next. Keep up the good work Kelly and good luck."

"Kelly Donovan you are an exception and should be rewarded for your actions not penalized."

Minister of Public Safety and
Emergency Preparedness

Ministre de la Sécurité publique
et de la Protection civile

Ottawa, Canada K1A 0P8

AOUT AUG 1 1 2017

Kelly Donovan
www.fit4duty.ca

Dear Ms. Donovan:

Thank you for your correspondence of July 16, 2017, on the issue of systemic misfeasance in Canadian policing.

Thank you for sharing your document entitled: *Report of Systemic Misfeasance in Ontario Policing and the Coordinated Suppression of Whistleblowers* and for your offer to discuss the important issues raised within. My officials will carefully review your findings and will contact you should they have any inquiries.

As Minister of Public Safety and Emergency Preparedness, I am committed to providing RCMP members with the support and leadership they need so that they can do their job of keeping Canadian communities safe. My mandate includes taking action to ensure the RCMP is free from harassment and sexual violence. As well, it is important that our national police service is an accountable and transparent organization.

As many of the issues you raise fall under the purview of my provincial colleague responsible for policing in Ontario, I note that you have also sent copies of your report to Stephen Beckett, Assistant Deputy Minister, and Matthew Torigian, Deputy Minister, at the Ontario Ministry of Community Safety and Correctional Services, as well as to the Honourable Marie-France Lalonde, Minister of Community Safety and Correctional Services, for their information and consideration.

Thank you again for writing on this important matter and sharing a copy of your report with me.

Yours sincerely,

The Honourable Ralph Goodale, P.C., M.P.

Ministry of Community Safety and Correctional Services

Office of the Minister

25 Grosvenor Street
18th Floor
Toronto ON M7A 1Y6
Tel: 416-325-0408
Fax: 416-325-6067

Ministère de la Sécurité communautaire et des Services correctionnels

Bureau de la ministre

25, rue Grosvenor
18e étage
Toronto ON M7A 1Y6
Tél. : 416-325-0408
Téléc. : 416-325-6067

SEP 13 2017

MC-2017-1635
By e-mail

Ms. Kelly Donovan
President
Fit4Duty
Kelly@fit4duty.ca

Dear Ms. Donovan:

Thank you for your correspondence introducing Fit4Duty and for providing the report on policing and whistleblowers in Ontario.

Ontario is taking meaningful action to reform police oversight and modernize policing. As you know, last year Justice Michael H. Tulloch led an independent review of Ontario's police oversight bodies. His team consulted with over 1,500 people across Ontario, and the Independent Police Oversight Review Report was recently released, containing 129 recommendations to improve police oversight in Ontario. Our government will immediately begin taking steps to build a more open and accountable police oversight system to strengthen trust between police and the communities they serve.

To learn more about The Independent Police Oversight System Review Report you may wish to visit: **www.attorneygeneral.jus.gov.on.ca/english/about/pubs/police_oversight_review**.

The Ministry of the Attorney General has the lead on the Independent Police Oversight Review Report. As such, I have shared your correspondence with my colleague, the Honourable Yasir Naqvi, Attorney General, so that he is aware of your concerns.

Thank you again for your correspondence.

Sincerely,

Marie-France Lalonde
Minister

c: The Honourable Yasir Naqvi
Attorney General

Fit4Duty™ – The Ethical Standard™
Brantford, Ontario
Tel 519.209.5721
kelly@fit4duty.ca
www.fit4duty.ca

SEPTEMBER 22, 2017

The Honourable Marie-France Lalonde
25 Grosvenor Street
18th Floor
Toronto ON M7A 1Y6

Dear Hon. Marie-France Lalonde,

I first contacted you back in June, 2017, when I mailed you a copy of my Report of Systemic Misfeasance in Ontario Policing and the Coordinated Suppression of Whistleblowers. On August 11, 2017, The Honourable Ralph Goodale responded to that same communication and indicated that the matter was important and falls under the purview of his provincial colleagues responsible for policing in Ontario, (naming yourself, Assistant Deputy Minister Stephen Beckett and Deputy Minister Matthew Torigian). I acknowledge receipt of your letter dated September 13, 2017, wherein you state that since The Honourable Yasir Naqvi "has the lead on the Independent Police Oversight Review" you have shared my correspondence with him.

I am writing you once again to advise you that as one of your constituents and advocate for both the taxpayer and police communities I am not satisfied with your response, or lack thereof, to my research and courage in coming forward with my report. My report was prepared with the sole intention of forcing legislators to accept that major problems exist with police legislation, culture and civilian governance. I have observed your social media accounts for months and I know that you have met with police leaders and discussed the future of policing. These same police leaders are being investigated, arrested, suspended with pay, having class action lawsuits filed against their services, and are being reported to the Human Rights Tribunal of Ontario in unprecedented numbers. If the writing is not yet on the wall that status quo will lead Ontario policing into demise, I can promise you that the worst is yet to come. Since the release of my report, I have been contacted by dozens of officers from across Ontario who have fallen victim to the systemic misfeasance or who have been injured during their careers and not provided adequate support but rather been subjected to tyranny and oppression which has had many of them on the verge of suicide. This is no longer a delicate political issue; these voices must now be heard.

For decades, both the Ministry of the Attorney General as well as the Ministry of Community Safety and Correctional Services have been the subject of reports and recommendations that would have prevented many of the systemic issues that exist today, and yet; actions taken have been few and insufficient.

I may only appear to be one voice and one opinion to you and your colleagues but let me assure you that, although I may have been the only police officer with the courage to address these issues, I am not the only police officer passionate about improving the morale and respect within the profession.

In the absence of effective leadership, people resort to civil litigation. It is unfortunate that in our democratic civilization we need lawyers and judges to solve issues that can be handled by objective human beings. I am once again offering my time to engage in dialogue with you, or any of your colleagues, to ensure that changes that are made to policing in Ontario are in the best interests of our communities, our officers, and our taxpayers.

Respectfully,

Kelly Donovan

PRESIDENT

cc. Deputy Minister Matthew Torigian
Assistant Deputy Minister Stephen Beckett
The Honourable Yasir Naqvi

Safety, Licensing Appeals and Standards Tribunals Ontario
Ontario Civilian Police Commission

Suite 605
250 Dundas Street West
Toronto ON M7A 2T3
Tel.: 416-314-3004
Fax: 416 -314-0198
Toll Free Tel: 1 888 515-5005
Toll Free Fax: 1 888 311-7555
Website: www.slasto.gov.on.ca

Tribunaux de la sécurité, des appels en matière de permis et des normes Ontario
Commission civile de l'Ontario sur la police

Bureau 605
250, rue Dundas ouest
Toronto ON M7A 2T3
Tél. : 416-314-3004
Téléc. : 416-314-0198
Sans frais Tél. : 1 888 515-5005
Sans frais Téléc : 1 888 311-7555
Site web: www.slasto.gov.on.ca

March 6, 2017

Ms. Kelly Donovan
Sent via email: donovandih@gmail.com

Dear Ms. Donovan:

Re: Complaint regarding the Chief of the Waterloo Regional Police Service and members of the Waterloo Regional Police Services Board

The Ontario Civilian Police Commission has reviewed your letter of January 4, 2017. Your concern stems from the result of a change in Policy at the Waterloo Regional Police Service and the manner in which the Chief of Police and the Police Services Board have handled a complaint made by a member of the police service.

As you know, the Ministry of Community Safety and Correctional Services is generally responsible for the parts of the *Police Services Act* dealing with internal police complaints so you may wish to share your views and concerns directly with that Ministry.

In the fall of 2016, the Ontario Government asked the Hon. Michael Tulloch to lead the Police Oversight Review (POR), a review of Ontario's three civilian oversight agencies – the Office of the Independent Police Review Director, the Ontario Civilian Police Commission, and the Special Investigations Unit. You may wish to raise your concerns directly with POR. You can contact the POR at 1-844-523-6122 or info@policeoversightreview.ca The POR website is: http://www.policeoversightreview.ca.

The Commission, however, has decided not to commence an investigation into your complaint. Thank you for bringing this matter to the Commission's attention.

Sincerely,

Joyce Mackey
Registrar

OIPRD
OFFICE OF THE INDEPENDENT POLICE REVIEW DIRECTOR

655 Bay Street 10th Floor Toronto, ON M7A 2T4

March 29, 2017

Via Email: Donovandih@gmail.com

Miss Kelly Donovan
11 Daniel Place
Brantford, ON N3R 1K6

Dear Miss Donovan:

Re: Public Complaint: York Regional Police Service
OIPRD Complaint Number: E-201611281450436483

The Office of the Independent Police Review Director (OIPRD) has carefully reviewed your complaint and determined it to be a conduct complaint relating to Detective Sergeant Shannon Anderson of the Professional Standards Unit of the York Regional Police Service (YRPS).

You indicate in your complaint that you are a sworn member of the Waterloo Regional Police Service (WPRS). You were dissatisfied with the manner in which the WRPS investigates its own police officers, so you presented a lawful delegation to the Waterloo Regional Police Services Board in which you raised those concerns regarding four major incidents. As a result of your delegation, Chief Larkin requested an outside investigative review into one of those incidents, a recent criminal case involving WRPS Sergeant Bradley Finucan. You indicate that you did not request that this particular incident be reviewed.

We understand from your complaint that Detective Sergeant Finucan was charged by the WPRS with eight criminal charges. You have provided us with extensive submissions regarding what you believe to be the WPRS' investigative deficiencies that resulted in these charges. You also advise that Detective Sergeant Finucan entered a guilty plea to two of those counts and received a conditional discharge.

The nature of your relationship with Detective Sergeant is unclear from your complaint, although it appears that you were not the victim of the criminal charges. However, your concern seems to be that the WRPS acted with bias towards Detective Sergeant Finucan during their investigation.

The outside investigative review directed by Chief Larkin was conducted by Detective Sergeant Anderson of the YRPS. You also advise that it was made clear to you at the outset of this review that disciplinary action would be taken against you if your allegations proved to be untruthful. For these reasons, you state that the investigative review had a direct effect on your career and personal life.

You advise that the investigative deficiencies you identified in the WRPS investigation were not addressed by Detective Sergeant Anderson during her investigative review. You have indicated that you do not believe that Detective Sergeant Anderson conducted an objective or impartial investigation. You believe that she made false, misleading or inaccurate statements and that she deceitful in her investigation of the incident.

In determining whether your complaint should be sent for an investigation, we have considered section 58 (2) of the *Police Services Act,* which sets out classes of persons who are prohibited from making complaints to the Independent Police Review Director. One of those categories is a member or auxiliary member of a police force, if that police force or another member of that police force is the subject of the complaint.

The substance of your complaint revolves around an internal investigation conducted for your Chief of Police, Chief Larkin, about matters concerning WRPS internal investigations. Your concern seems to be that the WRPS acted with bias towards Detective Sergeant Finucan, which if true is properly an internal matter. As such, it might be argued that this is a complaint about your own service, a situation to which the public complaints process is not intended to apply.

Further, we have considered that the outside investigative review, and its terms, were established by Chief Larkin. If Chief Larkin had any issues with the adequacy or scope or the review conducted by Detective Sergeant Anderson, this was properly for him to raise with Detective Sergeant Anderson or for you to raise again with the Board.

Lastly, while you have advised that Detective Sergeant Anderson's investigation affected you directly because it had the potential of having a direct effect on your career (ie, you were cautioned about the possibility of facing disciplinary charges yourself), you do not advise that you are facing disciplinary action as a result of this report or anything said or done by Detective Sergeant Anderson. Further, if you believe that you are professionally impacted by any investigative deficiencies in Detective Sergeant Anderson's report, then again this is an internal matter for you to address with your service and is not properly the subject of a public complaint.

For these reasons, the Director has determined that it is not in the public interest to send your complaint for investigation.

OIPRD
OFFICE OF THE INDEPENDENT
POLICE REVIEW DIRECTOR

Please be advised that the *Police Services Act*, our governing legislation, does not provide for an appeal from the classification and screening of complaints conducted by the OIPRD. Accordingly, our file is now closed. The only means of review for this decision is a judicial review in the Superior Court of Justice.

A copy of your complaint as well as our decision not to proceed has been forwarded to the Chief of York Regional Police Service for his record.

To find out more about OIPRD and the *Police Services Act*, please visit our website at www.oiprd.on.ca.

Yours truly,
Office of the Independent Police Review Director
Per:

Angie Mahadeo
Case Management Department
Local: 416-246-7071 Ext. 1109
Toll-free: 1-877-411-4773 Ext. 1109

From: **Sara Jackson** sjackson@ombudsman.on.ca
Subject: RE: Report
Date: May 3, 2017 at 10:50 AM
To: Kelly Donovan donovandih@gmail.com

Dear Kelly,

I am writing further to our phone conversation on April 26, 2017.

You contacted our Office in relation to your concerns about internal police processes for handling allegations of misconduct by officers against other officers. You indicated that you felt reprisals were occurring against officers who come forward to report misconduct by other officers, and you believed that the current system of oversight of police conduct is inadequate.

As discussed, our Office does not have jurisdiction over matters of police conduct and discipline, under section 97 of the Police Services Act, therefore we are unable to review your complaint further.

Thank you for bringing this matter to our attention.

Sincerely,

Sara Jackson

Sara Jackson
Early Resolutions Officer

Direct Line: 1-800-263-1830 EXT 3306
Fax : (416) 586-3485
Office of the Ombudsman of Ontario I Bureau de l'Ombudsman de l'Ontario
1-800-263-1830 - Complaints Line I Ligne des plaintes
1-866-411-4211 - TTY I ATS
www.ombudsman.on.ca I Facebook I Twitter
Subscribe to our e-newsletter I Abonnez-vous à notre e-bulletin

-----Original Message-----
From: Kelly Donovan [mailto:donovandih@gmail.com]
Sent: April 22, 2017 10:23 AM
To: Sara Jackson <sjackson@ombudsman.on.ca>
Subject: Re: Report

Hi Sara,

I just wanted to touch base with you to see if you had had the chance to read my report. I am now at 83 pages and can provide you the revised copy, if that would help.

I appreciate your help,
Kelly

> On Mar 16, 2017, at 10:24 PM, Kelly Donovan <donovandih@gmail.com> wrote:
>
> <Report_v5.pdf>

This email is intended only for the named recipient(s) and may contain confidential information, protected under the Ombudsman Act. If you receive it by error, please notify the sender and delete this message without delay, and do not use, distribute, copy, or disclose its contents.
Ce courriel est uniquement adressé au(x) destinataire(s) nommé(s) et peut contenir de l'information confidentielle, protégée en vertu de la Loi sur l'ombudsman. Si vous le recevez par erreur, veuillez aviser l'expéditeur et supprimer ce message au plus vite, sans utiliser, distribuer, copier ou divulguer son contenu.

HUMAN RIGHTS TRIBUNAL OF ONTARIO

BETWEEN:

Kelly Donovan

Applicant

-and-

Waterloo Regional Police Service

Respondent

-and-

Waterloo Regional Police Association

Affected Party

INTERIM DECISION

Adjudicator:	David Muir
Date:	February 17, 2017
File Number:	2016-24566-I
Citation:	2017 HRTO 221
Indexed as:	**Donovan v. Waterloo Regional Police Service**

WRITTEN SUBMISSIONS

Kelly Donovan, Applicant	)	Pamela Machado, Counsel
Waterloo Regional Police Services Board, Respondent	)	Donald B. Jarvis, Counsel
Waterloo Regional Police Association, Intervenor	)	No one appearing

[1] This is an Application filed under section 34 of Part IV of the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended (the "*Code*").

[2] On July 18, 2016, the respondent wrote to the Tribunal on behalf of the respondent and the applicant to request that the Application be "held in abeyance sine die, pending the outcome and disposition of certain investigations directly relevant to the issues raised in the Application."

[3] On July 25, 2016 the Tribunal advised the parties that the Application would not be processed further for a period of 6 months or upon the advice of the parties that the case should proceed.

[4] On December 12, 2016 the applicant filed a Request for Order During Proceeding ("Request") asking that the Application be reactivated.

[5] The respondent did not respond to the Request in a timely manner. On January 10, 2017 the Tribunal reviewed the applicant's Request and granted it without objection from the respondent. The respondent was directed to file a Response within 35 days.

[6] On January 10, 2017 the respondent wrote to the respondent after receiving the correspondence above and indicated that it was opposed to the reactivation of the Application.

[7] On January 16, 2017 the applicant delivered and filed submissions in support of her Request to reactivate.

[8] On January 25, 2017 the respondent provided their Response (Form 11) to the applicant's Request.

[9] On February 10, 2017 the applicant filed further submissions in support of her Request and in response to the respondent's Form 11.

[10] In my view it is appropriate to defer this Application for a further 60 days.

[11] The Tribunal may defer consideration of an application, on such terms as it may determine, and on its own initiative (Rule 14.1). The Tribunal has stated that deferral is not automatically invoked simply because the parties are involved in other legal proceedings. It is a discretionary measure that the Tribunal exercises on the basis of the circumstances in each case. However the Tribunal has generally deferred applications where there is an ongoing proceeding dealing with some or all of the issues in dispute in an application.

[12] The Tribunal's has taken this approach because where the parties are already engaged in a concurrent legal proceeding in which they are raising all or some of the same issues before a decision-making body with the authority to make determinations about those issues, the orderly administration of justice favours deferral to the other proceeding. In such a scenario, the Tribunal's normal approach is to defer to the other proceeding.

[13] Strictly speaking this is not a Request to reactivate as it appears that the Tribunal granted an abeyance for 6 months or such shorter time as the parties advised. The real question is whether or not the Application should be deferred pending the conclusion of the respondent's investigation and determination about whether or not charges under the *Police Services Act* ("*PSA*") will be laid against the applicant.

[14] I agree with the respondent that there is considerable overlap between the issues in dispute in the Application and the investigation currently underway under the *PSA*. The applicant does not squarely disagree with that proposition hence her initial agreement that this Application should be held in abeyance pending the conclusion of these investigations. While the issues between the cases are not co-extensive, it appears to me appropriate that this case be deferred, although I have some concerns with the length of time it has taken for the respondent to determine the next steps it intends to take.

[15] The applicant now argues, amongst other things, that these investigations are largely over and the respondent has not proceeded with charges. As indicated I agree that the next steps in this case ought to be determined, but it may make little practical sense to reactivate the case only to have the respondent request that it be deferred pending a proceeding under the *PSA*.

[16] The applicant also relies on the Interim Decision of the Tribunal in *Stanley v. Toronto Police Services Board*, 2015 HRTO 1566 ("*Stanley*"). In that case which involved a public complaint against the conduct of a police officer, the Tribunal concluded that because documents created in the complaints process under the *PSA* would be inadmissible in a Tribunal hearing because of statutory privilege provisions in the *PSA*, there could be little overlap in the facts as between the two proceedings.

[17] With respect, I do not agree. In the situation where the factual circumstances underlying the dispute exist independent of and outside of the *PSA* process, it is not clear to me how the facts and issues – all or part of the substance of the dispute – can be said not to overlap merely because of a statutory privilege over a number of documents. There may be issues as a matter or evidence about how to parse out what evidence exists independently of the *PSA* proceeding, but that is a different thing, than in effect, concluding that because the substance of the case is the same in both proceeding the facts cannot be separately proved before the Tribunal. By way of a simple example, a complaint form or statement taken during the investigation of the complaint if protected by a statutory privilege provision may be inadmissible in a Tribunal hearing but that does not mean that the complainant in the other proceeding cannot give evidence with respect to the facts that was also contained in the complaint or that the deponent of the statement which is similarly inadmissible cannot give evidence that might also have been given in the statement.

[18] I also note that the respondent argues that this circumstance is different than in *Stanley*, above, because that case involved a complaint by a member of the public and that consequently, if there is a proceeding against the applicant under the *PSA* the confidentiality provisions at issue in *Stanley* do not apply. The parties may disagree

about this but I do not need to decide that question at the moment and I decline to do so.

[19] In my view the issues in this case, while not co-extensive, significantly overlap such that all of the concerns with duplicative concurrent litigation are in play. Accordingly, in my view this case should be deferred for a period of 60 days or such shorter period of time in which the respondent makes a decision about whether not one or more charges ought to be brought against the applicant under the *PSA*. The respondent is directed to advise forthwith upon that decision being made or in any case after 60 days advise the Tribunal and the other parties of the status of its decision making. If at that stage there is still no answer the applicant may renew her request.

[20] I am not seized of this case.

Dated at Toronto, this 17th day of February, 2017.

David Muir
Vice-chair

Kelly Donovan

January 8, 2018

Ministry of the Attorney General
McMurtry-Scott Building
720 Bay Street, 11th Floor
Toronto, Ontario
M7A 2S9

To the Honourable Yasir Naqvi, Attorney General:

At this point, I trust that you have read my report of systemic misfeasance in Ontario policing that I widely distributed back in July, 2017. The report compiles actual cases from across Canada that show systemic abuses of power, investigative conflicts of interest and influences of power between police services and their oversight agencies; allowing misfeasance to flourish. I left the profession of policing to improve The Ethical Standard™ across Canada. Part of my journey has been ensuring the public is aware of the current state of policing, who the enablers are, and the ineffectiveness of our current oversight structure. I intend to hold police leaders and overseers to a higher standard of ethics and integrity. I trust that you would support me in this endeavour, and that is why you are receiving this document.

At this point in time, since I have not been engaged on these issues by anyone from your Ministry, I am involving you in these serious matters that should have been handled by various police services boards, the Ontario Civilian Police Commission ("the OCPC") and Office of the Independent Police Review Director ("the OIPRD"), and were not. Legitimate, reasonable and terribly concerning complaints about police officers, police chiefs and police service board members have been made to these bodies and there has been a complete disregard for legislated oversight responsibility; usually citing that these investigations are not in the "public interest." Perhaps it is time for the Ministry to survey the public to obtain their opinion of precisely what investigations are in the public interest.

There are enough studies to show that any police officer misconduct is a matter of interest to the public.

I have no doubt that misfeasance exists within all police services in Ontario. This document specifically addresses corruption at the Ottawa Police Service ("OPS"), Waterloo Regional Police Service ("WRPS"), and York Regional Police Service ("YRP").

I have been advised by members of the OPS that complaints have been made to the OCPC and OIPRD in the past regarding the conduct of the OPSB Chair, Mr. Eli El-Chantiry, and OPS Chief of Police, Mr. Charles Bordeleau. To this day, both of those individuals maintain their positions of authority and to my knowledge have not faced any discipline or objective and impartial investigation. If, in fact, investigations have uncovered misconduct or illegal conduct then transparency needs to improve.

I have personal knowledge about the issues at WRPS and I complained to the proper authorities as well. Similar to the matters in Ottawa, the individuals creating the problems are still all in their positions of authority. None of my complaints to both the OCPC and OIPRD were even investigated. The power we give police chiefs in Ontario becomes evident when only two weeks after the filing of the class action lawsuit against WRPS, Chief Larkin was elected as President of the Ontario Association Chiefs of Police. No one in this province seems to be accountable to the police officers or taxpayers; everyone continues to defer responsibility.

As Attorney General, Hon. Mr. Naqvi, I hold you responsible for ensuring this misfeasance does not continue, and that those committing these unethical and illegal acts are held accountable. Only with consistency and transparency will police services in Ontario regain the trust of the public and policing communities.

When you continue to reward, promote and insulate those responsible for the abuses of power, you become part of the problem.

I have outlined to you below my concerns based on evidence provided to me by complainants, all of which has already been brought to the attention of the OCPC and OIPRD.

I have broken down the concerns as follows:

PART I – CRIMINAL ALLEGATIONS AGAINST MEMBERS OF OTTAWA POLICE SERVICE - 4 -

PART II – CRIMINAL ALLEGATIONS AGAINST OPSB CHAIR - 5 -

PART III – ALLEGATIONS OF CORRUPTION, MISCONDUCT AND/OR UNETHICAL CONDUCT BY OPS CHIEF AND OPSB CHAIR - 5 -

PART IV - ALLEGATIONS OF CORRUPTION, MISCONDUCT AND/OR UNETHICAL CONDUCT BY WRPS CHIEF, WATERLOO REGIONAL POLICE SERVICES BOARD AND YORK REGIONAL POLICE SERVICE - 10 -

NEGLECT OF DUTY: - 12 -

Part I – Criminal Allegations Against Members of Ottawa Police Service

1. Revolving around numerous incidents reported by a civilian over a two-year period (Dec 2016-present), members of OPS have allegedly repeatedly refused or ignored evidence provided by the complainant, refused to take information on new incidents, failed to file charges, failed to consult with the embedded crown, released personal information that was not of public record and discussed the active investigation with unauthorized parties; the investigations were passed on to four different investigators in ten month period. A request for information on the investigations, by the complainant, revealed and substantiated the above allegations, as well as showing egregious and biased characterization of the complainant and incomplete information, inaccurate information and contradictions in reports, notebooks, emails and previous information provided to the complainant. This has resulted in the complainant filing complaints to the OIPRD, OCPC and Information Privacy Commissioner related to conduct (negligence, obstruction of justice, deceit, etc.) under the PSA, and negligence under related privacy legislation.
2. Further, during the above investigations, in spring 2016 a concerned OPS member informed the complainant, as the accused continued their actions towards her, alleged that her investigations were "politicized" by the Chair of OPSB, who is also Councillor for her area. This was substantiated by other emails from the Chair showing implicit, detailed knowledge of her investigations while they were active and sharing of information with members of the public and the accused.
3. On November 22, 2016, at 9:46 am, a City of Ottawa employee, who is assistant to the OPSB Chair/Councillor, sent an email request to an OPS Inspector asking for details of police investigations and the outcome of the investigations involving civilians living on Needhams Side Road.
4. A 4-page brief was prepared detailing police involvement with a female civilian residing on Needhams Side Road. This brief was sent electronically to the City employee on November 22, 2016.

5. The City employee is not a member of the OPS and did not file a request for information pursuant to the Municipal Freedom of Information and Protection of Privacy Act ("MFIPPA").[1] OPS has confirmed that there was no MFIPPA request filed by anyone on the above investigations.
6. The 4-page brief was not redacted and the civilian's permission was not granted to release the information in the brief.
7. FOR CONTEXT: On April 16, 2012, a police constable was arrested and charged with Breach of Trust by a Public Official, contrary to section 122 of the Criminal Code of Canada for having shared details of an occurrence report with a civilian. The officer's guilty plea to the criminal charge and subsequent conviction of misconduct resulted in his termination from employment as a police officer.[2]

Part II – Criminal Allegations Against OPSB Chair

8. In May, 2017, a citizen of Ottawa laid a private information accusing board chair Eli El-Chantiry of the following Criminal Code of Canada offences:
    a. s. 122 Breach of Trust by public officer; and
    b. s. 123 Disobeying a Statute – aggravating charge to s. 122 Breach of Trust.
9. The court did not permit the charges to proceed.

Part III – Allegations of Corruption, Misconduct and/or Unethical Conduct by OPS Chief and OPSB Chair

10. In February, 2016, an odd series of events led to the dismissal of a provincial offence against Lester Thompson, (father-in-law of OPS Chief Charles Bordeleau). Bordeleau had telephoned the prosecutor's office to find out who had been assigned the case. The charge was eventually dismissed, reasons cited being there was no one in attendance to provide evidence, despite the officer being advised he could leave. It is unclear if the board conducted an investigation into

[1] R.S.O. 1990, c. M.56.
[2] Markham and the Waterloo Regional Police Service, 2015 ONCPC 04.

the conduct of Chief Bordeleau.[3] The Chief of police is involved with the administration of justice in ways that create great potential for conflict and improper use of power.[4]

11. In April, 2016, OPSB Chair Eli El-Chantiry was criticized for allowing four standing committees to meet more often than the entire board behind closed doors. Stéphane Émard-Chabot, a lawyer who teaches and practices municipal law, was quoted by Joanne Chianello of the CBC as saying; "That is a citizen's right to observe the functioning of municipal government in all its pieces, and it reflects the provincial priority to promote transparency and accountability." The Ottawa Police Association was quoted as saying the board's procedures did not provide enough transparency. The PSA explicitly states that the PSB meetings are to be public, save in-camera requirements, and that all agendas, minutes, disclosures, and decisions are to be posted.[5]

12. In May, 2017, Michael Edelson, defense lawyer, sent a letter to Chief Charles Bordeleau and two provincial cabinet ministers detailing legal disclosure the lawyer received while defending then-acting Staff Sgt. Marty Rukavina. The charges were ultimately stayed, but disclosure provided to the officer's lawyer is alleged to have shown that evidence in the case was changed by the force's legal counsel and that some senior officers gave false statements during the SIU's investigation.[6] In response to this letter, Chief Bordeleau presented the issue to El-Chantiry and requested an investigation be conducted by the Ontario Provincial Police ("OPP") into the conduct of three senior members of the OPS. It is unclear what information the board was given at this time regarding the need to have the OPP conduct an investigation, although the allegations were publicly cited as "fraud and evidence manipulation."[7]

---

[3] "Conflict-of-interest allegation involving top police families prompts review," by Shaamini Yogaretnam, Ottawa Citizen, February 17, 2016.
[4] Vogel v. Canadian Broadcasting Corporation, 1982 CanLII 801 (BC SC).
[5] Police Services Act, R.S.O. 1990, c. P.15, Section 35(3).
[6] "Ottawa police chief stands by temporary promotion of officer facing OPP probe," Ottawa Citizen, July 24, 2017.
[7] "Updated: Ottawa police chief asks OPP to investigate senior officers for alleged evidence manipulation," Shaamini Yogaretnam, Ottawa Citizen, May 1, 2017.

13. On June 21, 2017, the lead investigator of the OPP probe emailed a member of the OPS and confirmed that the OPP were conducting a "criminal investigation" into the "conduct of a number of senior officers" of the OPS.
14. Matt Skof, president of the Ottawa Police Association ("OPA"), submitted an invoice to the OPS for legal indemnification for one of its members to the Chief. The Chief advised Skof that he wished to have the word "criminal" removed from future invoices.
15. June 29, 2017, Skof advised Chief Bordeleau that his conduct in relation to have the invoices from the lawyer disguise the ongoing criminal investigation by the OPP constituted a breach of the Police Services Act and OPS' 'Respectful Workplace Policy.'
16. For the period of July 22 to August 13, the Chief signed an order for the temporary promotion of Superintendent Chris Rheaume to the rank of Acting Deputy Chief.
17. In July, 2017, when confronted on the subject, Chief Bordeleau told the Ottawa Sun he stands by his decision to temporarily promote a senior officer who is under provincial police criminal investigation.[8]
18. On July 13, 2017, Skof sent a letter to the OPSB regarding conduct of the Chief in relation to the reimbursement of legal expenses. The letter addressed the following acts of misconduct by the Chief:
    a. asking that the nature of the OPP investigation into the conduct of senior members of the OPS be disguised;
    b. sending internal communication to the media, un-vetted (June 16, 2017, formal notice to the OPS Executive, in regards to the OPA-OPS relationship);
    c. not abiding by OPS policy or Ministry of Labour regulations on July 1, 2017, while directing traffic in uniform and on duty;
19. The letter from Skof also addressed the conduct of a Superintendent:
    a. misleading the Board regarding said OPP investigation;
    b. his conduct towards a civilian member of the OPS;

[8] "Ottawa police chief stands by temporary promotion of officer facing OPP probe," Ottawa Sun, July 24, 2017.

20. On July 20, 2017, El-Chantiry forwarded Skof's letter to the board and included a response to the allegations. The following issues exist in this response:
    c. El-Chantiry states that the only issue surrounding legal indemnification was whether or not the invoice would be paid, and he stated the issue is being handled through the grievance procedure;
    d. El-Chantiry does not address the allegation that the Chief wanted the "criminal" aspect of the ongoing investigation to continue to be disguised for the board, (which was the major point of Skof's complaint, and shows that he and the chief are colluding to conceal the nature of the OPP investigation);
    e. El-Chantiry also tells board members that "it is not uncommon for off-duty officers to assist in the community without their uniform/use of force if they witness an incident." El-Chantiry misleads board members since whether on duty or off-duty, when a police officer is in uniform they have several legal responsibilities under the Police Services Act, Occupational Health and Safety Act and internal OPS policy.
21. In September, 2017, an article in the Ottawa Sun revealed that members of the OPSB accepted the temporary promotion of Rheaume without realizing he was under criminal investigation.[9] The information only came to light when the Ottawa Sun obtained emails between board members. The emails show that some board members believe they were led to believe it was not a criminal investigation by Chief Charles Bordeleau.[10] In the article, board chair Eli El-Chantiry hides behind current Police Services Act legislation that prohibits the board from directing the chief in day-to-day operational decisions, and does not address the board's duty to monitor the chief's performance.
22. It is clear in the email from Allan Hubley, Ottawa City Councillor and member of the police services board, on August 1, 2017, that he was led to believe there was no potential for criminal charges for Superintendent Chris Rheaume when the

[9] "Police board members didn't know promoted cop faced criminal probe, emails reveal," Ottawa Sun, Shaamini Yogaretnam, September 14, 2017.
[10] *Supra* note 9.

board approved his promotion to Deputy Chief. Hubley's concerns were echoed by other members of the board (Sandy Smallwood, Tim Tierney, and Suzanne Valiquet).

23. On October 27, 2017, it was announced that the OPP will lay no criminal or disciplinary charges against senior Ottawa police employees after nearly a five-month investigation into allegations of fraud and evidence manipulation.[11] Despite the earlier letter by Edelson, Chief Bordeleau said the OPP "found no evidence of any misconduct or wrongdoing that would support charges under the Criminal Code or substantiate charges under the Police Services Act on any of the nine members."[12] Chief Bordeleau did not release any other details of the OPP report.

24. Michael Edelson is a lawyer bound to the Law Society of Upper Canada's Rules of Professional Conduct. Any lay person can deduce that when a lawyer discloses to a chief of police and two provincial cabinet ministers that he discovered evidence of criminal offences, he is in fact telling the truth. I find it completely unacceptable that the response from the OPS and OPP does not address what prompted the letter from Edelson in the first instance. If Edelson had no evidence of wrongdoing and reported that he did, the public expect that his conduct will be reported to the Law Society of Upper Canada and appropriately investigated. If this step was not taken by the OPS or OPP then one has to ask why? If Edelson made a false statement to the OPS he should be held accountable.

25. In October, 2017, OPS Sergeant Marty Rukavina filed a $3.35M lawsuit against OPS. Among his allegations are:
    a. Malicious prosecution, misfeasance in public office, deceit, civil conspiracy and infliction of mental suffering by the OPS board and several police employees.
    b. A Staff Sergeant had operated a private business that provided unsanctioned training to members of the OPS.

---

[11] "No charges after five-month OPP probe of Ottawa police," Ottawa Citizen, by Shaamini Yogaretnam, October 27, 2017.
[12] *Supra* note 11.

c. A systemic campaign was launched by OPS members to publicly discredit and humiliate Rukavina and implicate him in the explosion incident.[13]

26. On November 22, 2017, the female civilian mentioned in paragraph 2 above, sent information to the OCPC and specified her concerns regarding El-Chantiry's alleged personal relationship with a young female civilian. It is my understanding as well that this same female, who is El-Chantiry's protégé, had been arrested in the past, yet charges had all but disappeared; a check of police records would show. The belief at OPS is that El-Chantiry is using his influence and position as OPSB Chair to provide opportunities to this female; beyond any opportunities being offered to other residents of Ottawa; and other specific allegations of interference and obstruction of judicial proceedings and abuse of power. When I attended the OPSB in September, 2017, to present a delegation on the need for independent and impartial training of board members, I observed this female sitting at the "press" table within the council chambers.

Part IV - Allegations of Corruption, Misconduct and/or Unethical Conduct by WRPS Chief, Waterloo Regional Police Services Board and York Regional Police Service

27. In May, 2016, I wanted to complain about the conduct of several members of the Waterloo Regional Police Service ("WRPS") when conducting internal investigations. The WRPS' Public Complaints and Chief's Complaints procedure did not allow a member of the WRPS to be a Complainant of misconduct. I knew I was not permitted to make a complaint to the OIPRD since officers are not permitted to complain about officers at their service.

28. On May 4, 2016, I presented a lawful delegation to the WRPS Board revealing corruption and unlawful discretion during four internal criminal investigations.

29. On May 9, 2016, Chief Larkin directed me to not present myself in front of the board again, and placed me on administrative duties while professional standards investigated me for six Police Services Act ("PSA") charges.

---

[13] "$3.35M lawsuit alleges deceit, civil conspiracy and "campaign" of mistreatment against Ottawa cop," Shaamini Yogaretnam, Ottawa Citizen, October 3, 2017.

30. On May 9, 2016, I notified the board members by email of the reprisal action taken against me. This email was shared by an unknown board member with Chief Larkin, (the email was not addressed to Chief Larkin). Board members have all sworn (or affirmed) an Oath of Office to discharge their duties impartially. I was then directed by Chief Larkin to not communicate in any way with members of the board and two additional charges were added to the internal investigation.
31. An Investigative Review was conducted by YRP into one of the criminal cases referenced in my delegation. I provided the investigating officer with thirteen clear points of issue with the investigation. The investigating officer ignored almost all of those points and in the final report made several false statements. Issues outstanding with said criminal investigation and negligent review are as follows:
    a. WRPS investigators and the Crown Attorney suppressed exculpatory evidence;
    b. Chief Larkin did not consult with the Crown Attorney prior to arresting the officer, yet stated publicly that he had;
    c. Several conflicts of interest existed in the investigative process and none were declared;
    d. Evidence obtained after the officer's arrest proved that key aspects of the unsworn witness statements obtained by investigators prior to the officer's arrest contained false statements.
    e. A WRPS Inspector made false statements to YRP Investigator.
    f. Crown Attorney made false statements to YRP Investigator.
    g. YRP Investigator did not conduct investigation of any issues I raised in my interview, yet concluded the WRPS investigation was full, fair and impartial.
    h. YRP Investigator made false statements in the report provided to Larkin.
32. During the 14-month period that the WRPS conducted their protracted disciplinary investigation (despite the 6-month limitation), I began to suffer from symptoms of post-traumatic stress disorder. Rather than be concerned for my wellbeing I was threatened by the professional standard branch with an additional charge of insubordination if I was not well enough to attend a compelled interview.

Neglect of Duty:

What I find most concerning is that the OCPC and OIPRD were made aware of these, and other serious issues of misfeasance in Ontario policing, and have done little to curtail the level of corruption that exists within senior leadership and oversight agencies. Specific complaints, of which I am aware, are detailed below, in chronological order:

- December 1, 2010 – The OCPC, OIPRD and the Solicitor General at the time, Ian Davidson, were made aware of several acts of misconduct and criminal behaviour by members of the Orangeville Police Service. Some of those allegations included:
  - A member offered to not show up for criminal trial if he could be served alcohol after last-call;
  - A member refused to provide services while on duty, but offered the services through a private business the member owned;
  - A member made an order to destroy evidence and remove criminal charges against a friend;
  - Members saving pornography to work computers;
  - A member arriving for duty and operating a police vehicle while in a "drunken state;"
  - Members engaging in repeated "bullying" with no intervention by management;
  - General inconsistent discipline;
  - Outdated policies;
  - Inadequate training.
- June 28, 2016 – The Commission refused to investigate the Chief of the WRPS for refusing to initiate a Chief's complaint into a negligent criminal investigation that saw Constable Jeremy Snyder charged and suspended for 2-years only to later be acquitted by an Honourable Justice and the investigation to be criticized. The Commission determined that an investigation was not warranted, and Snyder in turn filed a civil lawsuit.

- August 8, 2016 – The OCPC cleared Chief Bordeleau of misconduct when he phoned the Provincial Offences Court office on January 25, 2016, to find out the name of the prosecutor assigned to his father-in-law's careless driving charge. The OCPC determined that Bordeleau "did not attempt to use his position to influence the outcome of the Highway Traffic Act matter nor to communicate with the prosecutors."
- August 25, 2016 – The Commission refused to investigate the Ottawa Police Services Board holding meetings which were not open to the public, contrary to Police Services Act s. 35(3).[14]
- March 6, 2017 – The Commission decided to not commence an investigation into my complaint of members of the WRPS board for suppressing my complaint of corruption during internal investigations and failing to properly monitor the performance of the Chief, and the Chief of WRPS for taking reprisal action against me for merely uncovering internal corruption and reporting it to the board.
- March 29, 2017 – The OIPRD determined it was not in the public interest to investigate my complaint of negligence, collusion and deceit by members of the YRP in conducting an Investigative Review for WRPS. Despite the fact that the officers in the complaint were YRP officers, the OIPRD stated I was not permitted to make the complaint.
- August 17, 2017 – The Commission refused to investigate the OPSB chair Eli El-Chantiry for misconduct in relation to false and misleading information provided to other board members and not adequately monitoring the performance of the Chief.
- On October 27, 2017, the civilian mentioned in paragraph 1 above, received a response to her letter to Hon. Minister Lalonde written by Matthew Torigian, former Chief of WRPS, advising her to address her concerns to the OPSB directly and the OIPRD.
- November 29, 2017 – The OIPRD refused to investigate Chief Charles Bordeleau when he failed to advise the Board of the nature of an ongoing OPP investigation into members of the OPS and his request of the OPA to disguise the nature of the OPP investigation.

---

[14] R.S.O. 1990, c. P.15.

- The OIPRD has very recently advised Matt Skof, in a general statement, that it will not conduct any investigations into the conduct of Chief Bordeleau.

As a result of the systemic neglect by the oversight agencies, officers are resorting to the only remaining avenue for justice; civil litigation. Here is a list of *some* of the ongoing litigation which will cost the taxpayers of Ontario millions of dollars and could have been prevented with adequate oversight:

- ✓ Constable Mike Sladek, London Police Service
- ✓ Constable Jeremy Snyder, Waterloo Regional Police Service
- ✓ Constable Paul Manning, Hamilton Police Service
- ✓ Sergeant Marty Rukavina, Ottawa Police Service
- ✓ Sergeant Gurdip Panaich, York Regional Police Service
- ✓ The Women of Waterloo Regional Police Service (Class Action)

All citizens of Ontario are facing a dawn of increased accountability in policing as a result of transparency achieved through access to information legislation and people like myself who are taking great risks to expose internal police corruption. When serious allegations are made about a person in a position of authority, the public need to trust that those allegations will be handled with due diligence, in a manner identical to that of a citizen-involved investigation. When it comes to internal matters within police services and oversight bodies, this simply has not been happening. What is being exposed in Thunder Bay and more recently in Montreal is happening everywhere. Trust in police is at an all-time low. Remaining in denial, and refusing to acknowledge the scope of the issue is not an improvement strategy.

If it is not completely evident, by the time you read this document, that a full review and inspection is warranted then please see Appendix A, at the end of this document, for a list of recommended interim solutions by way of directives for policy improvements. These recommendations can easily be implemented and will ensure that abuses are detected through better reporting and those committing these acts of misconduct or misfeasance will no longer be protected by other officers' oaths of secrecy.

I will make myself available should an advisory committee be formed to address any of the issues contained herein. I have taken on this initiative to not only expose the problems I am also very interested in being part of the solution.

Most sincerely,

Kelly Donovan

Copied To:
Hon. Marie-France Lalonde, Minister of Community Safety and Correctional Services
Mr. Benson Cowan, Ontario Civilian Police Commission
Mr. Graham Boswell, Ontario Civilian Police Commission
Mr. Gerry McNeilly, Ontario Independent Police Review Director

Appendix "A"

Directives to improve accountability and transparency:

These are suggestions only, and further dialogue will ensure understanding of the objectives of each recommendation.

Mandatory Reporting

The following must be reported to the public on an annual basis and can be produced without the names of members of the service or public.

1. Police Services must report all expenses related to the prosecution (misconduct or criminal) of its members, (this includes all FTE involved in the investigation and prosecution).
2. Police Services must report all legal expenses paid to defend Human Rights of Ontario ("HRTO") complaints made by members of the public.
3. Police Services must report all legal expenses paid to defend HRTO complaints made by its members.
4. Police Services must report all legal expenses paid to defend lawsuits filed by members of the public.
5. Police Services must report all legal expenses paid to defend lawsuits filed by its members.
6. Police Services must report all settlements paid to members of the public divided by HRTO complaints and lawsuits.
7. Police Services must report all settlements paid to its members divided by HRTO complaints and lawsuits.

**The Ministry of the Attorney General reports each year on how much of their budget was dedicated to the Human Rights Legal Support Centre, Prosecuting Crime, (as examples). It is reasonable for police services to report the above figures in order for the public to better understand where budgets are being spent, and assist in reducing the cost of policing.*

Policy

1. Members of police services shall be provided means of reporting misconduct of other members, including the Chief of police.
2. Members of police services shall be provided a means of appeal for all allegations of misconduct or criminal conduct that are not investigated.
3. A member of a police service alleging reprisal for having filed an HRTO complaint or complaint of misconduct or criminal conduct of another member, shall have the ability to complain to the OIPRD.
4. When an allegation of criminal conduct was made about a senior member of a police service and no charges are laid, the case is always referred to the office of the Attorney General to be reviewed.

TAB 10

Legislative Assembly of Ontario

Assemblée législative de l'Ontario

Official Report of Debates (Hansard)

JP-29

Journal des débats (Hansard)

JP-29

Standing Committee on Justice Policy

Comité permanent de la justice

Safer Ontario Act, 2018

Loi de 2018 pour plus de sécurité en Ontario

2nd Session
41st Parliament

Thursday 22 February 2018

2e session
41e législature

Jeudi 22 février 2018

Chair: Shafiq Qaadri
Clerk: Christopher Tyrell

Président : Shafiq Qaadri
Greffier : Christopher Tyrell

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

http://www.ontla.on.ca/

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7400.

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7400.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario

Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

ISSN 1710-9442

CONTENTS

Thursday 22 February 2018

Safer Ontario Act, 2018, Bill 175, Mme Lalonde / Loi de 2018 pour plus de sécurité en Ontario, projet de loi 175, Mme Lalonde JP-635
Police Association of Ontario JP-635
Mr. Bruce Chapman
Ontario Provincial Police Association JP-637
Mr. Rob Jamieson
Ms. Joanne Mulcahy
Toronto Police Association JP-640
Mr. Mike McCormack
Mr. Peter Brauti
African Canadian Legal Clinic JP-642
Mr. Matthew Boissonneault
Black Action Defense Committee Inc. JP-645
Mr. Kingsley Gilliam
Ontario Association of Police Services Boards JP-646
Mr. Eli El-Chantiry
Mr. Fred Kaustinen
Safer Ontario Act Review Collective JP-648
Mr. Knia Singh
Ms. Nana Yanful
Ms. Maureen Trask JP-651
Chiefs of Ontario JP-653
Mr. Nathan Wright
Chief Paul Syrette
Town of Caledon JP-656
Mr. Allan Thompson
Ms. Sandra Sharpe
Centre for Addiction and Mental Health—Empowerment Council JP-657
Ms. Jennifer Chambers
Ms. Roslyn Shields
Toronto Police Accountability Coalition JP-660
Mr. John Sewell
Nishnawbe Aski Nation JP-662
Mr. Julian Falconer
Mr. Travis Boissoneau
Association of Municipalities of Ontario JP-664
Ms. Lynn Dollin
Mr. Matthew Wilson
Ms. Kelly Donovan JP-667
Justice for Abdirahman Coalition JP-669
Ms. Dahabo Ahmed-Omer
Canadian Civil Liberties Association JP-672
Mr. Rob De Luca
Office of the Ombudsman of Ontario JP-674
Mr. Paul Dubé
South Asian Legal Clinic of Ontario JP-676
Ms. Sukhpreet Sangha
Toronto Community Housing Corp. JP-679
Ms. Hannah Kohn
Township of Muskoka Lakes JP-681
Mr. Donald Furniss

JP-635

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Thursday 22 February 2018

Jeudi 22 février 2018

The committee met at 0900 in room 151.

SAFER ONTARIO ACT, 2018
LOI DE 2018 POUR PLUS DE SÉCURITÉ EN ONTARIO

Consideration of the following bill:

Bill 175, An Act to implement measures with respect to policing, coroners and forensic laboratories and to enact, amend or repeal certain other statutes and revoke a regulation / Projet de loi 175, Loi mettant en oeuvre des mesures concernant les services policiers, les coroners et les laboratoires médico-légaux et édictant, modifiant ou abrogeant certaines autres lois et abrogeant un règlement.

The Chair (Mr. Shafiq Qaadri): Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice.

Colleagues, welcome to the Standing Committee on Justice Policy. As you know, we have a number of presentations. I'll run through them in a moment.

We have two late requests, meaning their requests to appear before the committee occurred after the deadline, which was last Friday at 10 a.m. Is it the will of the committee that we include them next week, should we have time? I'll take that as a yes.

I'll now move to our presenters. Just for the benefit of all, you'll have five minutes to make an opening address, after which you'll be asked questions in three-minute rotations by each party. As always, the Chair will enforce that with military precision.

POLICE ASSOCIATION OF ONTARIO

The Chair (Mr. Shafiq Qaadri): I invite Mr. Bruce Chapman, president of the Police Association of Ontario. Please come forward, Mr. Chapman.

Once again, on behalf of the committee and all members of Parliament, we thank you for the policing work that you do on a day-to-day basis.

Please be seated and introduce yourselves. Your official five minutes begin now.

Mr. Bruce Chapman: Good morning, everyone. My name is Bruce Chapman. I am the president of the Police Association of Ontario. Joining me is Michael Duffy, counsel for the PAO.

The PAO represents 50 of Ontario's local police associations and over 18,000 sworn and civilian members, and works hand in hand with the Ontario Provincial Police Association and Toronto Police Association on behalf of all of our members. I concur with the statements that they will provide to you.

I want to thank the committee for having me here today to talk about policing and Bill 175. I could start with facts and figures, but I'll start with a story instead.

At the London 2012 Olympic Games, extra police were required to handle protests, stop terrorist threats and provide security. G4S, one of the world's largest private security firms, was contracted to provide extra security. In short, the company failed to deliver. The government required 23,700 security guards, more than double the estimate. The security contract cost £553 million. By July 11, 16 days before the games began, G4S admitted to the British government that they would be unable to deliver the additional required security. British military troops were required to fill the gap. The numbers were in the thousands. In short, the effort was a financial disaster for everyone involved.

Since the British government implemented austerity measures and began moving policing roles away from the streets and into the boardroom, officer numbers are at their lowest in decades and violent crime is on the rise—up 14% last year. Knife and gun crimes have both increased by 20%. The British experiment with private policing has failed and its taxpayers have been left to pick up the pieces. You would think we would learn from the mistakes. Unfortunately, in reviewing Bill 175, it appears we haven't.

Bill 175 offers municipalities a path to contracting policing duties and other important public safety responsibilities to private services. Some of those could be for-profit corporations. Not only are the financial risks huge, but this is also dangerous and not in the spirit of public policing. Respectfully, we can't trust security guards to perform critical duties that help protect the public and maintain law and order. Ontario's safety should not be for sale. I encourage all members here to speak to their constituents about this issue. Privatizing police is something Ontarians are not willing to try.

In a recent survey of 2,000 Ontarians, only 6% indicated they were interested in privatizing police services; 92% indicated they feel safe or very safe in their communities.

Our police do their duty, and they do it well. We need to keep our police public to keep them effective and

active—so we can continue to do our job and protect the safety of all Ontarians.

Private security providers are only accountable to stakeholders and profits, not the people. Ontarians feel comfortable with and confident in their police services, who currently enjoy an 82% approval rating. A move to privatizing policing would be devastating to the support of the communities we protect.

In 2015, Public Safety Canada identified a failure to ensure private security oversight in Canada, resulting in an inability to ensure they are not vulnerable to organized crime and unethical and illegal behaviour. Further, there was no evidence of cost savings when privatizing or outsourcing police services.

Ontario's professional police believe in transparency, increased public trust and appropriate oversight. This bill hamstrings those efforts by reducing public police services.

I trust my fellow officers, and I know that we welcome the opportunity to build public trust and accountability in law enforcement. But changes must be reasonable. The government is hurting our ability to keep Ontario safe by handcuffing police while we should be handcuffing criminals.

The province has taken steps of suspending officers without pay for serious criminal offences not committed in their duty, and the bill implements increased training for municipal boards. But privatizing police service functions won't save taxpayers money, won't improve public safety and won't protect human rights. The move towards private services is based on a false narrative about the sustainability of policing.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Bruce Chapman: The fact is that policing costs at the municipal level are squarely in line with other municipal budgets. In fact, most municipalities have seen policing costs grow less than recreation, transportation and environmental services. The chronic underfunding of social services, like mental health and addictions programs, means police are doing more.

Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Chapman, for your introductory remarks.

We'll now proceed to three-minute question rotations, with the Progressive Conservative Party, beginning with Ms. Scott.

Ms. Laurie Scott: Thank you very much for being here today, Bruce, and for your association's great work on the ground in policing.

We feel that Bill 175 has some very serious concerns. We expressed them when we were in second reading debate.

You make reference to a problem with crime in the UK. What do you see as real, on-the-ground impacts that this bill will have if it's passed as it is to Ontario—so, on-the-ground impacts in Ontario?

Mr. Bruce Chapman: The bill, as currently written, will allow for an increase in outsourcing privatization of police duties. That, in our opinion, will lead to two-tiered policing.

What's happening in the UK now is, those affluent communities that are able to afford increased policing—because they're not getting it with the current level, because of the decrease in officers with the 20% cut—are having two-tiered policing. So if you're an affluent neighbourhood, you hire your own police to do the job. However, there's no oversight, there's no accountability and there's no transparency of these private companies as compared to public policing.

Our fear is that this bill will lead to similar situations, where municipalities will be able to privatize or outsource those duties that are core police duties.

Ms. Laurie Scott: You brought up some staggering statistics from the UK of the increase in crime since they made these changes. What you've said, and what we see in the UK—Bill 175 is titled the Safer Ontario Act. Do you actually think that it's going to be safer for Ontario?

Mr. Bruce Chapman: Our fear is that this will make Ontario less safe by some of the changes that are implemented in the new Bill 175. That's taking away core police duties, core police functions in providing public policing for our communities.

Ms. Laurie Scott: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Scott.

We'll now proceed to the NDP: Ms. French.

Ms. Jennifer K. French: Welcome to Queen's Park. It's nice to see you bright and early.

Mr. Chapman, I wanted to let you further discuss some of the specifics around privatization, as you said, of core police duties and core police functions. What are some of the examples laid out in the bill, or that you are concerned about, and what would that look like in the community? Also, you said it won't increase human rights or increase public safety—if you could expand a bit on that.

Mr. Bruce Chapman: Again referring back to the UK model, by cutting 20% to 40% of their police services, they've seen the failures over the past 10 years of how the privatization of those has not saved money, has not improved public safety. In fact, crime rates are rising and solvency rates are falling.

In addition to that, they actually changed the reporting mechanisms in the UK so that they're not even being reported the way they were 10 years ago, because they're afraid of the staggering statistics that show the increase in crime.

0910

In Ontario, we've already done that by allowing the municipalities to privatize, or outsource, some of those police duties that have fallen under the realm of the police services. It now will allow—you won't have the oversight, you won't have the accountability and you won't have the transparency. Private enterprise is for-profit for their stakeholders, so by allowing an increase to that—the way to do it is civilianization and effective

efficiencies within the police services themselves, and that is currently being done.

Communications, court security and forensics identification are ones where they've civilianized positions that were once held by high-paying police officers and are now being performed by civilians under the direction of the police, and we are able to increase the efficiencies, working hand in hand.

Ms. Jennifer K. French: So just for clarification, if it's civilianization, then there is the opportunity for the public to file a complaint or seek accountability measures, whereas if it's privatized and in a for-profit, they won't have those avenues?

Mr. Bruce Chapman: Yes, and it falls under the realm of police management, so the chief and the police services board will hold those employees accountable, as they have done and they will continue to do in the current model.

Ms. Jennifer K. French: How much time?

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Jennifer K. French: Okay. We had talked at length during the debate on this bill about the labour issues in this. Do you see union-busting tucked into this bill?

Mr. Bruce Chapman: Yes. I think that a prime example of what you would call union-busting is that you're going to have less police association members and less members that are protected under a collective agreement. The government introduced the fair Ontario workplaces bill, Bill 148, which protected workers' rights, and I feel that parts of this bill take away the rights of the employees of police associations.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. French, and welcome, Ms. Sandals, to the committee. Three minutes.

Mrs. Liz Sandals: Thank you very much for appearing today and for all the good work that your members are doing out in our communities across Ontario. I want to talk a little bit more about what you're calling privatization because certainly you've been speaking out very passionately about that. My understanding is that the current Police Services Act is actually much more permissive when it comes to privatizing various services than this current bill. I'm wondering why it is that you're speaking out against this bill, when it actually restricts privatization more. Is it the fact that a future government could change the regulations? What is it that's actually sort of tipped off the concern?

Mr. Bruce Chapman: It allows the municipalities the ability to outsource or contract out additional services that currently aren't covered under legislation. Regulation 386 allows for some of those duties. It's been done through court security and other methods. The overarching effects of the legislation will allow municipalities more flexibility to do that.

Tying into that is the example of the PEM grants, or the grant process, which were once used for 1,000 officers, throughout Ontario; the guns—PAVIS and TAVIS initiatives that now fall to the municipalities. To be able to provide any private company or any other entity for public safety to be able to use that money that once went to the police service directly, it would now go to the municipalities to decide how they want to spend that grant money. So it's taking it out of the hands of the police and putting it into the municipality to decide on public safety, on what they believe are public safety initiatives, and using that money that once went to put police on the street.

Mrs. Liz Sandals: So if I think of my local police, one of the things that they've used grants for recently has been actually—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mrs. Liz Sandals: —to fund a ride-along program with mental health workers. Is that the sort of thing you're concerned about? Because I thought that was really well-received.

Mr. Bruce Chapman: One of the great initiatives that is working is the partnership with mental health. When you decrease funding to mental health, the police are left to pick up the pieces. If you can work in partnerships with them—that's the police and mental health officials—then there is value to that. They are the experts in the field; we are the experts at providing security and protection for the citizens of Ontario.

Mrs. Liz Sandals: Because that's been my experience—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Sandals, and thanks to you, Mr. Chapman, for your deputation on behalf of the Police Association of Ontario.

ONTARIO PROVINCIAL POLICE ASSOCIATION

The Chair (Mr. Shafiq Qaadri): I would now invite Mr. Jamieson and Mr. Cerasuolo, president and vice-president of the Ontario Provincial Police Association, the OPPA.

Please be seated. Welcome. Your remarks begin now.

Mr. Rob Jamieson: Good morning. Bon matin.

My name is Rob Jamieson. I'm the president of the Ontario Provincial Police Association. With me here today are Vice-President John Cerasuolo and Counsel Joanne Mulcahy.

Our association represents nearly 10,000 uniformed and civilian employees of the OPP. Today, we wish to add our voices to those of the PAO and the TPA and express our concerns regarding Bill 175 in its current form.

In addition to my remarks today, I wish to formally adopt the opinions expressed by Bruce Chapman of the PAO, from whom you've just heard, as well as the comments that will be made by Mike McCormack of the TPA following my address to you.

I will focus my remarks primarily on accommodation, disability and police discipline. We have crafted an extensive and detailed written submission, which will we leave with you. I believe you already have it.

We have already shared this document with MAG and MCSCS. While they say they have listened to our comments and concerns, we have seen nothing in writing that they have taken our suggestions seriously, let alone whether they intend to make substantive changes to the bill. So we are here today asking that you take a sober second thought about what this government is about to do.

The OPPA, the PAO and the TPA are all supportive of building stronger and safer communities in Ontario as well as creating effective and meaningful civilian oversight of police. Those laudable goals, however, must not come at the expense of public safety or officers' rights as workers in the province of Ontario.

This government has advanced important initiatives to ensure that employees are treated fairly in the workplace. It has worked hard to expand workplace protections, most recently with the passage of Bill 148.

Bill 175, however, sets police officers and police civilian members apart from the rest of Ontarians in terms of their employment rights and is entirely inconsistent with this government's positive approach to labour relations. Indeed, this bill is the complete opposite of what I would have expected from this government.

With regard to accommodation and disability, we are extremely troubled by section 115 of Bill 175, which subverts police officers' collective agreement rights and seeks to limit their entitlements under the Human Rights Code. The bill will permit police service boards to strip disabled police officers of their appointments and move them into civilian bargaining units. This can occur for permanent or temporary disabilities and regardless of whether or not the officer's medical restrictions are significant. Any police officer who cannot fulfill the essential duties of his or her position, no matter how briefly, can be impacted without recourse to their collective agreement rights.

By overriding our members' collective agreement rights, section 115 breaches our members' right to freedom of association granted under the charter. This is not something that I, members of the OPPA or, for that matter, the electorate of the province of Ontario would have expected to come from this Liberal government.

What's even more troubling about section 115 is that it is advanced by this government in bad faith. In the run-up to introducing Bill 175, the government convened a consultative process which included the police associations and the Ontario Association of Chiefs of Police. Through that process, an agreement was reached on this topic that this government committed to including in this legislation. It is clear now, however, that this government has resiled from that agreement and has chosen rather to attack collective bargaining rights. It has made a mockery of the consultative process. Section 115 must be changed to reflect this agreed-upon language.

Police discipline: While we wholeheartedly support independent prosecution and independent adjudication of all police discipline complaints, the new process envisioned by Bill 175 strips away almost every right a police officer has to due process and procedural fairness in the disciplinary system. For example, the right to disclosure of the prosecutor's case, something that is commonplace in other disciplinary regimes, does not exist under Bill 175.

Worse yet, an officer could be compelled to give disclosure to the prosecutor or could be compelled to testify. Officers could be subjected to heavy penalties without even an investigation. Officers may not even receive a hearing at a tribunal because the tribunal can create alternatives to adjudicative or adversarial procedures while still imposing the same range of significant penalties.

Even if the officer is able to have a hearing, the standard of proof the prosecution must meet is now being downgraded from one of clear and convincing evidence to that of a balance of probabilities.

0920

At the same time, the range of penalties is being expanded to include fines of up to $35,000.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Rob Jamieson: Even if officers leave the workplace through retirement or resignation, they still can be prosecuted for workplace misconduct. Firing employees, or former employees, for workplace misconduct is inconsistent with the hallmarks of a modern, progressive workplace and, I thought, would have run counter to the basic philosophy of this Liberal government.

In conclusion, Bill 175 is seriously flawed, undermines the collective bargaining rights of our members, and erodes the fairness of the disciplinary process. Without substantive amendments, we cannot support this bill.

In our detailed document, we have recommended a number of changes to the legislation that would achieve two goals: (1) ensuring oversight and accountability of officers; and (2) respecting the basic principles of fairness and due process.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Jamieson.

We now pass to Ms. French for three minutes.

Ms. Jennifer K. French: Thank you very much for coming today.

I find it interesting that the government is using section 115. It was Bill 115 that attacked my collective bargaining rights as a teacher and inspired me to get active. I can see that it has also inspired you to get active.

When you talk about stripping an officer of their appointment—it's not something I'm really familiar with. What does that mean? If they're stripped of an appointment, does that mean they're not a cop anymore, or not an officer? What does that mean?

Mr. Rob Jamieson: That's the way we see it. As we see it right now, it's rather personal. I don't mind sharing with this committee that one of the challenges with law enforcement, especially with presumptive legislation 163—all the things that we were behind Minister Flynn, and everything else—this legislation flies in the face of all of this progress around the stigma around mental

health and the disproportionate number of officers who are committing suicide, compared to that of the public, and so on and so forth.

To have an officer come forward and to be supported, with the stigma around mental health—the fact now that they are in the shadows wanting to get help but can't get help—so there's someone like me, who was diagnosed with post-traumatic stress disorder, as a result of doing my job of being a police officer, three years ago. So I take this very personally when I see this, because I know how it impacts individuals. I know how it impacts families.

To me, this really sets the foundation for the spirit of this whole piece of legislation: the fact that someone gets injured on the job. If I break my leg, and I know that in nine months' time, I'm going to be back to regular duties in my police cruiser, I don't think that anyone is going to look at me and say, "You know what, Jamieson? You're out of a job."

But what I am going to say is that if you get diagnosed with PTSD, you acquire a mental disability as a result of doing your job. There's no question that first responders have a high incidence of this. All of a sudden, now, under this legislation, I'm worried about coming forward because I'm worried about having my rights and my appointment stripped from me, with me put into a different bargaining unit or whatever.

I can tell you, when you're dealing with folks who are vulnerable, suicide, self-harm and harm to families are serious issues. I can tell you that it impacts our members significantly.

We are 100% opposed to this. I don't know why this has come forward. This is contrary to Bill 163 and all the progress. This has caused undue harm already—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Rob Jamieson: —to the people across this province who have seen this and who want to come forward for help but are absolutely petrified and terrified to do so because of the consequences.

Ms. Jennifer K. French: Are you worried that if officers feel they're going to be stripped of their appointment and don't come forward with PTSD to get a diagnosis, that then we're having more officers untreated on our streets, in our communities and in their homes?

Mr. Rob Jamieson: Absolutely; 100%. Let's be honest here. Mental health stigma is still there. It's a serious issue within the first responder community. It's specifically—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. French.

Ms. Jennifer K. French: Thank you.

The Chair (Mr. Shafiq Qaadri): To the government side: Ms. Wong.

Ms. Soo Wong: Thank you very much for your presentation. I hear your concerns. I echo your concerns, as a former nurse.

I do want to say thank you for your suggestions. I believe that the government has been taking progressive steps when it comes to mental health and first responders, with a number of legislative changes though the Ministry of Labour. But I do hear your comments. I believe that when we look at the clause-by-clause down the road, we will be looking at this piece as well.

So I just want to say thank you for your comments, and thank you to all your officers for keeping Ontario safe.

Mr. Rob Jamieson: If I could respond to that, I would say thank you.

I find it interesting that this is called the Safer Ontario Act, yet mental health is not mentioned at all within the act itself that I saw. I find it very interesting, when we're talking about mental health. This is a significant issue that needs to be addressed. You're calling it the Safer Ontario Act, and yet I've gone through it—there are hundreds and hundreds of pages—and I struggle to find where the words "mental health" and the commitment to mental health are. If we're all going to be stakeholders and partners in this, the police can't keep being the default.

We're here today to try to put some perspective on that. We have been putting these ideas forward for months, either through the FPAC committee—and some of the people who are in this room today are on that committee. We've raised these concerns and been continually disregarded. We have met with MAG, MCSCS. We've put all these papers forward. You have them. We need something back in writing. We need to tell our members, "You're going to be okay."

We're not against accountability. We're not against oversight. But what we're against specifically on the areas of accommodation and disability and some of the other issues that we're bringing up today—we cannot support this legislation.

The Chair (Mr. Shafiq Qaadri): We'll now move to the PC side. Mr. Romano.

Mr. Ross Romano: Thank you, gentlemen and ma'am. Welcome, John from Sault Ste. Marie; I just want to say hello.

Obviously, your positions as police officers are inherently dangerous. There are physical dangers any time you take down a suspect. There are mental health dangers given that you're dealing with situations—such as first responders at a highway traffic fatality or anything of the sort. So there are obviously inherent mental health and physical dangers. What kind of an impact do you think this will have on the level of service that officers provide, if this legislation passes, when they go to, let's say, a highway fatality or they need to take down a suspect in a high-risk situation?

Mr. Rob Jamieson: I'll answer quite candidly. I was a road sergeant up until a couple of years ago, before I became president. One of the last accidents that I went to was a 21-year-old girl who was decapitated. We had to arrest her cousin for impaired driving causing death. Those are images that most of you in this room—I know you were a nurse; you've admitted that, so you've seen some things. But the thing is, most people in society don't see that on a continual basis.

If you don't have officers who are healthy, who can come forward and feel that they're going to be support-

ed—if they come forward under this legislation, they're going to be out of a job, which is going to affect all kinds of things. Officers are proud to be police officers—men and women, more and more diversity within the ranks as well. We want to reflect the communities. People are proud to do what we do. But this really flies in the spirit of that.

I'm very concerned about the impact to communities. We need our officers to be healthy, and we need them to be supported.

We need this government to understand—it's amazing, because Minister Flynn has done so much positive work in this area. That's why I'm blown away by this. I'm astounded by this. To not support officers who want to come forward is—I have no words. I'm shocked; I truly am.

Mr. Ross Romano: I'm going to take this in a different direction, looking at the material that you've submitted today dealing with rights of officers, the nature of complaints and what can flow from that with respect to disclosures.

It's already difficult enough, I know, being an officer, especially after a charge is laid and you end up in court. Officers are criticized quite extensively by defence lawyers when they take the stand and look at trying to find ways to successfully prosecute a case.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Ross Romano: All the case law you need to understand and appreciate as an officer—how do you feel this legislation, this aspect, is going to impact your abilities moving forward?

Mr. Rob Jamieson: I'll defer to counsel.

Ms. Joanne Mulcahy: Basically, Bill 175, we acknowledge, has oversight provisions, but it erodes the rights of officers. So instead of officers carrying out their duties, they will be spending much more time in hearings, without rights.

The Chair (Mr. Shafiq Qaadri): Just before I pass the floor to Ms. French, I do need to have you identified, please.

Ms. Joanne Mulcahy: Joanne Mulcahy, counsel for the association.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Mr. Jamieson, and to your colleagues for your deputation on behalf of the OPPA.

I now move to our next presenters—actually, Ms. French, you have the floor. Go ahead.

Interjections.

Ms. Jennifer K. French: I'd be glad to have a second go-round.

The Chair (Mr. Shafiq Qaadri): Thank you. I'm not suitably caffeinated yet. I'll remember to do that momentarily.

Thank you for your deputation.

TORONTO POLICE ASSOCIATION

The Chair (Mr. Shafiq Qaadri): Our next presenters are with the Toronto Police Association. Please come forward, Mr. McCormack and Mr. Brauti.

Welcome. As you've seen, your five-minute opening address begins now.

Mr. Mike McCormack: I'm Mike McCormack, president of the Toronto Police Association. This is our counsel, Peter Brauti. He will be addressing the committee on behalf of the Toronto Police Association.

Mr. Peter Brauti: I'm here to talk about oversight. To be clear, none of the associations are against oversight. The associations expressly recognize the importance of oversight. However, we are unanimously against oversight provisions that are unnecessary, can be easily abused and make Ontario less safe.

Here are some examples of problematic provisions in this act. These are just some of the many examples that we could point to. Section 33 of the act provides new fines of up to $50,000 for officers and imprisonment of up to one year for not co-operating with the SIU. This provision is completely unnecessary and is excessive in its penalty. We have continuously asked the drafters for examples of officers not co-operating with the SIU, and they have given us no examples. The new provision is a solution for a problem that doesn't exist.

0930

Besides, there are already existing penalties in the PSA for non-co-operation with the SIU. Officers who do not co-operate with a lawful SIU request can be charged with insubordination or neglect of duty. Everyone knows that the SIU can go to the police service or the OIPRD and have a charge laid for not co-operating with a lawful request from the SIU, and the officers can be reprimanded, lose pay, lose rank or be dismissed. That power has been around for years, yet there have been no efforts to charge or prosecute in that regard. That's because the reality is, there has been no lack of co-operation with SIU. The new provision should be eliminated.

Many of the new provisions actually create an unsafe Ontario. Traditionally, SIU interviews have taken place at police stations in the division where the incident took place. This allows officers to stay working in the division right up until the interview, come off the road, do the interview and then immediately return to the road to continue to service the public. Section 27 of the new act proposes that the SIU can choose the location of the interview. This is, without doubt, to allow the SIU to demand that interviews take place at SIU headquarters in Mississauga.

We know that SIU incidents usually involve six to 12 officers. The new provisions will take those six to 12 officers off the street and, in the case of Toronto, have them travel 90 minutes—for York, two to three hours; for the OPP, maybe four to 14 hours—to conduct these interviews. The act will take hundreds and hundreds of police hours away from the public while these officers are travelling to these interviews. This act and that provision will make the public less safe and will make officers less safe, because there will be less officers on the road as they travel to do these interviews.

Section 77 of the act allows for the discipline tribunal to get the investigative report before the hearing begins.

In other words, it will allow investigators to put their biased thoughts and conclusions before the tribunal before the officer is even brought forward to have his hearing heard. The investigative report often contains evidence which is inadmissible or may never even be attempted to be called at a hearing. The government has promised that this will not be in the legislation, but we have yet to see anything in writing.

Section 82 of the act allows for any number of intervenors to be parties at the discipline hearing of an individual officer. This includes not only special interest groups but also the complaint director who represents the investigative body. As a result, at an individual hearing for an officer, we could see a prosecutor, joined by the complainant, who is allowed to be a party, joined by two or three special interest groups who are now allowed to be a party, joined by the investigative body, who is allowed to be a party—all as adverse parties against the officer in his individual case. This is hardly a balanced proceeding. Adding the investigative body as a party does nothing other than add a biased party into the mix.

It's also important to note that in the vast majority of cases where the complainant has become a party, those cases have become virtually unmanageable as it is. Discipline cases for officers are now taking three to seven years to be completed in the current system. Allowing interest groups to intervene will make individual cases a prolonged sideshow about public policy, which has no place in an individual discipline case.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Peter Brauti: If we're serious about balance and fair reform for a safer Ontario, I'd encourage you to read the provisions of the act and ask yourself: Is this specific provision necessary? Can it be a source of abuse? Does it really make Ontario safer?

Finally, I would note that everybody wants independent adjudication and prosecution, but this act does not go far enough. It only provides true independence if there is a public complaint, but it doesn't provide for independent adjudication and prosecution if it is an internal complaint.

The Chair (Mr. Shafiq Qaadri): Thanks, Mr. Brauti, and to your colleague.

To the government side: Ms. Wong.

Ms. Soo Wong: Thank you very much for your presentation. Can you elaborate a little bit more on both your written submission and what you just said? I'm going to quote you here: "This act does not go far enough" to deal with independent adjudication and prosecution. Can you elaborate? How far do you think we should be going?

Mr. Peter Brauti: It should be complete independence. You should have an independent adjudicator and an independent prosecutor.

The way the act works right now is that if a member of the public puts in a complaint, there will be an independent adjudicator and an independent prosecutor. But if there's an internal complaint—for example, the chief makes the complaint—then the chief gets to choose the adjudicator and choose the prosecutor, which is the current system. That is not independent adjudication.

Ms. Soo Wong: You have expressed on numerous occasions in your presentation this morning concerns about the oversight. My question to you is, what are the evidence-based best practices? The public demands oversight. Since we are, for the first time in the government, making these extensive and hopefully comprehensive changes with regard to oversight, share with us which model from different police service boards—or other jurisdictions that have evidence-based best practices in oversight.

Mr. Peter Brauti: I don't know if I could point to any specific jurisdiction and say that's the model, because they all have problems; no doubt about it.

As I said at the beginning, the associations universally say, "Look, we think oversight is a good thing. We think it's appropriate; it's necessary." But the problem is, and what the act largely does is, it is going to completely overburden and crash the system.

For example, I don't know if you know this, but the OIPRD's investigators have launched a government grievance against the OIPRD because they are overburdened. They can't get through their caseload as it is. Right now, they have 110 days from the time that they are supposed to get the complaint to the time it is supposed to be resolved, either with a charge or not. They are only meeting that goal 24% of the time. The government has asked them to reduce that to 90 days. The investigators are saying, "We will only be able to meet that goal 15% of the time."

This legislation will double or triple the amount of complaints that come in.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Peter Brauti: As a result of that, we're going to see officers waiting not three to seven years for their hearing to be heard; we're going to see five to eight years before they actually have a hearing. And they're on restricted duties. That can't make Ontario safe.

The Chair (Mr. Shafiq Qaadri): To the PC side: Ms. Scott.

Ms. Laurie Scott: Thank you very much for appearing here today—and your duty to serve the Toronto Police Service.

I think that you should continue to expand—I mean, I think the impacts of the delays, and five to seven years, that they have on the officers before they can be heard—and just from a legal point of view, you may see more cases coming forward.

Mr. Peter Brauti: As a lawyer, I'm starting to bring delay applications before the court to say that this is abuse of process. That's going to continue to happen.

In the meantime, what happens is, officers cannot write for promotion; they cannot engage in duties that would allow them to be promoted later. They are often placed on restricted duties, so they can't be out on the road. They are losing overtime, which is important income for their families. All of that continues throughout that five-to-seven-year process or however long it's going to be.

The longer that we shelve these people, the greater the harm to the individual officers and the greater the harm

to the public. We want officers to be promoted. We want them to become more proficient in their job. We don't want them on restricted duties. We want them servicing the public.

Ms. Laurie Scott: Go ahead.

Mr. Ross Romano: Perhaps you can just expand on the nature of the effect this is going to have on an officer's ability to continue to execute his or her duties on a daily basis—dealing with that issue, and then how it's going to affect their day-to-day job.

Mr. Peter Brauti: As far as the delays go, again, when you overload the system and they're on restricted duties, essentially, they are working—there's no doubt about it—but they're doing tasks that would be more appropriate for a civilian. So we have highly trained individuals who could be doing policing functions, but instead they're filing paper. That's what I mean when I say it makes the community much less safe.

Mr. Ross Romano: It's also not very efficient, at the end of the day.

Mr. Peter Brauti: It's incredibly inefficient. If we could streamline this process, it would be incredible, but that's not what this legislation does. It doesn't streamline it. It overburdens the system. Literally, in my view—I'm in the trenches every day; I do this more than anybody in the province—it's going to crash the system.

Mr. Ross Romano: So it's less efficient, less safe. What's the advantage to it, then?

Mr. Peter Brauti: I don't know what the advantage is. That's why we're here.

The Chair (Mr. Shafiq Qaadri): To the NDP side: Ms. French.

Ms. Jennifer K. French: Again, thank you very much for coming in today.

You had started out talking about some of the new fines or some of the penalties. You also mentioned that the drafters, or the government, were not forthcoming when you were asking for specific examples that would warrant some of these penalties. Can you expand a bit on that and what your thoughts are as to why those penalties are there, then, if there is nothing to point to?

0940

Mr. Peter Brauti: We had numerous meetings with the drafters, and often the response was, "We didn't think about that" or "we didn't consider that" or "we didn't know that." When we asked for specific examples, they said, "That's what we were told." Well, what were you told? Give me the example. They couldn't give me an example of where that would take place.

Sorry, the second part of the question was?

Ms. Jennifer K. French: Your thoughts on why, then, it is in there.

Mr. Peter Brauti: It's there to appease special interest groups. It's to solve a problem that doesn't exist. It's put in there for popularity, as opposed to real practice.

In real practice, there are penalties. It's already there; it's all there. You can be charged in the Police Services Act, if you don't co-operate with the SIU, for neglect of duty or insubordination and be brought before the tribunal. It is already there. But $50,000 sure sounds good to some people out there who want to see people be tough on cops.

Ms. Jennifer K. French: Some of the folks who I heard speak at the consultations in the community—and I know that you've heard this as well—had a lot to say about their experience within the system when it comes to complaints and when it comes to the delays. I would call it a tortured process for all involved. You're obviously speaking to it from the officers' standpoint, and we've heard it from the community standpoint in terms of families.

I'd like you to explain how these changes might affect that experience for the public. You had mentioned from the officers' standpoint, but—

Mr. Peter Brauti: That's the strange thing about these hearings. We'll stand there and we'll complain that this is outrageous delay, and then the complainant stands up and complains about the outrageous delay. We're adverse parties in the hearing because the allegations are serious, and we're adverse. But we're joining each other in saying this is ridiculous. This act is going to make it more ridiculous. The public complainants are going to suffer.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Peter Brauti: Not only the officers, but the public complainants are going to suffer.

Ms. Jennifer K. French: Thank you. If you had any last thoughts, in the last 20 seconds?

Mr. Peter Brauti: If I had any last thoughts—I would scrap this bill, or I would say let's wait until there is an election. Let's wait until June and see who the government is, and then decide whether this should pass. Those are my last thoughts.

The Chair (Mr. Shafiq Qaadri): Thanks, Mr. Brauti, and to your colleague, for your deputation on behalf of the Toronto Police Association.

AFRICAN CANADIAN LEGAL CLINIC

The Chair (Mr. Shafiq Qaadri): Is Mr. Matthew Boissonneault here? Mr. Boissonneault, are you present?

Mr. Matthew Boissonneault: Hi.

The Chair (Mr. Shafiq Qaadri): Okay, great. Welcome—on behalf of the African Canadian Legal Clinic. Bienvenue. Asseyez-vous. Your five-minute introductory remarks begin now.

Mr. Matthew Boissonneault: Thank you. First of all, I would like to thank you all for inviting submissions from the ACLC. I'm here to talk about the implementation of Bill 175, and particularly the policing oversight aspect of it.

Historically, the African Canadian community has been at the forefront of the development of independent police oversight in Ontario. The community's leadership in police oversight spans several decades, and with good reason. Criminologist Scot Wortley reports that African Canadians are disproportionately victims of police use-of-force incidents, and an investigation by the Toronto

Star revealed that 18 of the 51 fatal shootings by Toronto police since 1990—the inception of the SIU—were of black people. This represents 35% of such shootings, despite the fact that African Canadians comprise just 9% of Toronto's population. The race of the victim was not revealed in approximately one third of these shootings. Therefore, black people in Toronto are, at best, overrepresented in these fatal police shootings at a rate of 4 to 1.

This is the context in which the ACLC has approached police oversight. A history of disproportionate violence inflicted against black bodies, and the ensuing lack of consequences for the officers involved, have resulted in a fractured sense of trust and a healthy dose of skepticism with respect to police conduct and oversight.

The irony of this statement being delivered by someone who is not a member of the black community is not lost on me. But my experience at the clinic has exposed me to the harsh reality that different communities interact with the police in vastly different ways. This occurs in both practice and perception. Police services are public services, and police officers are public agents with the right to exercise deadly force. And, crucially, we are all the public. Therefore, while I'm delivering this statement on behalf of the ACLC, I'm also here in my capacity as a member of the public.

While Bill 175 is largely a commendable piece of legislation, there are certain sections contained within the Policing Oversight Act that are concerning to the ACLC and its community partners, with whom we've consulted. These sections are largely not the result of recommendations from Justice Tulloch, and we believe that their application will undermine the independence of Ontario's police oversight mechanisms and will also fundamentally compromise the public's confidence in Ontario's police. These sections are sections 16, 18, 19, and 33 of the Policing Oversight Act.

Section 16, "Power to investigate": Our principal concern with respect to this section is that it limits the jurisdiction of the SIU. Specifically, we request that sexual assault allegations against officers be included as a stand-alone ground for investigation under the SIU's jurisdiction.

Section 16(1) allows for an investigation into incidents resulting in:

"(1) The death of a person.

"(2) The serious injury of a person.

"(3) the discharge of a firearm at a person."

In no uncertain terms, sexual assault is inflicting serious bodily harm, and it's often combined with an abuse of power. However, the nature of this harm is unique and therefore deserves its own classification as an offence to be investigated.

Victims of sexual assault should not be precluded from bringing complaints forward for incidents that occurred prior to the enactment of Bill 175. This is particularly important if the accuser was a minor at the time of the incident, but this should apply to all victims regardless of age, gender or any other social classifier.

Section 18, "Investigation of related persons": This section allows the SIU to extend its investigations to "any other person" whom the SIU director considers responsible for the incident in question. This is, in the ACLC's opinion, the most dangerous inclusion in the Policing Oversight Act. The SIU depends on civilian witnesses' co-operation to assist its investigators. Section 18 shatters any protections that civilian witnesses currently enjoy, and will completely dissolve their inclination to co-operate. This section largely removes the SIU's confidentiality assurances to witnesses, thereby further inhibiting their potential co-operation.

Once a potential witness understands that they are potentially subject to a criminal investigation, they will understandably (a) refuse to co-operate, or (b) seek the advice of a lawyer. This lawyer will presumably advise against co-operation for fear of their client implicating themselves in the subject incident or any related criminal matter. Justice Tulloch did not recommend a provision akin to section 18 in his report. Its inclusion is a clever ploy that expands the jurisdiction of the SIU in theory but slams the door shut on the possibility for complete and thorough investigations into officer conduct in practice.

Section 19, "Ancillary investigations" and "Access to SIU files": Under this section, the SIU director must provide all SIU files to police services if the director refers an investigation of a potential criminal offence to a police chief. This inherently includes matters that do not result in criminal charges. Like section 18, section 19(5) attacks the SIU's ability to attract co-operating civilian witnesses. If a civilian suspects that their file, including statements and information, will ultimately be released to the police without their consent—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Matthew Boissonneault: —then they are far less likely to co-operate, for fear of the long-term impact.

For the sake of brevity, section 33 states that officers and designated authorities "shall comply with a direction or request received from the SIU director ... unless it is impracticable to do so." By assigning the purposefully vague qualifier of impracticability, it allows officers to evade full co-operation.

Overall, this is a matter of public trust and public confidence. The police services' duty is to serve and protect, which in my opinion—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Boissonneault. Your questioning begins now with the PC side.

Mr. McDonell?

Mr. Jim McDonell: Thank you for coming out today. You discussed a number of issues that go contrary to what the justice recommended. Any other side, or why you'd see that they would be included in this legislation?

Mr. Matthew Boissonneault: Pardon me?

Mr. Jim McDonell: Do you see why the government might have included these? Are there any merits or anything?

Mr. Matthew Boissonneault: I think that there are some. I don't necessarily think that section 16, for

example, is intended to exclude sexual assault. All we're saying is that we think it shouldn't.

The other one, section 18, subverts the meaning of what it's intended to do by, on its face, expanding what the SIU is allowed to do, which is something that looks good, but in effect, we think that it will give serious pause to any potential civilian witnesses who might co-operate with them. That's because even if the SIU director theoretically or hypothetically promises that he's not going to investigate them for anything whatsoever, they can't be certain. With that in the back of their head, or in the back of their mind, I think that they're going to be extremely reluctant to co-operate with police oversight mechanisms.

Mr. Jim McDonell: Have you had a chance to consult with the government on any of these issues, or with the ministry?

Mr. Matthew Boissonneault: We will be, in a few weeks. But we've heard from partners, other community advocacy groups, that have, and our understanding is that whenever section 18 is brought up, it's a non-starter. They will not discuss it, which honestly just exacerbates the concern we have. There is a specific reason why it's included, but it's one that they're not necessarily comfortable sharing with us.

0950

Mr. Jim McDonell: So they never provided any explanation—just an unwillingness to consult on it.

Mr. Matthew Boissonneault: Yes, although I'm not really an authority on that because I wasn't present at the meeting. That's what we were told.

The Chair (Mr. Shafiq Qaadri): To the NDP side: Ms. French.

Ms. Jennifer K. French: Thank you very much for a very comprehensive presentation, which I would like to have. Is there a submission for us—

Mr. Matthew Boissonneault: Is there a portal through which I can submit it online?

The Chair (Mr. Shafiq Qaadri): Email it to the Chair. And the text, of course, is in Hansard.

Mr. Matthew Boissonneault: Okay. Would you like a copy for now?

Ms. Jennifer K. French: We'll make sure that we get it before you leave today, because I'd like to be clear on the specifics.

You called section 18 the most dangerous inclusion of the oversight act, shattering the protection of civilian co-operation. From where I sit as a member of the civilian community, I can't imagine that keeping people out of the process is actually the goal. So I'll be interested to hear the government's answer to that. It would also be interesting to connect with the police on that and get it from all parts. I am curious where that comes from.

You had to go through that really quickly. Was there anything that you weren't able to get on the record?

Mr. Matthew Boissonneault: We do think that Ontario police do their job extraordinarily well. There are just a few things included in here that we think will do more harm than good.

I flew through section 33. Police officers have a duty to comply with SIU investigations unless it's impractical. In our opinion, the issue of practicality is something that should be discussed on a case-by-case basis between the director and the officers involved, if anything, but to assign it pre-emptively is just insulating officers from potentially having to co-operate. We don't see why that qualifier is being assigned without any further explanation in terms of what it actually does.

Ms. Jennifer K. French: On section 16, the power to investigate, you were talking about how sexual assault allegations should be a stand-alone section, and then I thought it was in answer to someone's question that—I thought what you said was contrary to that. Can you just clearly state what you would like to see?

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Matthew Boissonneault: We would like to see sexual assault allegations against officers be included as a fourth stand-alone ground for investigation by the SIU.

Ms. Jennifer K. French: As it stands now, you said it's not included.

Mr. Matthew Boissonneault: It's death, serious injury, and the discharge of a firearm.

The Chair (Mr. Shafiq Qaadri): To the government side: Ms. Wong.

Ms. Soo Wong: Thank you very much for your presentation. I appreciate your comments and suggestions on how to strengthen Bill 175.

In your presentation you didn't talk too much about the oversight in terms of the agency collecting personal data that includes race-based data. I want to hear your opinion. How would that benefit or support the clients you serve at the African Canadian Legal Clinic? Can you just provide some information about that?

Mr. Matthew Boissonneault: In our experience, there is an absence of quality data that discusses the communities that police interact with. Different sources do have them—and this expands beyond law enforcement; it's essentially every major social institution. The more data we have, the better we are able to identify problems and try to work with people to achieve solutions. That's a bit of a platitude, but we focus on data so much at the clinic because it works. It's almost like a biopsy.

Ms. Soo Wong: I wanted you to push out section 18—you have expressed concerns to the committee. In your submission to the committee—I know you have offered to share that with us—does it talk about how we improve that particular section? You have expressed concerns to the committee about the co-operation of the civilians and getting witnesses' support and that kind of stuff. Does your written submission to the committee give us some suggestions on how to improve that particular section?

Mr. Matthew Boissonneault: It doesn't, really, and that's because, when we all got together and discussed this—

Ms. Soo Wong: Who's "we"?

Mr. Matthew Boissonneault: The ACLC and our partners within the community.

I don't know if I'm at liberty to go into detail about that. But they want it excluded in its entirety.

Ms. Soo Wong: They want to delete that whole section?

Mr. Matthew Boissonneault: Yes. They want section 18 gone.

That being said, we would be more than happy to look into it and, if you guys are interested, to work with you in terms of coming to a compromise. But it doesn't seem like there's much room to work with something where there are just polar opposites.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Soo Wong: Thank you very much for your presentation.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Boissonneault, for your deputation on behalf of the African Canadian Legal Clinic.

BLACK ACTION DEFENSE COMMITTEE INC.

The Chair (Mr. Shafiq Qaadri): I'll now invite our next presenters to please come forward: Mr. Gilliam and Ms. Steele of the Black Action Defense Committee.

Welcome. Please be seated. Your five minutes begin now.

Mr. Kingsley Gilliam: Good morning, Mr. Chairman, and members of the committee.

You know who the Black Action Defense Committee are, so we're not going to spend time introducing ourselves.

We are here representing the board of directors, membership of the Black Action Defense Committee and all Ontarians who yearn for a day when their children and other family members can walk the streets in safety, when they can walk the streets without harassment or brutalization by police, who stop them for no apparent reason and question them and give them a beating if they don't co-operate, like they did with Dafonte Miller in Whitby two years ago.

People yearn for the day when they can have a crisis and can call 911 with an assurance that their loved ones will not end up dead, like Andrew Loku, who was picked up on the Don Valley Parkway by Toronto police officers, riding an ebike at night. It was a rainy, foggy night. For his safety, they took him up, they drove him off. Actually, they got permission to take him home, across the city, to Gilbert Avenue. Another cruiser or a tow truck was coming with his bike. Within half an hour of him arriving at his home, something occurred. The police were called. Within 20 seconds of the police arriving on the landing, 28 feet away, Mr. Loku was shot dead. When asked at the inquest what happened after he shot him, the officer who fired the fatal shot said he fell like a tree.

Ladies and gentlemen, this is the type of policing that we have. I'm not saying that all police are like that. But this is routine.

Dafonte Miller, who I referred to, was beaten up by an off-duty Toronto police officer and his brother. They chased him and beat him with a piece of steel pipe and broke his bones. His eye was knocked out of his head. Then they called Durham police. Officers came, and they told them that he was assaulting them or breaking into cars or this type of thing. This is totally untenable.

The presenters before—Mr. Brauti, on behalf of the Toronto Police Association—will tell you to scrap this bill.

We have put tremendous energies and years—over four or five decades—of working with successive governments to try to deal with this issue, and none had the courage to take it on, because they were all afraid of the police.

1000

We cannot have that in a free and democratic society. Your freedom as legislators will be determined by what freedom the police deem you should have. That's a police state. Canada is a democracy.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Kingsley Gilliam: We are here to unequivocally support this bill, although it did not go far enough for us in some respects.

Mr. Brauti told you about all the problems that it will cause, with these penalties for non-compliance with the SIU. That is an indication that there is still an intent not to comply, so they don't want any penalties for non-compliance—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Gilliam.

We'll pass it now to the NDP: Ms. French.

Ms. Jennifer K. French: Thank you very much. I'm glad to see you again. The last time I saw you was in Durham region, in Oshawa. Welcome to Queen's Park.

I appreciate your passion, but I'd like to also pull from you some specifics, if possible, in the legislation. You say that it doesn't go far enough for some of the specifics. I'd like to know, whether it's accountability or oversight or any part of this, if there are any sections that you would tighten up or clarify, or where you haven't received assurances from the government that it accomplishes what you were hoping it would.

Mr. Kingsley Gilliam: Let me put it like this: We have worked tirelessly with the two ministries involved in putting this bill forward, so they have got our input.

We know that you cannot get everything in one fell swoop. However, one of the major issues that affect this whole thing around the SIU, or the OSIU, is the issue of the compliance with the early investigation. We have seen stonewalling. Weeks and months after an incident, neither the subject officer nor the witness officers—the subject officer never gives any evidence, and the witness officer was never available, and they do all kinds of things to prevent having to account for their actions.

Our position, while it may not be this bill's, is that police officers are not ordinary citizens. Ordinary citizens are not given the power of carrying a gun and using deadly force on others, or the power of arrest. The state

has imbued them with that power through legislation. Therefore, they should have an obligation to be held accountable for their actions.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Kingsley Gilliam: For every use of deadly force, they should be able to account for why that was the only option available.

Secondly, on that note, when the Charter of Rights and Freedoms was introduced by Pierre Trudeau in 1981, it was intended that ordinary citizens would have some rights, that they could not be arbitrarily stopped—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. French.

We'll move now to the government side: Ms. Wong.

Ms. Soo Wong: Thank you very much for your presentation and for sharing your opinion about Bill 175.

I'm particularly interested in your opinion on how this proposed legislation, in terms of the new requirement for public reporting, would improve the confidence. I've consistently heard about the African Canadian community's lack of trust, lack of confidence. How will this proposed legislation, in terms of public reporting, improve public confidence in terms of police oversight? Because that's what the essence of this bill is.

Mr. Kingsley Gilliam: We have been saying, from before this conversation began at the police services board, that for policing to regain the confidence of the people, it has to go back where it began. In 1829, Sir Robert Peel, who invented modern policing, designated nine principles—it's in my presentation—that would be required if policing was to be effective. Those are that the community must have trust. The police are the community, and the community are the police, and they trust each other.

Until we create the conditions to go back there, you're not going to get the confidence. We have cohort after cohort of kids growing up in the GTA, not only in Toronto, who would rather deal with bullying than call the police, because the police are a worse enemy to them than the gangsters. That undermines any attempt or perspective of getting trust. You cannot hire enough police officers to keep any community safe, because you would have to buttonhole each resident with a police. You'd have to have a one-to-one. So it is the morals, the values—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Kingsley Gilliam: —the general mores and laws and people's values that sustain and that keep them from breaching the law. As long as you are looking at the enforcement and throwing money after police to stop people from breaking the law, but they have the inner fortitude and desire to break the law, you're not going to change things. What we have to get back to is certain common values that society holds dear.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Wong. To the PC side: Ms. Scott.

Ms. Laurie Scott: Thank you very much for your passionate and well-spoken presentation here this morning. Really, I don't have any questions. You've done such a great job in your presentation.

I thank you for coming this morning and answering the questions and doing a presentation and for the many years that you have been fighting for equal rights.

I don't know if you want to add anything? But I just wanted to say thank you. You and Valorie did a—and if Valorie wants to speak at all?

Mr. Kingsley Gilliam: There was one point I was about to add, and that was about where the bill falls short.

Ms. Laurie Scott: Okay, sure.

Mr. Kingsley Gilliam: It comes to the issue of the subject officer. Subject officers are not expected to provide accounting as to why they fired the gun or did take whatever action that brought them here. That is on the assumption that their charter rights protect them from this.

I am not a lawyer, but I do not believe that the intent of the framers of the charter was to protect law enforcement from accounting for their actions. I think it was to provide protection for civilians against abuse. I believe strongly that once you are given a gun, a badge and are in uniforms, you are no longer an ordinary citizen, and you have a responsibility to carry out your duties to the best of your ability within the framework of the law. When you have so done, and it involves lethal force, you should be able to justify it.

So I think that this area needs to be explored because—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Kingsley Gilliam: —I have monitored all kinds of these situations, and Mr. Brauti told you that there are no statistics and things. Yes, because if you do not gather data, you will not have any data to give out. If you don't monitor incidents of non-compliance, you won't have any record of non-compliance. All of this is based on data collection and administrative—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Scott, and thanks to you, Mr. Gilliam and your colleague on behalf of the Black Action Defense Committee.

This committee is in recess until 2 p.m. in this room this afternoon.

The committee recessed from 1010 to 1401.

ONTARIO ASSOCIATION OF POLICE SERVICES BOARDS

The Chair (Mr. Shafiq Qaadri): Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice.

As you know, we're here to consider Bill 175, An Act to implement measures with respect to policing, coroners and forensic laboratories and to enact, amend or repeal certain other statutes and revoke a regulation.

We'll begin our five-minute opening address with the next presenters" Mr. El-Chantiry, president, and Mr. Kaustinen, of the Ontario Association of Police Services Boards. Your five minutes begin now. Do introduce yourselves, gentlemen, and welcome.

Mr. Eli El-Chantiry: Good afternoon, Mr. Chair. My name is Eli El-Chantiry. I'm the chair of the Ontario

Association of Police Services Boards and also the Ottawa Police Services Board. With me is Fred Kaustinen, executive director of the Ontario Association of Police Services Boards.

We are here to share our views on what we like about Bill 175. These views and suggestions are based on our participation in over 200 Future of Policing meetings, from hosting several conferences and seminars about police reform, and from serving our 500 members.

Fred will now address the details of our submission. I'll turn it over to Fred.

Mr. Fred Kaustinen: Thank you, Eli.

Committee members, if you'd turn to page 3 in the slides that we've provided, I'll start with what we like about the bill.

I'd just like to highlight three things in here. The first is that the new oversight provisions, as suggested by Justice Tulloch, essentially set a new global standard for investigative independence and transparency. This is truly impressive.

There is a concerted attempt in this bill to clarify police board responsibilities to strategically govern police operations through policy without interfering with any specific police activity or investigation.

Thirdly, the minister is identified as responsible for police board training. This is woefully lacking in Ontario, and we're glad to see it.

Finally, it should be mentioned that it's also great that these features have been offered to First Nations communities.

There are four areas that we take some exception to. The first is the OPP detachment boards concept, which we support, but we do think that municipalities should be the ones to determine whether their local OPP boards are disbanded, rather than that decision being forced upon them by the province.

Second of all has to do with the collective bargaining process. Currently, the bill suggests that a police board member must be present through all of the negotiations. This doesn't happen anywhere else in Ontario. It's a huge distraction from governance, and it weakens the bargaining process. We want to have the boards remain as those that authorize the mandate to professionals and those that ratify the agreement, rather than be forced to be part of the bargaining process itself.

Thirdly, boards should be allowed to make policies about police deployment rather than making decisions about the deployment of specific officers. That's an area that needs to be tweaked in the act.

Finally, with regard to budget arbitration, where there is dispute on police budgets between boards and municipalities, currently it says that adequacy standards are the baseline for arbitration decisions. We believe the local boards' strategic plans for policing also need to carry just as much weight in those decisions.

There are a few other suggestions here about the transition from the old legislative paradigm to the new one. Essentially, there are some areas we're suggesting where it's best perhaps phased in.

Finally, we recognize that lots needs to be done in regulation. We specifically note that establishing board performance standards needs to be done, and compulsory board training needs to be identified.

Thanks for your interest. We look forward to working with all the stakeholders in implementing this bill.

The Chair (Mr. Shafiq Qaadri): Thank you, gentlemen, for your opening remarks.

We'll pass it now to the PC side. Ms. Scott.

Ms. Laurie Scott: Thank you very much for appearing here today.

This is a very large change in the Police Services Act. I think it's the largest in 20 years. It's a very large bill. Were you able to give input to the creation of the bill? Was there enough time? It's very large. You represent a very critical part of policing. I know that you made some recommendations, but could you elaborate on what you would like to see? Was there a consultation done?

Mr. Eli El-Chantiry: Through the Chair, Madam Scott, thank you very much for the question.

Yes, we believe we're overdue for the changes. As you mentioned in your remarks, it has been over 20 years. We have done quite a bit of consultation across the province. Also, as a sitting member of Future of Policing, we had attended over 200 meetings. We had 30-odd members across the province. I believe it would be almost impossible to achieve everything we would like to see, but the act is a step in the right direction.

I'm sure Fred wants to add something.

Mr. Fred Kaustinen: Yes, it's almost 30 years. It's well overdue. All the stakeholders have been participating in those meetings. Nobody is 100% satisfied, but the parts where it's compromised from our original positions, we're fine with, just with those four minor exceptions. It's a good move forward for the public.

Ms. Laurie Scott: I received a letter from a member of a rural police services board—and I know you addressed it a little bit, but I just want to read parts of the email. The person expressed strong concern over the creation of the OPP's detachment boards, which they believe will erode the independence and autonomy of local police services boards. They point out the vast distances that detachment board members would have to travel in a rural setting, and note that the bill doesn't spell out the number of members on a detachment board or how communities will be represented. I just wondered if you had heard that issue come up and if you had a comment.

Mr. Fred Kaustinen: Yes. There are 350 municipalities in Ontario that receive municipal policing services from the provincial police.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Fred Kaustinen: Less than half of those have representation on the boards. So the detachment system brings in over 200 more communities being represented. How that gets done needs to be sorted out in regulation, so we've made some suggestions on how to best satisfy everybody's interests.

Ms. Laurie Scott: Thank you very much. I look forward to those comments.

The Chair (Mr. Shafiq Qaadri): To the NDP side: Ms. French.

Ms. Jennifer K. French: Welcome to Queen's Park.

Mr. Eli El-Chantiry: Thank you.

Ms. Jennifer K. French: I had a few questions. As you said, there were four points that you take exception to. I was just curious: When it came to the collective bargaining process and your thoughts on that, can you expand a little bit? Because you've said that you want to be involved but not mandatory. What did I not understand there?

Mr. Eli El-Chantiry: Maybe I can shed some light on this. As you know, Ms. French, I'm the chair of the Ottawa police board. Right now, a board member must attend the negotiation. What we're asking is—a board can delegate this, if they wish, to HR or a legal service. As you know, we're the only sitting—it's mandatory for a board member to sit on a negotiation. We believe we can delegate this, with a direction to our HR or our legal staff to be able to negotiate.

In my city of Ottawa, we have over 7,000 members of CUPE 503 and over 3,000 members of the transit union, and we don't sit, as a politician, and negotiate. Neither does the minister of our ministry. They don't sit and negotiate with the OPP.

So we're saying we don't need to be there physically; we can have our direction and remove the politics out of negotiating and focus on policing and safety.

Ms. Jennifer K. French: Thank you. You also mentioned in your presentation that there is much that needs to be done in regulation. One of the things that I've been hearing broadly is that much in this bill will be left to regulation. Is there anything that the government has told you will be left to regulations that concerns you, anything that you think should actually be subject to a debate and a vote and be talked about now, as opposed to left to regulations?

Mr. Fred Kaustinen: Everybody wants to see their sacred cows enshrined in the legislation, but I think there needs to be a saw-off between what's in the legislation and what's in the regulation. We can live with that the way it's been presented.

1410

Ms. Jennifer K. French: Okay.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. French. To the government side: Ms. Sandals.

Mrs. Liz Sandals: Thank you very much for your presentation. I guess we're all interested in the concept of a detachment board. I will say that in the neck of the woods where I live, there's both a model I'm aware of, where there's one detachment where I think there are six different police service boards overseeing it, and then the other extreme, which is one board for an entire county that oversees more than one detachment. So I sort of see the larger model as having been more effective than the fragmented model.

I was wondering why you wanted to keep the old contract boards in place, even as you move to a detachment board model.

Mr. Eli El-Chantiry: We're not saying we want to keep it; let the municipality decide this. Where I come from, in eastern Ontario, I have a county. They have eight boards with one detachment, so the detachment commander really has to attend eight different meetings with eight different requests. We're saying maybe it should be one detachment per one board on a county level.

I know we need to have a little bit of consideration for the geography. As you go up north, there's a different geography, there's distance, there are multiple areas. But we're saying, let the municipalities work with you and do a transition; not just say, "No, we have decided this area will have a board, this area doesn't have a board." That's what we're trying to—

Mrs. Liz Sandals: Are you suggesting that the old contract boards would continue to have some power, or simply that they would be advising the new larger detachment board?

Mr. Eli El-Chantiry: We need to work together. I came here from a municipal service. Obviously, it's a little bit different for us, but what we heard from our members with the OPP area—I mean, a community needs to have a voice; a community needs to have representation. At the same time, one detachment represents 20 communities. How many people are you going to be able to have on one board?

We need to work on some of the detail together, but what I'm saying to you is, one board per detachment. We've seen it work in some areas, and in some areas, actually, they're asking for it to be that way.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Fred Kaustinen: I'd just add to that that the contract boards currently have very limited powers, and the detachment boards look like they will have more power. You could still have an outlying local board that's establishing priorities for its own local community, and that could fit in quite well underneath the detachment board.

Mrs. Liz Sandals: But would you still be expecting the commander of the detachment to visit all of these?

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Sandals. That question will have to remain rhetorical.

Thank you, Mr. El-Chantiry—shukran—and Mr. Kaustinen for your deputation on behalf of the Ontario Association of Police Services Boards.

Mr. Eli El-Chantiry: Thank you very much.

The Chair (Mr. Shafiq Qaadri): Afwan.

SAFER ONTARIO ACT REVIEW COLLECTIVE

The Chair (Mr. Shafiq Qaadri): I now invite our next presenters to please come forward: Mr. Singh and Ms. Yanful of Safer Ontario Act Review Collective. Welcome.

Mr. Knia Singh: Good afternoon.

The Chair (Mr. Shafiq Qaadri): Please be seated. If you have materials for distribution or for copying for our colleagues, let us know.

Mr. Knia Singh: Thank you.

The Chair (Mr. Shafiq Qaadri): Please begin now.

Mr. Knia Singh: I apologize; I'm just plugging in the computer.

Good afternoon, committee. My name is Knia Singh, and I'm accompanied by Nana Yanful. We're part of the SOAR Collective, the Safer Ontario Act Review Collective.

The SOAR Collective is an ad hoc, independent group of greater Toronto area-based African Canadian lawyers and legal scholars. In this brief, the SOAR Collective sets out its recommendations for Bill 175, using an African Canadian lens, to ensure greater policing and oversight accountability, transparency and racial equity for African Canadians across Ontario.

There is a history of policing the African Canadian community that is directly linked to the enslavement of African people over four centuries by the British Commonwealth throughout the western hemisphere. This direct link between slave patrols, stopping, detaining, arresting and abusing people of African descent has carried on until the present day, in 2018, with a disproportionate number of African descendants being subject to policing policies and behaviours.

The Ontario government has taken a bold step forward to improve the Police Services Act to protect the rights of Ontario residents and ensure accountability at all levels of policing. The SOAR Collective is in a unique position to assist with the review of the Safer Ontario Act and provide valuable input that can improve policing in Ontario, due to the first-hand experiences of injustice against African Canadians at the hands of police in the province of Ontario.

It is indigenous and African descendants who have been subject to the discrimination and abuse by police services across the province of Ontario, which is reflected in the disproportionate amount of arrests, charges and people incarcerated compared to the rest of the general population. It is through this lens that the SOAR Collective has analyzed Bill 175 and is presenting these important observations, suggestions and recommendations. It is our hope that these recommendations will be taken seriously and acted upon in order to make this a safer Ontario for all, regardless of race, colour or ethnic origin.

The document we've presented to you has 10 bullet points to start off, and those are the 10 most important things we've taken from Bill 175. I will go through in order the first 10. The rest of our document provides the recommendations in wording and language in the schedule, as it is in the draft of Bill 175. We will be providing any amendments before the deadline is reached. We're open to any conversations with the committee if they require more information from us.

First of all, there is no specific mention of the African Canadian and/or black community in the initial address. By failing to mention the community, it fails to recognize the unique histories and cultures connected to these communities. I've outlined it in my introduction.

We understand First Nations; this is traditionally First Nations land, and that's why historically the government has recognized their rights in a unique position. But what has been left out of British and Canadian law, government and acknowledgement is the connection with African Canadians and the trans-Atlantic slave trade. We are submitting and letting the committee know that the experience of land being taken and African people being taken from the continent and brought here has created a unique history where the socio-economic conditions are worsened, discrimination is acted out in a different way and, as I've said before, it's reflected in the populations in prison, the charges, arrests and, recently, what we know as arbitrary detention and carding.

If this is not acknowledged, we're not being truthful to the reality of what policing is in Ontario and across the country. We see a disproportionate amount of deaths through mental health or shootings that are affecting the community.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Knia Singh: Police services boards: The duties and responsibilities of the boards are to provide effective governance.

Schedule 1, part IV: We want to ensure non-conviction records are not part of the approval process as it does deter and limit people from the community taking part as employees of the police service.

As I do not have enough time, I'll ask the Chair if there's an extension of time warranted or granted. If not, all of our recommendations are located in the document.

The Chair (Mr. Shafiq Qaadri): Thank you. Time passes to the NDP: Ms. French.

Ms. Jennifer K. French: It's my opportunity to ask questions or to give you space to comment further, if you'd like to take the opportunity to continue your presentation.

Mr. Knia Singh: Thank you, Ms. French.

I will jump forward to bullet number 8, on the Ontario Special Investigations Unit, because the information I've been presenting directly relates to the investigation of serious bodily harm or death. There are a number of concerns laid out with this bill.

There is no mention of the collection of race-based data for research and analysis, and we believe that's very important to understanding the climate.

There is no requirement to investigate when an officer's gun is used. There are many reports of firearms being drawn on civilians, and that should be accounted for when analyzing a police officer's actions.

1420

The director is not required to report to the public on why it decided not to investigate a matter for which it was given notice.

These are serious concerns to the community, as we sometimes feel the community's concerns are overlooked and not taken seriously. With that being addressed, it would provide the community with more support.

The SIU should be required to share information with the victim's family, support person and other supporting

organizations. In the community, there a lot of people who are under-resourced, and having the victim's family, support or other community organizations with the resources—the SIU should be able to provide and share that with them.

There should be a requirement that the staff and investigator complement of the SIU be reflective of the pluralistic, multiracial and multicultural character of Ontario society—specifically from communities under-represented within the oversight bodies.

There should be a requirement that there should be an African Canadian liaison team or support person employed by the SIU, and an African Canadian advisory body. Again, committee, we do press upon the importance of involving the African Canadian community at this level because, as we see, there's a disproportionate effect to First Nations and African Canadians. Without communication with the community, we perceive that these problems will continue.

But we do acknowledge the Ontario government's bold step forward in addressing and revising the Police Services Act, and that is why the SOAR Collective has come together to analyze.

Thank you, Ms. French.

Ms. Jennifer K. French: I'm probably almost out of time.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Jennifer K. French: Shoot; I was listening so intently.

I want to ask you if you have any concerns—the same question I've asked before—about what might be left to regulation, things you'd like to know now, rather than leaving it to after the fact, in backrooms?

Ms. Nana Yanful: There wasn't anything specifically, Ms. French, but we know that we can make recommendations to the ministry regarding regulations when that time comes. We did have some language that we would like included—

The Chair (Mr. Shafiq Qaadri): To the government side: Ms. Wong.

Ms. Soo Wong: Thank you very much for your presentation and your written submission.

I see the executive summary with all your recommendations. I want to push a little bit further with regard to your comments on recommendation number 5, dealing with a new inspector general. You commented that that particular new position doesn't go far enough—at the bottom of the first page—saying that there's no requirement that the inspector general provide a fulsome report to the minister. Can you elaborate a little bit more about that? What do you mean by "fulsome" reporting?

Mr. Knia Singh: Just a brief indulgence, Ms. Wong—we have all of our notes related to each section that our collective has worked on, so I do not want to misquote any of our members.

Accountability is a big piece of the way a community reviews any changes to legislation. The fact that there's no requirement that the inspector provide a report—when the authority is left with the inspector, we expect the inspector to be able to produce something. If he can't provide a report to the minister, then the minister doesn't have the information required to make the final decision. That is where we have found a deficiency now.

I'm looking at the notes—

Ms. Soo Wong: Maybe you could follow up with us.

We have had a number of witnesses before this committee already; it's 2:25. I think you're the first group to have indicated your support of the community safety and well-being plans. You saw the importance, and I think you made a recommendation to this committee that that plan be posted on a website to ensure more transparency. Others saw this as extra work for the chief or for the police community. Can you elaborate a little bit more, in terms of building confidence—because much of this proposed legislation, if passed, is, hopefully, building more confidence, more trust, more relationships with policing. Could you elaborate more about this particular community safety and well-being plan as it relates to the government's intent of more oversight?

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Knia Singh: Yes. To briefly sum it up, the fact that the plan is written in the legislation is productive and beneficial. However, if the community does not know, they will not have faith. If it is posted by each municipality, then they have a recourse to follow up. That has happened with the regulations. The regulations are great on carding, but the community doesn't understand them, and there needs to be more outreach. It goes the same with the Police Services Act.

The language on the information: Before, it was "shall" versus "may." The language says "may." We want "the inspector shall provide a report"—not the opportunity to decide whether he does or not.

Ms. Soo Wong: Okay. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Wong.

Now to the PC side: Ms. Scott.

Ms. Laurie Scott: Thank you for appearing here today and for a very organized report. Are there any specific ones that you didn't get a chance to elaborate on that you would like to? I can ask otherwise, but I appreciate the fact that you've done a lot of work, and so if there's something you wanted to highlight without me asking specifically, please go ahead.

Mr. Knia Singh: Yes. Well, thank you. I'll let Nana just skim through, but I will comment, basically, on the diversity plan and the community well-being. We did recognize it as a very positive step forward, and we did welcome all the changes.

There is one instance—in the municipal boards, there's a recommendation about five, seven or nine members. Our collective believes that there should be an allowance of up to 11 members, because certain municipalities have greater populations, such as Toronto—great; diverse—and 11 members would fit in the major metropolitan areas in Ontario. So we would think that would be a good recommendation, to expand the board to that level.

Police record checks in section 33(2): "The appointing person or body must consider the results of a potential appointee's police record check...." Now, criminal checks only provide criminal convictions, but a fulsome, vulnerable-sectors check and a police record check also show non-conviction records. We would like to see the legislation reflect that it would not be examining those non-conviction records, because it could deter people who have a lot to contribute from being part of the process.

I myself have 11 non-conviction records. However, that would prevent me from being part of the process if that was a screening-out form.

Ms. Laurie Scott: I was going to ask for clarification on that, so thank you.

Please go ahead. Did you—

Ms. Nana Yanful: Yes. I think I would focus a little bit on the powers or duties of the chief of police. There were a few things that our collective did find, specifically on issuing discipline. That's number 6 on page 2 of our document. We said that officer misconduct or unsatisfactory work performance wouldn't be considered when issuing discipline. Because the chief does not possess the ability to terminate an officer for those things, outside of an application for a tribunal, we thought that this process might be time-consuming and result in increased legal costs for the service. That was just one item that we identified under that heading.

Ms. Laurie Scott: Okay. Thank you very much.

Ms. Nana Yanful: Thank you.

Mr. Knia Singh: And a final one, on the declaration of principles: The principles are outlined and they speak about the need to do things.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Knia Singh: Some of us analyzed this and recommended that it shouldn't be "the need"; it should be a directive. Instead of "the need to be responsive," use "shall be responsive," "should be responsive," "must be responsive." "The need" is an ideal that is open to interpretation. A straight directive in the act would give the imperative for the officers to really live up to the act.

Ms. Laurie Scott: Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Scott, and thanks to you, Mr. Singh and Ms. Yanful, for your deputation on behalf of SOAR.

Mr. Knia Singh: Thank you.

MS. MAUREEN TRASK

The Chair (Mr. Shafiq Qaadri): I invite our next presenter to please come forward: Ms. Maureen Trask. Welcome, Ms. Trask. Please be seated. Your five minutes begin now.

Ms. Maureen Trask: Thank you to the Chair and committee for this opportunity to speak regarding Bill 175, the Safer Ontario Act.

Personally, I have no problem with what is being proposed in the bill. Modernization of such an established institution as policing is overdue. The course of action to strengthen police oversight and clarify police functions in terms of community need is necessary.

So my focus is not on this entire bill; I'm focused on the Missing Persons Act, schedule 7 of the bill, and will speak to it.

For over four years, I've advocated for this legislation, along with other families who have missing loved ones. I want to start by giving you a recap of key milestones along my journey to this point.

December 2013: Local families collaborated with Waterloo Regional Police, shocked to learn that police have a major roadblock to investigate missing persons cases where there is no evidence of crime. Police have no authority to access personal information or the ability to search possible premises that could lead to finding missing persons. Current legislation allows for access only if there is evidence of crime. That means that when there is no evidence of crime, families are left frustrated and do not have equal investigative rights that could help to find their missing loved one.

1430

In April 2014, after researching and learning that a missing persons act had in fact been implemented in other provinces, and that it was recommended by the federal government to have an act in place for all provincesprovinces and territories, it was a matter of getting a missing persons act in Ontario.

In June, I met with my MPP Catherine Fife, Kitchener–Waterloo, to discuss the issue and get a petition started. In October 2014, she introduced the petition to the Legislature, asking government to introduce missing persons legislation. Letters of support were garnered from various stakeholders, including the Ontario Association of Chiefs of Police. In October 2015, a motion was made by MPP Fife for missing persons legislation and was supported by all parties.

In January 2016, a Ministry of Community Safety policy team, of which two members are here today, was set up, and monthly conference calls took place regarding research, privacy concerns and consultations with government and stakeholders. Draft legislation was helped by provincial examples and the Uniform Missing Persons Act that was adopted by the Uniform Law Conference of Canada in 2014.

In November 2017, we saw Bill 175 introduced by this government, with little mention of the Missing Persons Act. This was rectified in the second reading debate.

Here we are now, four years later, but getting closer. I see some light. I've raised my questions about the drafted Missing Persons Act in my monthly calls with the policy team. All items were answered, understanding that regulations will cover off the details of many of the questions I had asked.

Will the Missing Persons Act make a difference? In my assessment and that of other families, yes. This act will ensure personal information is accessible to police and allow searching of premises in a timely and consistent manner to help find missing persons.

Reporting to the public is to be made on an annual basis. Statistics will help to determine patterns in the

data, identifying if things are getting better, worse or staying the same. Missing persons is a social issue that typically does not get reported on. It's glaringly absent from annual reports. This, too, needs to be part of all annual police reporting, if we're going to be able to understand the missing persons issue.

For implementation, here are some things to consider:

—ensure resources are available to conduct these investigations;

—develop timely regulations and prescribed transparent procedures; and

—ensure awareness and training for the judiciary and police; and

—provide information for families regarding what the legislation will and won't do.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Maureen Trask: A lot of time and effort has been put in. I appreciate all of the assistance and support from those who have worked on it. I will continue working on this and other legislative changes. I do this to honour my son Daniel, who was missing for three and a half years before his partial remains were found in May 2015. Daniel would want to know that some good has come from his demise. Any measures to get answers are well worth the time and effort.

Anyone might have a missing loved one—any of us. Every life matters. Let this guide your deliberations. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Trask.

I invite the government side. Ms. Wong.

Ms. Soo Wong: Thank you very much for your presentation, and for your hard work and determination. I know the government has heard your story, and I'm pleased that you continue to work with the Ministry of Community Safety and Correctional Services on this particular file.

I know that the time is limited. Can you share with this committee any additional support that may be needed in terms of resources, in terms of family, in terms of investigating and supporting families with missing persons, that would be helpful?

Ms. Maureen Trask: I'm pleased to say that the policy team that was put together, in their consultations, actually covered off supports for families as the second priority. I was terribly dismayed when I first came on this journey to find that there are no supports. The indigenous review right now is telling us that they don't have resources. Quite frankly, nobody has resources available to them.

Police, quite frankly, as good as their hearts are, are not equipped to provide emotional support for families. There needs to be a level of expertise involved there. We wouldn't want to take away from them to do the investigative things and searching things that they need to do, so a lot of work still needs to be done on that. That, in fact, is one of my next endeavours.

Ms. Soo Wong: Thank you for your determination and perseverance on this file.

The Chair (Mr. Shafiq Qaadri): To the PC side: Ms. Scott.

Ms. Laurie Scott: Thank you very much. You've had quite a personal journey, Maureen, and you've been tenacious in advocating. I would say the Missing Persons Act—this section of the bill, anyway—is long overdue. You are making a difference in people's lives, for sure, by getting this. I think that most of the population would be surprised that there was nothing, and that the police did not have the tools.

This is Human Trafficking Awareness Day, in case you didn't know—

Ms. Maureen Trask: I know.

Ms. Laurie Scott: —so we've been speaking about it a lot in the Legislature. Of course, the intricacies of the tie-in to missing persons and children going missing and being trafficked is very much real.

As you've had the journey of developing the policy—I know that you're going to stay involved in developing the regulations, because we're just not there yet, as this is the framework legislation—I hope that you continue to advise us and to put forward your knowledge which you've gained over the many years.

When I hear from the police that there are 13,000 missing children in the province of Ontario—most people are shocked at that statistic.

I don't know if you wanted to elaborate on anything else you've found that you could share. I don't need to take the time.

Ms. Maureen Trask: I mentioned stats in my presentation. I'm very adamant about uniform statistics across Canada. The RCMP have a great jump-start on that, but there's a long way to go.

As far as the trafficking, yes, there is definitely a huge number of young missing persons, girls and boys, who are ending up in the trafficking arm. Unfortunately, they are being shipped so far away that it's difficult for families to track them.

Ms. Laurie Scott: That's right. Well, thank you for your time, and I hope to see you as the regulations go forward.

Ms. Maureen Trask: Definitely. Thank you.

The Chair (Mr. Shafiq Qaadri): Mr. Arnott, for one minute.

Mr. Ted Arnott: Thank you, Maureen, for coming today to make your presentation to this committee. I want to express my appreciation to you for all the work that you've done on this issue, and for informing me in previous meetings as to what needs to be done. I really appreciate everything that you've done.

You have indicated that some of the details need to be fleshed out during the course of the development of regulations, assuming this bill passes. I certainly give you my commitment that the members of the Legislature will want to work with you if there are issues that arise during the course of those discussions, because we need to get this right. It's so vitally important for so many families across the province—

Ms. Maureen Trask: I appreciate that, Ted.

I should have mentioned that I recently moved to Ted's jurisdiction as a constituent now, so my umbrella has expanded a little bit. But that's a wonderful thing.

Mr. Ted Arnott: And Catherine Fife deserves enormous credit for the work that she has done in the Legislature as well. Thank you.

Ms. Maureen Trask: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Arnott, for your intervention.

We'll now proceed to Ms. French.

Ms. Jennifer K. French: I would say that Ms. Scott and I are following a similar thought pattern today with the human trafficking conversation.

Also, I was curious for you to elaborate more on stats and the uniform statistics.

Before I ask about that, though, I did want to thank you very much for coming today, and for what has been, I am sure, an unbelievable journey. I think that your advocacy is much of why we're here today, so thank you for your involvement. I'm sorry Catherine Fife couldn't be here. I know she would be glad to sit across from you and say the same things.

I did want to know if you had any more thoughts on the specific stats you'd like to see accessible to police or to authorities.

Also, you talked about the training needed for judiciary and police, clear education about what the limits are or what is available in terms of tools for families—if you could expand a bit on what you'd already started.

Ms. Maureen Trask: Certainly. Thank you. As far as the statistics go, ask anyone how many missing persons there are in Ontario and you'll get many variations of answers. The issue is that most people, including the RCMP, report on the number of missing incidents. So if someone is reported missing three times, that counts as three times. It's not the actual number of physical persons.

1440

There's no continuity of those stats either. Within the year, how many were found? How many new ones went missing? How many, it may be found, resulted in a crime or homicide? There's no way of truly looking at the patterns in the data because all the data isn't there to tell us the story.

Ms. Jennifer K. French: That's been a bit of a theme today that I've heard. If we don't have the data, if we're not collecting the data, we can't analyze the data and we can't learn from the data.

Ms. Maureen Trask: Exactly. I only learned that by contacting the RCMP to try to get that answer, and they said, "We can't provide it."

Ms. Jennifer K. French: Do you have recommendations—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Jennifer K. French: —on what that education would look like? You had to learn it first-hand, in the thick of it. What would you like others to already know?

Ms. Maureen Trask: I'd like to see formal training for police, because most units do not have a formal missing persons unit. It's investigators who get involved, with no formal training. There should be, in the Ontario Police College, a curriculum on that. I know the OPP are looking at that.

The other thing is, for families, the biggest issue is communication and that relationship and rapport. They need to build and have that trust with the police. When I got involved, it was appalling, which is why I got the families together with the police to try to make it better.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Ms. Trask, not only for your presence, but also for sharing your very personal journey, on behalf of all the members of the committee.

CHIEFS OF ONTARIO

The Chair (Mr. Shafiq Qaadri): I now invite our next presenters to please come forward: Chiefs of Ontario, Chief Paul Syrette and Nathan Wright. Please come forward, gentlemen.

Your five minutes' opening address, please begin now. Do introduce yourselves as well.

Mr. Nathan Wright: Good afternoon. I'd like to thank the committee for your time today. My name is Nathan Wright. I'm the chief operating officer at the Chiefs of Ontario. I'm here today with Chief Syrette of Garden River First Nation, who is also a former police officer with many decades of first-hand experience.

First I want to acknowledge that we are on the traditional territory of many indigenous nations, in particular the Haudenosaunee, the Mississaugas of the New Credit, as well as the Anishnawbe Nations.

I'd like to start today by acknowledging the work that Ontario has done by taking very positive steps on First Nations policing issues. Many reports and First Nation leaders have called for legislative change regarding equitable policing standards and funding. Ontario has responded with amendments, which is a positive step forward.

However, we see three problematic areas where the proposed bill will undermine community safety and indigenous self-government. These would be unintended, but very serious, negative consequences. It would be unfortunate if these well-meaning amendments were marred with these negative elements, but luckily these problems can be solved by the very small and very specific changes that we are requesting here today.

Chief Paul Syrette: Thanks, Nathan. Good afternoon, committee members. I will start with the first requested amendment, which involved First Nation bylaw enforcement. Under the proposed amendments, First Nation bylaw enforcement would be expressly excluded from the list of mandatory police functions. In practice, this would make many bylaws unenforceable because many of our communities cannot find the funds to pay for our own bylaw enforcement. This is a community safety problem and a major impediment to self-government.

First Nation bylaws were likely excluded because municipal bylaws were excluded as well, but First

Nations are not municipalities and our bylaws and circumstances are very different. First Nation bylaws need to be enforced for important reasons that do not apply to municipalities. For example, we often use bylaws to implement indigenous self-government and to regulate our own lands and communities. The right to self-government was recognized by the political accord the Chiefs of Ontario signed with the Ontario government under resolution by the Chiefs-in-Assembly. But that recognition sounds hollow if First Nation bylaw enforcement is treated as optional.

Our bylaws also address fundamental community safety issues, such as keeping illegal substances out of our dry communities and protecting vulnerable community members from dangerous offenders. These are the kinds of issues that should be mandatory for police to enforce, just like other laws that protect community safety.

Lastly, unlike municipalities, First Nations often cannot afford to pay for their own law enforcement. If bylaws are not a mandatory police function, they will simply not be enforced in many communities. Our bylaws play additional and important roles relating to self-government and community safety, but there are fewer resources to enforce them.

This situation could be solved by removing just three words from subsection 11(2) of the proposed amendments. If this is done, future consultations can still take place about First Nation bylaw enforcement when regulations are drafted. However, if this is not done, the exclusion of First Nation bylaws will be set in stone, setting us back for many years to come, and undermining First Nation self-government and community safety.

We strongly urge you to make this small but incredibly important change.

Mr. Nathan Wright: Our second request is that First Nations policed directly by the OPP be able to appeal to an independent arbitrator if they are not receiving adequate services. The arbitrator can then order that the gaps in services be addressed. This kind of appeal mechanism was recommended in the Kashechewan inquiry, and that's been requested by First Nations for a number of years.

The process is needed to help ensure equitable policing levels for First Nations going forward into the future as governments and government priorities change. Although a complaints process has been proposed for the First Nations police by the OPP, this process is not binding to the Ontario government. It also is not impartial and it is not adjudicative.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Chief Paul Syrette: Although it may be acceptable in a municipal context, it is insufficient in a First Nation context because it puts the minister in an irreconcilable conflict of interest as a respondent to complaints, as the funder and as the final decision-maker in complaints.

Our third and final request is an important and sensitive wording issue. The proposed amendments state that "First Nation territory" means "a reserve." This is incorrect and very problematic. Our territories are far more expansive than our reserves. We have important rights and deep connections within our territories which extend far beyond our reserves, such as hunting and fishing rights. To refer to reserves, the amendment should use a term other than "territories."

And on a final note—

The Chair (Mr. Shafiq Qaadri): Thank you, gentlemen, for your introductory remarks.

We will pass it to the PC side. Mr. McDonell.

Mr. Jim McDonell: Do you want to finish your last point?

Chief Paul Syrette: If I could just state it, our ultimate goal is full First Nation control of First Nations' law and order issues. We believe this is necessary for us to have truly safe and healthy communities. The proposed amendments will not achieve that goal, and so we see this as a stepping stone in our long path. Thank you.

Mr. Jim McDonell: Thank you for coming out today. You talked about the requirement to appeal for certain levels. Maybe you could just elaborate on some of the examples that you'd be looking for as far as the appeal process to make sure your levels are brought up. It's your second item there.

Chief Paul Syrette: What we're referring to there is that First Nations communities—right now, there's an existing group of about approximately 40 that receive services by the Ontario Provincial Police. That unique group does not have a mechanism or an option to file appeals should they not be satisfied with the level of service that's provided. That's problematic. That's why we're addressing that issue—because they fall away from that option to certainly file an appeal if they're just not satisfied. That puts us in a very vulnerable position.

Mr. Nathan Wright: That includes issues like HR, equipment, training, all those services or requirements that a normal police force would normally have. They don't have an independent body to bring those issues forward for address.

Mr. Jim McDonell: Are there any other issues you have throughout the—to be a little more specific on in the bill?

Mr. Nathan Wright: In particular to your first question?

Mr. Jim McDonell: Overall, in anything.

Mr. Nathan Wright: Overall, in anything?

Mr. Jim McDonell: Yes.

Mr. Nathan Wright: I think the cultural appropriateness of the training provided thus far really needs to be addressed. The legislation is not going far enough in that particular area. That's one area that I know the Ipperwash inquiry has recommended and a number of the inquests have also recommended. And the chief can probably speak more to that.

Chief Paul Syrette: There have been a lot of steps taken and there has been a lot of training done with a lot of the services throughout the province, but it needs to be ongoing. There needs to be more. There needs to be

further recognition that it's not just a one-week cultural orientation course.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Chief Paul Syrette: There needs to be more impact. Come out to those communities and learn. Come and be educated by the First Nations and learn about what is required, and I think we'll be successful there.

Mr. Nathan Wright: Just on a final note, we do want to acknowledge the positive steps Ontario has taken with respect to First Nations policing. For example, Ontario does deserve recognition for the funding it has provided to address the wage gaps and wage parity between indigenous and non-indigenous—and also just to hold up my colleagues from MCSCS for their work on that particular issue.

Mr. Jim McDonell: Thank you.

1450

The Chair (Mr. Shafiq Qaadri): To the NDP side: Ms. French.

Ms. Jennifer K. French: Thank you and welcome to Queen's Park. I have so many thoughts and questions. I appreciate your submission.

I see that we didn't have the opportunity to get to the next steps. You touched on it with the culturally responsive services and your thoughts on that. Is that, broadly, to the rest of the bill, that you're wanting to see something else—or was that specific to the creation of NAPS?

Chief Paul Syrette: I think services are very important, of course, but there are so many other components when we talk about resolving issues, resolving conflicts, resolving all kinds of matters that we face on a daily basis. The understanding of that cultural aspect of it—the understanding of the significance of an eagle staff that is at a demonstration, the significance of the smudging ceremonies—and that is participated in with many of our friends and neighbours that we deal with. We have to live side by side. We're dealing with issues that sometimes get a little bit political. We want to recognize the fact that, culturally, we need to be there in understanding—just an understanding and that mutual respect for each other that deals with that cultural component.

Mr. Nathan Wright: Just further to that: The only way we can do that is, really, true partnerships in the development of the regulations going forward. That's a place where we're well-equipped, certainly, to help with that.

Ms. Jennifer K. French: I would imagine so.

You had talked about the bylaw enforcement and the lack of resources that would—why it would need to be done by police. What sorts of resources would be required to support this piece of legislation more broadly? Has there been a commitment to this? We see the framework here, and we see much to be accomplished in regulation, but I haven't heard a dollar amount.

Chief Paul Syrette: I don't have specific dollar amounts. But I can say—to use the example of the bylaw enforcement officer, we don't have those. We can't fund bylaw enforcement officers, although we want to have them. We rely on the police services that are there. They're tasked with enforcing these bylaws.

It's the uniqueness of that challenge alone, in funding. Again, it boils down to funding all the time. That's what we're trying to do, so that—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Chief Paul Syrette: We want to have that ability to self-govern and make our own laws that are specific for our communities—a vast province and the amount of First Nation communities throughout. We want each individual community to be able to do their own enforcement and make their own laws that are specific to their community—not one encompassing, say, a provincial offences act that just blankets everything.

Ms. Jennifer K. French: I'm very glad to see this in here, although, that said, I'm surprised it wasn't a standalone piece of legislation—but here we are.

Thank you so much for coming. Please keep us in your loop as you're having that input in regulations.

The Chair (Mr. Shafiq Qaadri): To the government side: Ms. Wong.

Ms. Soo Wong: Thank you very much, Chief and Mr. Wright, for being here today and for your written submission.

I noticed that in your written submission to the committee—my ministry, the Ministry of Community Safety and Correctional Services will be looking at it attentively, particularly the issue you raise about the culturally respectful piece. I think that the minister is prepared and continues to be working with the Chiefs of Ontario.

More importantly, I think we recognize your concerns about more resources, and also the training piece. Training is not one day; it's always ongoing, whether it is the Chiefs of Ontario or every policing board. This is a key piece.

I want to get clarification. With respect to Bill 175, except for these areas you have identified in terms of your presentation and your written submission—generally, the Chiefs of Ontario do support Bill 175 going forward. Am I correct to say that?

Chief Paul Syrette: Yes, that's very correct.

Ms. Soo Wong: The previous witness talked about one of our schedules dealing with missing persons. We know we have to do better. For that particular section of the schedule of the legislation, are you satisfied? Dealing with the community, can we do more—because of the cultural sensitivity piece? More importantly, I want to hear your view about that particular schedule.

Mr. Nathan Wright: There's definitely continued work with your ministry and my colleagues across the board and across the region on that. We definitely started the important work around missing persons and have provided thus far a number of commentaries and recommendations going forward within that particular context, but it's work unfinished. That's where I'll leave that.

Ms. Soo Wong: Okay. We've just begun.

Mr. Nathan Wright: Yes.

Ms. Soo Wong: Right. Thank you very much for being here. I really appreciate it.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Wong, and thanks, gentlemen, Mr. Wright and Mr. Syrette. Meegwetch, on behalf of the committee here.

TOWN OF CALEDON

The Chair (Mr. Shafiq Qaadri): I invite our next presenter to please come forward: His Worship Mayor Allan Thompson of the town of Caledon, and colleagues. Welcome, Mayor Thompson. Please be seated. Your time begins now.

Mr. Allan Thompson: Thank you very much. I'm Allan Thompson, the mayor of Caledon. I'm part of Peel region and I'm here to talk about the Police Services Act.

The challenge is that back in 1980, with the fast growth that Peel region was taking, we could not promote enough sergeants to build the platoons for the forces. So they pulled the forces out of the town of Caledon and brought in the OPP, which created a section 10 under the Police Services Act. So at this point in time, we have two forces that serve the region of Peel. The region of Peel's police services board is a separate entity where Caledon has no representation at this point in time.

Under the new act, it means that we have to have a choice of two different things. Here is the challenge and the dilemma in how the act is written. We've been doing our homework, and this is how and why I'm here. Do we create a separate board? Because it is big, for the OPP—we have 136 officers—so it means it can stand to have a separate board. But what the act is trying to do is simplify it, that each municipality have one board.

The challenge is that we do not have a place at the regional table. Looking at it at first blush, great. If Caledon doesn't do a separate board and is part of the police services board at the region of Peel, at first blush it looks like this: Yes, we just add two more and have two representatives, an elected representative and a citizen, who would move the board from seven to nine. And it means that we'll now have an elected representative and a citizen under section 10 of the Police Services Act.

The challenge is that when you go in-depth, we don't have the authority or the ability to do that municipally. What it means is we need direction from the province to say, "Okay, in order to accommodate the OPP, then we need to have the region of Peel directed by the province to do that." In the act, it doesn't say that, yet when we look at everything in our governance, we don't have the ability to go from seven to nine. We have to be directed by the province.

These are the two challenges we have. Basically, why I'm here is: Here are my questions; here is my dilemma. I have no opinion on everything. What I'm saying is we just need clarification on how we can move forward. I'm done.

The Chair (Mr. Shafiq Qaadri): Thank you, Mayor Thompson.

We'll now begin with the NDP. Ms. French.

Ms. Jennifer K. French: Welcome.

Mr. Allan Thompson: Thank you.

Ms. Jennifer K. French: I used to live in the little town of Palgrave, and I lived in Bolton for a time, so I welcome you.

I don't have the answer for you, not being in government and just sitting across from them. I will look forward to hearing their answer as you seek clarification. But I wonder if, like you, there are other jurisdictions in Ontario, and other folks who are going to find themselves in a similar predicament. Do you anticipate that? Do you see this as being not just unique to the—

Mr. Allan Thompson: I do know there are other section 10s, especially in northern Ontario, especially Wawa, but it's a little different and unique because it assumed certain areas where we're still part of the municipality. We're part of Peel region. We're 56% of the land mass. We have 69,000, and below us there are 1.5 million in the region of Peel. So it's an urbanized police force, and it's more of a rural police force that serves Caledon.

I have no qualms with how everything operates. It's just, basically, how do we get representation as a section 10 sitting at the police services board? Or do we create another one? Those are our real dilemmas. How do we make it work?

Ms. Jennifer K. French: You had said you don't have an opinion on this; you're looking for clarification.

Mr. Allan Thompson: Yes.

1500

Ms. Jennifer K. French: But if I pushed you and asked you for your opinion on this, is there a way that you would like to see it work? Or is it really a matter of either/or?

Mr. Allan Thompson: Yes. If you're asking me, I think we already have a very good infrastructure and a very good police services board that serves us well in the region of Peel. So if you were asking me, if I had my choice, I would probably say that it would probably be easier and quicker to just add two more representatives—representing section 10 of the police act—to represent at the police services board. To create another police services board means that, yes, you're just going to add more bodies, but you're going to create another layer of government, or a governing body. We already have something there.

That's what I'm saying: We have two ways to go here, but we just need clarification on the how.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Jennifer K. French: Unless there's anything else you want to add, it's their turn next, so I'm looking forward to their answer.

Mr. Allan Thompson: Thank you.

The Chair (Mr. Shafiq Qaadri): To the government side: Ms. Sandals.

Mrs. Liz Sandals: I am still trying to figure this out; sorry. Is there just one police services board at the moment for the whole of Peel region?

Mr. Allan Thompson: Yes, that's correct.

Mrs. Liz Sandals: So there's one consolidated regional police services board.

Mr. Allan Thompson: Yes.

Mrs. Liz Sandals: The Peel Regional Police provide the policing in Brampton and Mississauga.

Mr. Allan Thompson: Correct.

Mrs. Liz Sandals: That one police board chooses to contract out Caledon to the OPP.

Ms. Sandra Sharpe: It's a regional decision.

Mr. Allan Thompson: Yes, it's a regional decision.

Mrs. Liz Sandals: So it's a regional decision to contract Caledon to the OPP?

Mr. Allan Thompson: That's correct.

Mrs. Liz Sandals: So what you're saying is, you're okay with that structure the way it is now.

Mr. Allan Thompson: Correct.

Mrs. Liz Sandals: You just need the act to be clear that you can continue with that structure. Because at the moment, it looks like the act might require you to set up another police services board, and you're okay with the Peel regional police services board contracting part of the territory out—you, Caledon—to the OPP.

Mr. Allan Thompson: I am, but we have no representation at the board that represents Caledon. That's the challenge.

Mrs. Liz Sandals: So you don't have a seat on the Peel Police Services Board?

Mr. Allan Thompson: No, and that's why I'm saying let's put it under section 10. That's why. We have nothing of the sort. This is the challenge.

Mrs. Liz Sandals: Okay, now I get it. So there is actually a problem with the current structure. You're hoping you can get representation, but you don't actually want another police services board.

Mr. Allan Thompson: No.

Mrs. Liz Sandals: You just want representation on the existing one—

Mr. Allan Thompson: It makes the most sense.

Mrs. Liz Sandals: —and carry on with the contract.

Mr. Allan Thompson: Absolutely.

Mrs. Liz Sandals: It's the seats. Okay, now I understand. Thank you.

Mr. Allan Thompson: Sorry I didn't make it clear enough.

Mrs. Liz Sandals: It's an unusual situation.

The Chair (Mr. Shafiq Qaadri): Ms. Wong?

Ms. Soo Wong: Mr. Mayor, in terms of your seeking clarification on the governance issue, how many persons or representatives are you looking for, for Peel: one or two? I heard it's two.

Mr. Allan Thompson: Yes, it's two. If you read the act, right now it's at seven, so it has to go to nine. So you have one elected representative, which probably will be Caledon, and you'll have one citizen who would be there.

Ms. Soo Wong: Okay. All right. Thank you for that question.

Mr. Allan Thompson: Thank you very much.

The Chair (Mr. Shafiq Qaadri): To the PC side: Ms. Scott.

Ms. Laurie Scott: Thank you very much for coming and appearing here today and presenting your dilemma. I don't pretend to have an answer, but it is a very valid point.

I had been wondering: Have you been getting any communications from the ministry to say, "Hey, how do we get a seat at the table?" Because, justifiably, you need a seat at the table.

Mr. Allan Thompson: Yes. Thank you for clarifying. Originally, they said, "The region of Peel can do that," so we've gone through it. We've been working very closely with the police services board and the OPP. Everybody has been fantastic. Everybody is trying to find a solution here. What we've found is, in the act, it doesn't really clarify. But the way we're structured and the way it's written, we have to have the province say, "You need to move from seven to nine," by adding two representatives from section 10 of the police services board act to represent Caledon.

We just thought, "Okay, it's the first blush. That's what it will look like." But as we started to peel the onion, we got down to the bottom of it and we said, "Okay, we just caught this."

This is why I'm here. It was recommended that I'm probably the right representative to come here to speak on this, so that's why I'm here today.

Ms. Laurie Scott: Absolutely. Okay. Well, I'm sure the government is listening. It's one of those things that—

Mrs. Liz Sandals: Now that we've figured it out.

Ms. Laurie Scott: Now that we've figured it out, that's okay. You just need a seat at the table.

Mr. Allan Thompson: It's an easy one to figure out. It's just that we need the clarification.

Ms. Laurie Scott: We need the clarification. I'm sure that you're very in touch with your member, Sylvia Jones, on this issue.

Mr. Allan Thompson: Yes.

Ms. Laurie Scott: We will definitely keep an eye, to see if it is a place for amendments, or if it is a place for regulations afterwards. I'm not sure what the answer is yet.

I really do appreciate you bringing the subject to the table, and your dilemma. We need to address it. Thank you.

Mr. Allan Thompson: Well, thank you. The executive director from the Peel Police Services Board—we all understand, and that's why I'm here.

Ms. Laurie Scott: Absolutely. I think we all want to help you solve it.

Mr. Allan Thompson: Thank you so much.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Scott, and thanks to you, Mayor Thompson, and your colleague, for your deputation on behalf of the town of Caledon.

CENTRE FOR ADDICTION AND MENTAL HEALTH—EMPOWERMENT COUNCIL

The Chair (Mr. Shafiq Qaadri): I'd now invite our next presenters to please come forward: Ms. Chambers

and Ms. Shields of CAMH, the Centre for Addiction and Mental Health—Empowerment Council. Welcome. Please do introduce yourselves. Please be seated. Your five minutes begin now.

Ms. Jennifer Chambers: Thank you. I'm Jennifer Chambers, executive director of the Empowerment Council. We're a voice for clients with mental health and addiction issues in Ontario to generate systemic change on behalf of this community. We've addressed numerous legislative committees, Senate committees, appeared before the Supreme Court and had standing at numerous inquests.

I'm going to focus on two main parts of the bill. I'll refer you to my paper for our longer submission. One is a request to add to the values forming the bill a statement saying that there's a need for understanding of people in crisis and people of differing abilities. People in crisis are actually a substantial number of the police calls and a substantial number of the people who die in encounters with police, so I think it's very important to specify our community in particular. We want to note as advocates ourselves that the emphasis on independent advocacy in the bill is something we fully support, and the transparency and accountability that are exemplified in the bill.

A concrete step in bringing the community more into the policing framework is the community safety and well-being plans. I think the value of those plans will depend entirely on the composition of the advisory committees that devise them. It has been an oversight that while there's a requirement that people who work with people with mental health or physical health issues are included on the advisory committees, there is no requirement for any inclusion of the community itself. It is a common type of discrimination for people with disabilities to be talked about, but not talked to, so we'd very much like to see added to the list of people included, people representing people with physical or mental disabilities.

Similarly, we'd also like to ask that when the municipal councils consult with members of the public, including members of racialized communities and the First Nations, Inuit and Métis communities, they include people with lived experience of mental health issues in the group consulted by municipal councils. Once again, this is one of the highest-contact groups by police services, one of the groups at greatest risk of death in police encounters and the group most likely to be tasered by police. It's very important that our community be heard, and also that there be attention paid to the intersection of race and mental health, which is a particularly vulnerable intersection.

Go ahead.

Ms. Roslyn Shields: Great. Thank you to the standing committee for the opportunity to respond to Bill 175. My name is Roslyn Shields and I'm a senior policy analyst at the Centre for Addition and Mental Health, CAMH.

Today, I'd like to address Bill 175's proposed Missing Persons Act and specifically section 5, which would allow police to demand the release of records, including personal health information, to assist in the search for a missing person in the absence of a criminal investigation.

Currently, if a person is missing, the police can request the release of personal health information to help them find a person. The Personal Health Information Protection Act gives health care custodians discretion to determine what information to release in response to these requests. Section 5 of the Missing Persons Act would remove this discretion from the health care custodians, and they would have a duty to comply.

At CAMH, we work closely with police when a patient goes AWOL by proactively sharing clinical and risk-related information. We also respond promptly when police call looking for a member of the public who is missing. In these circumstances, CAMH determines which information is important to share—for example, they are an in-patient—without compromising their privacy or the reason for their admission. Under section 5 of the Missing Persons Act, police could demand and receive further personal health information on our patients if they are not satisfied by what's provided.

For this reason, CAMH is concerned that section 5 of the Missing Persons Act will compromise our patients' privacy without enhanced benefit to personal or public safety. Thank you.

Ms. Jennifer Chambers: The Empowerment Council shares these concerns.

As we may have a few seconds left, let me just add that a number of features of the bill reflect recommendations that we've made at inquests into deaths of people with mental health issues in encounters with police. We're happy to see some of these issues addressed, such as, for example, a good foundation for data collection and research in order to make good decisions in the area of policing.

The Chair (Mr. Shafiq Qaadri): Thank you very much for your precision-timed remarks.

We'll now proceed to the government side. Ms. Wong.

Ms. Soo Wong: Thank you very much for your presentation and your written submission. Just going back to your written submission as it relates to the community safety and well-being plan—because I think you're not the only group that asked this committee about this particular plan and making sure this plan is more transparent, and for municipalities to post that. Are you in support of that kind of initiative?

1510

Ms. Jennifer Chambers: Yes. I think it needs to be a committee that's transparent, accountable and very inclusive.

Ms. Soo Wong: Your comment earlier about the race issue and mental health: Can you elaborate, in terms of this proposed legislation, in terms of greater oversight, greater transparency as well as confidence, does the Centre for Addiction and Mental Health work with collaborative organizations like Hong Fook—that's in my riding of Scarborough–Agincourt—do you believe that

this particular proposed legislation, if passed, will address this issue? Because we heard previous witnesses express concerns to this committee about the marginalized community and the vulnerable populations. Can you share with us—because this is what the intent of the bill is, to provide greater oversight in that particular area.

Ms. Jennifer Chambers: I think it could. I think it's going to depend very much on who composes the advisory committee and who is consulted by the municipalities. If there's broad-based diverse consultation and inclusion, then I think that it could address community concerns.

There also needs to be a process whereby the community participates in the selection of who is going to be representing the community on the advisory committee, so there's a sense of participation and accountability to the community rather than a sense that they were chosen by people who the community may or may not trust.

Ms. Soo Wong: I heard very clearly that your group has asked specifically that survivors are included in the composition. Am I correct in hearing that?

Ms. Jennifer Chambers: Yes.

Ms. Soo Wong: Okay. That's great. Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Wong. To the PC side: Ms. Scott.

Ms. Laurie Scott: Thank you very much for appearing here today before committee and making a great presentation. We've all heard the stories of the mental health situations—the underfunding, and unfortunately, both by police having to pick up that slack, 30% to 40% of their calls in northern Ontario or even higher, and in our jails—it's like a repository, unfortunately, for a lot of patients who need mental health services and are really, actually, breaking the law in some instances just to access services. It makes this all—

Ms. Jennifer Chambers: It's sadly true.

Ms. Laurie Scott: Yes, and I'm sure you can—I didn't know if you wanted, given that background—you know all those statistics—to further flesh out some of the added recommendations that you want to see to Bill 175, and you've touched on them, about having the adequate advisory as well as members. I didn't know if you wanted to elaborate any further on some of the comments.

Ms. Jennifer Chambers: Well, one thing that we didn't put in our response was that ultimately, in order to reduce the number of people who are encountering police and to reduce the number of people in corrections, there has to be a reaching past ministry silos to develop a comprehensive plan of support for people who are marginalized.

People who are marginalized for other reasons often end up with mental health and addiction issues, and people who have mental health and addiction issues fall even further off the grid. Ultimately, both in human terms and in economic terms, it costs our society more not to address things early, but to address them only when we're holding people in custody who shouldn't be there.

Ms. Laurie Scott: Absolutely, and well-said. We all need to collectively—as you mentioned, the silos. That's absolutely been happening. It's a great expense to everyone—to the collective wellness of the person, but also the burden on society and the patchwork system that we seem to have.

Thank you very much for being here and presenting today. Hopefully, you got out all the points you wanted to get out, out. I just want to make sure before—I have 30 seconds, probably, left, so can hardly get anything out. But I appreciate it.

Ms. Jennifer Chambers: I'll say that we also appreciate that they've clarified the name of the complaints officer, because I get a lot of people contacting me with complaints about police who don't understand what the Ontario police review director is.

Ms. Laurie Scott: Okay. That's good. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Scott. To the NDP side: Ms. French.

Ms. Jennifer K. French: I appreciate your thorough presentation. I have so many questions, so I'll see if we can get through a few of them.

When it comes to mental health—and we know that more and more often, police become the front lines out in our community, with mental health—is there a way to approach that involving police or whatnot that you would like to see fleshed out in this bill, like, different recommendations?

Ms. Jennifer Chambers: On behalf of the organizations I've represented, I've been involved in inquests into 11 people's deaths, with police, and we've made a lot of recommendations regarding training and performance evaluations. What we have lacked, though, to make really good decisions in that area is concrete data about how training and education are manifested on the street. There really needs to be a means of collecting that information.

The best solution I've been able to come up with through all these different exposures to different situations is the use of body cameras to allow for the collection of how training is playing out in actual interactions with people, because we know how people have learned at the college, but we don't always know what's happening on the street, unless a member of the public accidentally films it. We need the kind of data collection that's encouraged in the bill.

Ms. Jennifer K. French: We've heard "data collection" a lot today in terms of what that needs to look like across the board.

We heard from one of our officers earlier who said, "We all want our officers to be healthy." There is a concerning section in the bill, section 115, which they had brought up, which might be a deterrent to officers who would otherwise seek help for mental health. Is that something that you've actually looked at? Do you have thoughts on that part of it in terms of the mental health of officers?

Ms. Jennifer Chambers: I noted that there's a requirement to accommodate members of police services with disabilities, and we support that, but I can't comment specifically on 115.

I did think that the whistle-blowing protection for police in cases of misconduct was a good addition to the bill, but I actually thought there should be more of an obligation to report professional misconduct. I thought that that might actually protect officers from reprisal.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Jennifer K. French: Also, you mentioned about the intersections of our racialized community members and mental health. Do you have some suggestions—I'm sure you do—to make a better system?

Ms. Jennifer Chambers: One would be, again, the way the community safety committees are devised. I think that we can bring together such intersections.

But also, at the last inquest we managed to get a committee formed of the police services board that will represent racialized communities. We succeeded in getting one—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. French, and thanks to you, Ms. Chambers and Ms. Shields, for your deputation on behalf of CAMH.

TORONTO POLICE ACCOUNTABILITY COALITION

The Chair (Mr. Shafiq Qaadri): I'm now pleased to welcome to the committee a former mayor of the city of Toronto, who served ably from 1978 to 1980: Mr. John Sewell, currently a Toronto Police Accountability Coalition member. Welcome, Mr. Sewell.

Mr. John Sewell: Thank you, Mr. Chairman.

The Chair (Mr. Shafiq Qaadri): A five-minute opening address. Please be seated, and please—

Mr. John Sewell: I'm going to take up 10 seconds by pouring myself a glass of water.

The Chair (Mr. Shafiq Qaadri): Sure. Go ahead. Your time begins now.

Mr. John Sewell: Mr. Chairman, I'm representing the Toronto Police Accountability Coalition. We submitted a brief to the committee, which I think has been circulated to members of the committee, from what I've heard, so I'm just going to talk to it very, very briefly.

Basically, the Safer Ontario Act is a rewrite of the Police Services Act, and it incorporates a lot of the language out of that act. What we have concentrated on in our brief is the elements of the new act that relate to the duties of a police officer and the duties of police service boards. I think that most of the attention of the act is on the review mechanisms and how they can be improved and Mr. Justice Tulloch's report and so forth, but in fact we think that this is the opportunity to get serious about looking at what police officers actually do and what police service boards actually do.

What our brief does is to actually look at what the act says, and then say, "Is that really what happens in real life?" We think the answer is no. We think that, in fact, there should be significant improvement.

For instance, just to take one example, section 1, subsection (3), of the new act says, "The need for co-operation between the providers of police services and the communities they serve." That's one of the principles. But in fact, we think that what it should say is, "The need for co-operation between the provider of police services, social agencies and institutions, private security companies and the communities they serve, including the establishment of formal methods of interaction." We think you have to be really, really specific.

At the moment, there's not a great deal of good interaction between public policing and private policing in Ontario, and that's a problem. The way to deal with it is to actually put it as one of the principles in this act, that that's something that should happen. We aren't saying how it should happen, but we're saying it should happen, just as there should be better communication between social agencies and police services.

1520

We have a number of recommendations about those changes, in terms of the principles in section 1. Then, in section 11, we deal with the question of what it is that police officers should actually be doing. We think that the recommendations that are now many, many years old—I don't think this act has been rewritten for, what, 25 years, but I think the principles here are probably 75 years old. We think they should be looked at more seriously, and we have suggestions about how in fact that should be worded.

As an example, we think that one of the real functions of what officers do is to undertake, with other social institutions and agencies and civil society organizations, steps to prevent crime and criminal behaviour, including, where appropriate, diverting individuals from the criminal justice system. We think you should state that really, really specifically. The idea that police officers are going to prevent crime—as we know, that's a myth. It's not true. It just doesn't happen. But, in fact, working with others, they can have an influence on it. We think that should be very, very explicit and we suggest the wording for that.

Similarly, when it comes to the question of police service boards, we suggest that you should be very clear about what it is that they're required to do. That's in section 37. We think additions should be made, such as the requirement that they review and approve annual operating and capital budgets. At the moment, this is not a very strong function of the police service boards. We think they should be required to encourage community discussion on policing issues and lead public debate. They do not do that at the moment. In fact, nobody is doing that. Our organization tries to, but we don't have the money or the resources. But it's the police service boards that should be. We think the boards should be responsible for ensuring active research and so forth.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. John Sewell: So there are some of the recommendations that we think have not received the attention that they should and that we hope that you as the committee will actually put in place. We don't think these are particularly disputative. We think, in fact, that when people look at them, they say, "Oh, yes, that all

makes sense." So these are not divisive things that we're recommending. They're very simple, but they need your attention. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Sewell. We'll pass it to the PC side. Mr. McDonell.

Mr. Jim McDonell: Thank you for coming out. Do you have any other points you'd like to make, or any to highlight?

Mr. John Sewell: Well, we'd love it if you could strengthen the section about officers being suspended without pay. There are some minor recommendations about how they can be suspended without pay that are in the act, and they move in the right direction, but in fact we think that you should probably adopt the advice that Alberta has, which says it's in the discretion of the chief. Quite clearly, if the chief does something wrong, it's going to be grieved, and that's perfectly fine, as well. But we think there should be much more discretion on police management about being able to suspend without pay. We have some wording that we suggest on that, as well.

Mr. Jim McDonell: Okay. Now, you talk about active research not being done today. What are some examples? You're talking about—

Mr. John Sewell: I'm sorry, I didn't hear the beginning.

Mr. Jim McDonell: Active research not being done—you're asking that the police service boards be given more authority or responsibility to do that?

Mr. John Sewell: Well, I think that if we actually started to understand what other police services are doing and how they might approach it, that's going to help us all. I can give an example. In Ontario, we've had the SIU for—20 years now? A long time. It's only now that some other provinces are saying, "Oh, we should have one of those too." That's the situation where I think police service boards in other jurisdictions have not done the kinds of research that they should.

I suspect there's lots of other things where they could do it. I can talk about two things that our organization has done. One is we've done research into the question of the crowns monitoring the charges that police are laying. So if you want to lay a charge as a police officer, you have to get the approval of a crown. It's research that we've done, and, in fact, what has been shown is that it happens in Quebec that you can't lay a charge unless you first get crown approval, and the number of charges that are laid are substantially less than in Ontario; the number of charges that are withdrawn are substantially less than in Ontario. So that's a piece of research that if we had done really well with police service boards here in Ontario 10 years ago, when they did it in Quebec, we'd be saving an awful lot of money. So that's one piece.

The two officers in a car is another piece of research that we've done showing that this is an absolutely crazy thing. We don't need it, it's a waste of money and so forth.

So there are two examples that we have done that the police service board should be doing.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. McDonell. To the NDP side: Ms. French.

Ms. Jennifer K. French: I appreciate your presentation, and welcome to Queen's Park. You're part of a coalition that is—is it community-organizations-based, individuals, just sort of concerned parties?

Mr. John Sewell: Yes, yes. It's a very loose thing. We've been together for 17 years. We think we're the only organization in Canada that tries to spend its time looking at police policies and bringing forward some good, critical ideas and some alternatives, and we've been doing that.

Ms. Jennifer K. French: And thank you. I finally found your submission here, so I've got it in front of me.

Mr. John Sewell: Good. Terrific. It's a good one.

Ms. Jennifer K. French: It seems to be.

Mr. John Sewell: We tried to be very clear in saying, here's what you might do.

Ms. Jennifer K. French: Yes, and very thorough, I was going to say. But one of the pieces that you had mentioned that I kind of twigged to, and I'm looking at it here, is you're making a recommendation—this is in the principles section—to reword. Rather than "the need for co-operation between policing providers and the communities they serve," you're suggesting an amendment: "The need for co-operation between the provider of police services, social agencies and institutions, private security companies, and the communities they serve."

Mr. John Sewell: Being very specific, yes.

Ms. Jennifer K. French: You've put private security companies in here under "policing," where that's private and outside of the accountability framework currently. What are your thoughts on that? Because we've had some concerns about privatization. We always, as New Democrats, have concerns about privatization and the lack of accountability.

Mr. John Sewell: I wasn't talking about privatization. In fact, there are more private security officers now operating in Canada than there are public police officers.

Ms. Jennifer K. French: So you're not suggesting that they take over more police duties.

Mr. John Sewell: No, I'm not.

Ms. Jennifer K. French: Okay.

Mr. John Sewell: I'm saying that we should be figuring out ways that they can co-operate better. You must remember that private security officers control all mass public space, basically, in the country: all shopping centres, all big sports arenas and so forth.

Ms. Jennifer K. French: And fall outside of an accountability framework that we're looking at here.

Mr. John Sewell: They do, and in fact, that's something—certainly, I'd be willing to talk about that; that might be useful. But, in fact, police should be talking to those security things and they should be talking to the police.

Ms. Jennifer K. French: And a question: We're glad to have you here today and your submission, but have you had the chance to consult with the government prior to today?

Mr. John Sewell: Oh, we've met with a number of ministers on many occasions. We try to do that. Marie

Lalonde, we've met with her; Yasir Naqvi, we've met with him. Yes, and we've given them our advice on things they might do, and some of the things they actually are doing.

Ms. Jennifer K. French: So 17 years in the making.

Mr. John Sewell: It's taken a long time, yes.

Ms. Jennifer K. French: Okay. Thank you.

The Chair (Mr. Shafiq Qaadri): To the government side: Mr. Potts.

Mr. Arthur Potts: Thank you, John. It's great to see you here again.

Mr. John Sewell: Thank you, Arthur.

Mr. Arthur Potts: For those of you who don't know, Mr. Sewell wrote a fantastic book years and years ago: Up Against City Hall. That was my first piece of political advocacy literature, and it's a must-read for all politicians about how to get your way at city hall.

You continue this incredible work and I want to thank you and the coalition for the analysis that you've done because we are seeing a lot of that advocacy reflected in this, particularly the notion of more civilian oversight. My board experiences all relate pretty much to the city of Toronto and that relationship and how, over time, this council has been able to get more and more control, but still more may well be needed. So I appreciate what you've done on that over the years.

1530

We had a deputant earlier who was talking about the size of the boards. They were recommending for large organizations like the city of Toronto that—I think seven is the max we go to now. They were recommending we go to 11, and that would help better reflect diversity. Would you be a supporter of that kind of a move?

Mr. John Sewell: Yes, I would. The new act takes it up to nine. We actually recommend in here 15.

My theory on this is pretty simple. The smaller the board you have, the less dissension you're going to have. People don't want to disagree when there's a small number in the room. Have a larger number in the room and people feel that they can have disagreements without too much trouble.

It seems to me, when it comes to policing, you want to have a lot of opinions around the table. Often, you don't now. Police service boards, as you know, when you go to them, they are closed shops. It is very, very discouraging, in my mind. I think Toronto has the best board, and it's not very good, in my opinion. Some of the others I've been to—it's very discouraging.

So the larger, in my opinion, the better—up to about 15. It will also allow a lot more diversity. If there's one thing we need, it's diversity. Yes, I support larger boards, 11 or 15; that would be good, certainly.

Mr. Arthur Potts: You also talked about oversight of a budget. Of course, that happens in Toronto. I guess I'm inferring from that comment that we're not seeing it happen across the province, which would be news to me. I thought all boards—

Mr. John Sewell: That's right, that's right.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. John Sewell: We made some recommendations to Mr. Naqvi earlier, when we heard he was redrafting the thing, saying that in fact they should be trying to reduce the number of boards out there. They have some service boards out there that are in control of six police officers. This is craziness, absolute craziness. I'm not quite sure how you do it, but I think if you had some, you know—

Interjection.

Mr. John Sewell: Yes.

Mr. Arthur Potts: Thank you very much. I appreciate it.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Mr. Sewell, not just for your deputation today but for your decades of service to the city of Toronto.

Mr. John Sewell: Thank you. I appreciated being here.

NISHNAWBE ASKI NATION

The Chair (Mr. Shafiq Qaadri): I now invite our next presenters—please come forward—of the Nishnawbe Aski Nation: Mr. Falconer and Mr. Boissoneau. Thank you, gentlemen. Please be seated. You will have five minutes to make your opening address. Please do introduce yourselves as well. Your five minutes begin now.

Mr. Julian Falconer: Good afternoon, Mr. Chair and members of the committee. My name is Julian Falconer. I am legal counsel who does not a modest amount of work on police accountability issues—I say, with some regret about my white hair.

Mrs. Liz Sandals: Me too.

Mr. Julian Falconer: Thank you for that. I appreciate that, MPP Sandals. It's nice to have someone who helps me.

Beside me is Travis Boissoneau, who is the chief administrative officer of Nishnawbe Aski Nation, and he will commence our remarks.

Mr. Travis Boissoneau: Good afternoon. Thanks again for taking the time to hear us out.

First off, I'd like to acknowledge the partnership between the province of Ontario, through Mr. Naqvi and Minister Lalonde's office, with Nishnawbe Aski Nation and Nishnawbe-Aski Police Service.

For those of you who may not know, the legislation barring the indigenous policing portion arose from a four-year table known as the Adequacy Standards Table. Again, that was in partnership with the province, Nishnawbe Aski Nation and NAPS—NAPS being the largest indigenous police service in Canada.

NAPS has been fighting for this type of legislation since its inception in the early 1990s. The new legislation will give First Nations the ability to access various police oversight bodies, from special investigations to complaints. It's imperative that the individuals within these agencies have the skills and knowledge required to provide culturally appropriate services to First Nations. Regrettably, neither MCS nor the agencies are where

they need to be, in their current state. I say this after four years of concentrated negotiations.

It's important that the agencies are structured so as to best ensure that cultural competence is woven throughout the system. As stated by Justice Tulloch, "for competency development to be truly successful, it will need to involve critically assessing organizational policies, programs ... and general practices." He goes on to say that they should be "consistent, comprehensive, and mandatory for all staff." These efforts need to be monitored and measured.

There is a wide variety of skills required within the oversight bodies to adequately understand the complex issues that our First Nation communities face, and quite frankly, systemic racism is one of the issues.

We are confident that, with meaningful inclusion of the indigenous population in the creation of the regulations, we, as a team, can get this right. We also encourage the affected ministries, namely the Ministry of Community Safety and Correctional Services, to partake in the same level of education and systemic review.

Throughout our work, we have acknowledged that there is a clear gap between the values expressed by the Premier and Minister Lalonde and the bureaucracy and, further, the legal advice that they receive. This void is intolerable, especially for a ministry that is responsible for the provision of adequate and effective police services, negotiating First Nation police services agreements, the provision of funding and the drafting of policy and legislation that affect indigenous lives. These same values expressed by the provincial leaders have to govern the behaviour of the bureaucracy. Again, after four years of a very challenging exercise, it's clear that cultural competence remains absent.

MCS can look to its colleagues at the Ministry of the Attorney General and the indigenous justice division and consider in-house expertise. In the meantime, we strongly urge that MCS engage with the Ministry of Indigenous Relations and Reconciliation—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Travis Boissoneau: Did you want to add anything?

Mr. Julian Falconer: Speaking to issues of larger police accountability, I have had the honour of representing the families of Edmund Yu and Wayne Williams—I acted in the Lester Donaldson case—the family of Sammy Yatim; Dr. Abouhassan; currently, Dafonte Miller; and the families of Schaeffer and Minty. I just want to say this: You cannot, with all due respect, wait—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Boissoneau and Mr. Falconer. The NDP is welcome to offer you time, but it passes now to Ms. French.

Ms. Jennifer K. French: Please continue.

Mr. Julian Falconer: Thank you.

You cannot wait. I understand that you were urged to delay the passage of this bill. You cannot wait, because by waiting, you signal to those who are most vulnerable to police misconduct that their losses and their tragedies will simply continue to be systemically overlooked.

I recognize and acknowledge the important role that police play in society and that there are many good police officers. Sadly, with all due respect, I'm kind of like a cancer doctor. I end up dealing with the police misconduct cases and I see the bad policing. I'm here to tell you that going to the Supreme Court of Canada twice on SIU investigations being undermined, acting in the Dafonte Miller case that's playing out right now with, again, an SIU investigation that is undermined—each time that happens and we have to have this forced litigation to produce an answer, you erode society's confidence in policing. Why this legislation matters is that it creates clear rules, it ensures that there are actual consequences for undermining an SIU investigation, and it gives guidance to good police officers and good leaders.

When you were urged this morning to delay this to a new government, sadly and with the greatest of respect—lawyers always say that when they're about to deliver a shot—what you're hearing from those who are being babysat is that they don't want a babysitter. Well, that makes sense. The police union wouldn't want oversight, but it's our job to make sure they have oversight so that we help them help us.

I encourage you, with the greatest respect, to understand the total betrayal for indigenous interests if you were to delay passage of this bill. They have been waiting decades to have safety backed by the rule of law. They represent the only members of the Ontario public who do not have safety backed by legislation and they stand to achieve that. Delaying that would deprive them. Delaying this legislation would mean that we would continue with these fractures in society around police accountability issues.

I simply urge you to move. I give the government credit. It's not a perfect piece of legislation, but they deserve credit. They do. And I am not one known for being that supportive and glowing about government, so it means something. Thank you.

Ms. Jennifer K. French: I'm also not that glowing about government. I get to sit across from them.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Jennifer K. French: I'll take them.

1540

When you made the point—and point clearly taken—about disappointedly recognizing the difference in values between—you had mentioned the Premier and Minister Lalonde, the bureaucracy, legal counsel. Point taken. I hope that the government will also speak to that, but certainly I'd be interested in the specific regulations you're looking to see or some of those pieces. I'd like to ask the Clerk if there is a submission, if we have that. Did you submit—

Mr. Julian Falconer: We have not done a submission, but one is coming because—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. French.

Ms. Jennifer K. French: That's fine. I look forward to it.

The Chair (Mr. Shafiq Qaadri): You're welcomed to pursue that afterward.

To the government side. Ms. Wong.

Ms. Soo Wong: Thank you very much for your presentation. I'll look for your written submission.

Going back, you mentioned earlier dealing with the whole issue of cultural competence. Know that our ministry, MCSCS, is working towards dealing with regulations. Just remember that this hasn't gone off the rails, because we are proposing this legislation. We have to get this legislation passed. Mr. Falconer, we are determined to get this legislation passed, just so you know. We're not going to be waiting, okay?

I wanted to hear from you, because we heard earlier from the Chiefs of Ontario, who came before us this morning overwhelmingly supporting the legislation, asking us to tweak certain wording, as well as the bylaw enforcement piece and the OPP. I wanted to hear from you, with respect to the proposed legislative changes, how it will improve—we've got to be better, because right now it's not working—and achieve better policing outcomes for First Nations communities. That is what the government is intent to do. I wanted to hear from either one of you or both of you. That would be great.

Mr. Travis Boissoneau: Just again referring to the past four years: We actually sat at the table and went through a lot of the technical aspects. I'll just say in short, we've lost lives due to lack of infrastructure. We've lost lives due to just a lack of adequate policing. Our communities suffer from maybe having one police officer. They are being asked to be a firefighter, a social service worker. The resources within the community aren't—because it currently sits as a program, there is no legislation backing standards. That's the overarching goal.

Julian wanted to add—he's been at the table for the last four years.

Mr. Julian Falconer: I want to emphasize this: Part of the reason it's so important to pass this legislation as it relates to the indigenous policing is that it comes as a product of actual collaborative drafting. Nishnawbe Aski Nation and NAPS, as the largest indigenous police service in the county, sat at the table with MCS officials, and others from MAG, as well, and worked together on over 100 amendments.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Julian Falconer: This is a product of a pretty groundbreaking collaboration.

Now I flip to the other channel. When I'm doing police accountability issues, I'm in the Supreme Court of Canada. Families are dragged through a court system and legal battles for years. That's not a great way to effect change. I've seen both, and you need to give important support for what was an important collaborative venture.

Having said that, sadly—and I report this—at the bureaucratic level, MCS doesn't even register on the meter with—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Wong. To the PC side: Ms. Scott.

Ms. Laurie Scott: Thank you both, Julian and Travis, for being here with us today. I wanted to bring it back to Travis. I don't know if you got a chance to really finish what you were saying about the relationships that you do have, which I think are fairly good, the relations with other police services. "The largest police force in Canada" is quite a statement. I think we all want to see improvements for indigenous people. I didn't know if you wanted to elaborate on that a bit—just the relationships and what you see.

Mr. Travis Boissoneau: Again, I came here to focus on the whole cultural competency piece. Once this legislation passes and all the regulations—we're hoping to be a part of the regulation process or development process. The whole concept is to ensure that people who are working even with our police force fully understand what exactly they're dealing with, and not just in terms of the service that they provide, but the population that they're serving.

In terms of the bureaucracy, it is a struggle. It's not just a struggle with MCS; there is a whole population in the north that we've been working with over the past few—well, NAN has been doing this for over 30 years. We're doing our best to bring our population and the issues to the forefront, because we need the province and the feds to understand that there are people who live up here in a unique way, and they have a right to the same services, whether that be policing, health care or education. When I mention systemic racism, when there's a struggle to get adequate police servicing to a First Nation community versus the services provided everywhere else, to me, it's blatant. I think the work that we're doing—the province as well—is trying to bring it to a safe, healthy place for our communities.

Ms. Laurie Scott: Very good. How much—

The Chair (Mr. Shafiq Qaadri): Forty seconds.

Ms. Laurie Scott: Oh, 40 seconds. Well, I can't really do too much in 40 seconds, but thank you for the patience and the collaboration that has gone on. I'm hoping this bill, if there are amendments that could be made to strengthen it, to change it—and if the regulations come forward, you definitely have to be part of those regulations. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Scott, and thank you, Mr. Falconer and Mr. Boissoneau, for your deputation from the Nishnawbe Aski Nation.

ASSOCIATION OF MUNICIPALITIES OF ONTARIO

The Chair (Mr. Shafiq Qaadri): I'd ask our next presenter to please come forward: Ms. Dollin, president of AMO, the Association of Municipalities of Ontario, and your colleague. Thank you, Ms. Dollin. To your colleague, please be seated. As you know, your five minutes begin now.

Ms. Lynn Dollin: Thank you very much, Mr. Chairman. My name is Lynn Dollin. I am the president of the Association of Municipalities of Ontario, which governs

almost all of Ontario's 444 municipalities. With me today is Matthew Wilson. He's a senior policy adviser with AMO as well.

Ontarians pay the highest policing costs in the country. Most of these dollars come from municipal property taxpayers. Ontarians also pay the highest property taxes in the country. If our property taxpayers in this province paid the per capita average for policing of all other provinces, we would have $500 million a year in savings. Those $500 million would make a solid contribution to the costs of other services that keep people safe and healthy.

Legislation drives the cost of services. Policing is no different. There are some changes in schedules 2 to 4 of Bill 175 that will advance the agenda to modernize policing, particularly with respect to the oversight agencies, and we support those changes. There are some other elements of the bill which will drive up municipal costs and police budgets. After six years of discussion, six years of our participation in the ministry's process to consider the future of policing, I wish I could tell property taxpayers more was being done to stabilize or reduce these costs.

In our brief time, I will highlight just two key areas where even small changes might make a difference to improve the efficiency or effectiveness of policing.

(1) Most Ontario communities are small. I'm concerned about their capacity to develop community safety and well-being plans without provincial support or assistance. For example, 190 municipalities have six or less full-time administrative staff. Eleven municipalities have only one full-time administrator. I'm concerned this new unfunded mandate will be setting small communities up to fail.

The bill compels municipalities to bring various groups, including provincial employees and agencies, to the table, over which municipal councils have little control or no control to direct. An errant individual or agency wholly unrelated to the municipality could hold a council hostage by choosing not to participate.

If legislation is going to direct municipalities, it should equally direct and compel provincial agencies and police services to participate as well. If the minister is prepared to assume the powers of a council that does not adopt and implement a plan, then the minister must also take the necessary steps to ensure everyone who needs to be at the table is at the table.

(2) We must set up police services boards to succeed. They will only be successful if they are representative of their unique communities. This bill would eliminate nearly 100 police services boards in rural and northern regions. No one can argue that this puts much more distance between the police, its civilian boards and its local community.

1550

For this change to be successful, the bill must be changed to provide that every municipal council will have at least a seat at the table of an OPP board. In addition, provincial appointees to a police services board must be done in a timely way that enhances diversity, with a skill set that contributes to good governance. There is nothing in this bill that speaks to provincial performance on this.

We also believe that the bill needs to clarify who has the mandate to support boards. There needs to be an organization named in this bill that has been established to help police board members fulfill their governing function.

I see a lot of sticks aimed at the police services board and not a lot of carrots. It is worth remembering these board members are community leaders and they're fellow citizens. For all intents and purposes, they're volunteering on behalf of others to take on this task of police governance. They perform a vital function in our democracy. They deserve to succeed. We need them to. Our submission provides a number of other examples of what this bill could do to help boards do their job well.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Lynn Dollin: Municipal leaders are seeking legislative change that promotes the effective and efficient delivery of public safety through policing. After six years of discussion, this is the time to look at the fundamentals upon which police services have been built, and lay the foundation for quality delivery into the future. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Dollin. To the government side: Ms. Mangat.

Mrs. Amrit Mangat: Thank you for your presentation.

The mayor of Caledon, Allan Thompson, said before in his presentation that Caledon doesn't have representation at the Peel region police board. This act allows municipal governments the freedom to increase the size of their police services boards if they choose. Can you talk about that to us? What is the importance of that flexibility?

Ms. Lynn Dollin: I think that making the police services boards larger will help, but that still won't help in all instances where there are many municipalities served by one board—in the fact of York region, for instance. I can think of the OPP detachment in Nottawasaga. Certainly once you get up into the north—with all due respect to the former mayor of Toronto, you can't compare Toronto to Kapuskasing and Kenora district and the fact that one OPP detachment could be 200 kilometres from end to end. Making that distance between the residents and their board and the police will only cause trouble, as opposed to help bring things together.

Mrs. Amrit Mangat: Okay. I have a second question. We have heard from police associations their concern about privatization. What is AMO's position on that issue?

Ms. Lynn Dollin: First of all, we did submit recommendations, 34 of them, back in April 2015, and one of our top three was the ability in certain cases for privatization. You don't need a master mechanic to perform an oil change, and that was a comment from the assistant commissioner in the RCMP. There are lots of

examples of where there could be a job done by someone other than a policeman with a gun. A good example would be guarding a manhole in a construction activity, or hitting a button on a traffic signal in a shopping mall. You don't need someone in those cases, but you do need to make sure that the people who are trained and have the gun are available when you do have an emergency, to keep the people safe.

Mrs. Amrit Mangat: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Mangat. To the PC side: Ms. Scott.

Ms. Laurie Scott: Thank you very much for appearing here today.

You had mentioned the police services board. We've heard other presenters say there are police services boards with only six police officers. I don't have your recommendations in front of me—I'm sorry about that—but do you want to make any more points about the flexibility that you'd like to see for forming police services boards and the composition?

Ms. Lynn Dollin: Thank you for that question.

Through you, Mr. Chair, I think the most important message that we have is, for the most part, municipalities sign the cheques, and we are the closest to the people. When there is a problem, it's the local councillors, the local mayor who hear about the issues. We know what the systemic issues are in our municipalities.

We also are the ones who provide the money for the police service to run.

Other than our representation on the board, we have not a lot of control. When the police come to our council with a budget, we're not allowed to go line to line through that.

Dare I even bring up interest arbitration and the costs that have escalated for first responders like police and fire over and above what all of our other workers have negotiated through a contract?

All of those things have helped to escalate the cost of policing, and very few of them are within the control of the municipal council. So, having representation on that board, and making sure our voice is heard on that board, is extremely important.

Ms. Laurie Scott: I've heard from some municipalities on the new diversity plan process that the legislation introduces. Could you tell us what kind of burden for some of the smaller municipalities that could bring onto your members?

Ms. Lynn Dollin: I would actually look to more diverse police services boards. Again, it talks to the uniqueness of the police services board, and where you are in Ontario.

Certainly, one of the issues that we've had in the past is having vacancies far too long. I spoke in my remarks about the fact that there is nothing in the act that governs that performance. At this point, sometimes it has been a year that we've had a vacant spot, and then perhaps somebody—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Lynn Dollin: We're hoping that that provincial appointee will also consider the diverse nature of whatever the unique community is.

Ms. Laurie Scott: Thank you very much for presenting here today.

The Chair (Mr. Shafiq Qaadri): To Ms. French and the NDP.

Ms. Jennifer K. French: Hi. Welcome to Queen's Park.

Ms. Lynn Dollin: Thank you.

Ms. Jennifer K. French: I had a few questions. As you said, many of your communities are small. To Ms. Scott's question about the safety and well-being plans—you had mentioned that it would be challenging, if not potentially insurmountable, to do it without the provincial supports. What could that support look like?

Also, I heard what you said about ensuring others were participants as well—that they couldn't hold someone hostage, as you put it, or that sort of thing. If you have specific thoughts on how to smooth that, or support—if that's a go-ahead.

Ms. Lynn Dollin: Certainly. Thank you, through you, Mr. Chair. I almost feel like a broken record sometimes. Unfunded mandates: So much of the time, there's legislation that comes towards municipalities that affects us, and all of it great—most of it, anyway—very, very good ideas, and really good things to do. So are safety and well-being plans—very good things to do. But it's another unfunded mandate. Remember, municipalities get nine cents of the household tax dollar—nine cents—and that goes to paying for our police.

What we're asking for, particularly in the smaller municipalities, is that there be some kind of a fund or assistance or a resource for them, to help them with the process that's going to be required. The act certainly says, "If you don't do it, we're going to do it for you, and we're going to bill you for it." All municipalities want to do what's best, but you have to look at the resources within each one.

Ms. Jennifer K. French: To that point, with the resources, as you said, we can't compare Toronto with Kapuskasing—or that's not a fair comparison. Are there other regional concerns that we aren't seeing reflected in this legislation or that create problems for different locations?

Ms. Lynn Dollin: Matt, do you want to take that?

Mr. Matthew Wilson: Certainly, when you look at the amount of consolidation—

The Chair (Mr. Shafiq Qaadri): Introduce yourself, please.

Mr. Matthew Wilson: My name is Matthew Wilson. I'm a senior adviser with the Association of Municipalities of Ontario.

When you look at the ability of boards—if you make them too big over too large a geographic area, they can't be representative of local interests. In all the work that we've done, people care passionately about policing. It is fundamentally a local thing; it's a local service. But if the folks who are controlling it are hundreds of kilometres

away and you don't have a say, then you're not going to feel that your needs are being reflected. Having boards being able to fulfill functions within a reasonable geographic size is certainly a very important element.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. French, and thanks to you, Ms. Dollin and Mr. Wilson, for your deputation on behalf of AMO.

1600

MS. KELLY DONOVAN

The Chair (Mr. Shafiq Qaadri): I now invite our next presenter to please come forward: Ms. Kelly Donovan. Welcome, Ms. Donovan. You have five minutes for your address. Please begin now.

Ms. Kelly Donovan: Thank you. My name is Kelly Donovan and up until June 2017, I was a police officer with Waterloo Regional Police. I represent thousands of police officers from across Ontario and Canada. I do not support Bill 175 as it stands now.

During my time at Waterloo, I witnessed misfeasance during internal investigations of other police officers at the service; more specifically, unlawful arrest of members, corrupt investigations and criminal allegations being overlooked. Waterloo only allows members of the public to make a complaint of misconduct, and the OIPRD does not accept complaints from police officers. Therefore, I made a lawful delegation to my police services board to disclose the misconduct of several high-ranking members of the service and, as a result, I was disciplined and silenced.

Chief Bryan Larkin ordered me to have no further contact with members of the board. I was relegated to administrative duties and I was put under investigation for eight Police Services Act charges. There was never a complaint from a member of the public; this was the result of a chief's complaint. Over the next 14 months, I was constructively dismissed. Chief Larkin used the Police Services Act to silence me so that I could no longer disclose to the board the unethical conduct happening within the service.

Following my delegation to the board, another police service was contracted to conduct an impartial review of a recent internal criminal investigation. That review was negligent and biased, and is irrefutable evidence that when police investigate police, there is bias.

During my constructive dismissal, I wrote a 93-page report citing cases that show just how systemic misfeasance is in Ontario police services and how often police chiefs and ineffective oversight bodies are able to silence police whistleblowers. This report is contained in tab A of my submission. I made complaints to all of the applicable police oversight bodies and none of them chose to enforce their legislated authorities.

In June 2017, a $167-million class action lawsuit was filed against Waterloo, and I believed that politicians would now start to listen to us police officers trying to expose to you what goes on behind closed doors. Two weeks later, Chief Larkin was elected as president of the OACP, and it became very obvious to me that police chiefs in Ontario are above reproach, as a result of our current and proposed legislation.

When I resigned, I sent my report to 200 politicians in Ontario. Those emails are listed in tab B of my submission, and I believe five members of this committee were on that list. I received a cookie-cutter response from Minister Lalonde and I never received a response from Minister Naqvi at all.

Despite Justice Tulloch recommending a whistleblower program for police officers as a result of submissions like mine, this did not make it into the bill. In fact, I don't believe my report had any influence over Bill 175 in any way.

I have three suggested amendments to the bill:

(1) I would recommend that the bill be amended to combine schedules 2, 3 and 4 into one special investigations unit. It is inefficient and costly to the taxpayer to have three separate oversight bodies—the discipline tribunal, inspector general and the SIU—all while still permitting chiefs to conduct their own investigations. This does not allow for more accountability and transparency

Each of these bodies determines if there are grounds for a criminal or provincial offence, including misconduct. The only differences between these bodies is who they investigate and from whom they receive their complaints. These investigators will be the most skilled, knowledgeable, objective and ethical people, so why would we not maintain one central agency, with satellite offices where resources can be shared? By changing the definition of "official" to include all persons in policing, the SIU would therefore investigate all complaints of criminality or misconduct, including the chief.

(2) Alternatively, I would like to see changes made to part VI of schedule 1. Chiefs should not be exempt from disclosure requirements because they are not above the law, inspectors should not be current officers, and it is blatantly obvious that a conflict of interest exists when you allow chiefs to investigate each other for criminal offences.

(3) With regard to part IX of schedule 1, police officers should always be afforded the right to an impartial investigation. This is not achieved by allowing chiefs' complaints. Under the bill, officers lose their right to a fair trial, which violates their constitutional rights. Only after a sanction is imposed can the officer appeal the decision. All allegations of misconduct should be handled by one central agency for consistency and fairness. This would end internal systemic misfeasance. I have 500 signatures on a petition to support that recommendation.

The lack of consultation prior to the release of Bill 175 shows a continued reluctance by government to accept the gravity of internal corruption that exists within our police services.

I am living proof that internal corrupt practices are eliminating—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Kelly Donovan: —good, honest people from the profession. I was an exemplary police officer until Chief Larkin used internal discipline to constructively dismiss me. Nothing in Bill 175 would prevent what happened to me from happening again to another honest police officer. In fact, after I was diagnosed with post-traumatic stress disorder last February, I could have faced termination under part VII of schedule 1.

This bill was prepared in haste without adequate consultation with the right people. If police officers were not scared into keeping quiet, you would receive hundreds of submissions just like mine.

I appreciate the opportunity to address you today.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Donovan. We'll begin with the PC side. Ms. Scott.

Ms. Laurie Scott: Thank you very much. That's quite a detailed report. On the consultation part—I didn't know if you wanted to finish off anything more that you wanted—five minutes is a very short time.

Ms. Kelly Donovan: I surprisingly got it all in. Thank you.

Ms. Laurie Scott: You did. Okay.

On Bill 175, you did mention schedules in that. I didn't know if you wanted to speak about the consultation process in this bill—that it's not going to address what you experienced, and if you would just expand.

Ms. Kelly Donovan: I think it has to be known that police officers are scared into not speaking about anything. That's common knowledge within the policing community.

I attended one of Justice Tulloch's public sessions as a way to voice my concerns to Justice Tulloch. I was one of the only officers in the room. That was in London.

When I attended the Kitchener session, it was full of members from the service, of very senior ranks. The image that was put forward was that you don't speak up, you don't attend and you don't give your feedback to these public sessions or you will be disciplined. That's why I think there's a huge voice that is necessary to be heard in this process that is being silenced by legislation currently.

Ms. Laurie Scott: Do you feel in Justice Tulloch's report that—what part is missing?

Ms. Kelly Donovan: I know there's protection against reprisal, but there's no deterrent for reprisal. There is no whistle-blower protection in Bill 175 that would allow an officer to anonymously report misconduct from inside.

Ms. Laurie Scott: That's very different from Justice Tulloch's—

Ms. Kelly Donovan: Justice Tulloch was recommending the whistle-blower, because he understood the importance for that anonymity—and that was not addressed in Bill 175.

Ms. Laurie Scott: Do you feel it's right across policing? Do you feel it's gender—

Ms. Kelly Donovan: No, I think it's men and women. Since the time I resigned very publicly, I get calls daily from officers who say, "I'm being put through the same thing." That's why it's so important that there be an opportunity for those voices to be heard, where they know there won't be any repercussions for them having spoken out.

Ms. Laurie Scott: You have made this very passionate plea. You've written a book. I'm a bit surprised that Justice Tulloch got—even though you feel that you weren't heard publicly when he was out there making his—

Ms. Kelly Donovan: I apologize. What I meant was that Justice Tulloch did listen to me.

Ms. Laurie Scott: Yes, that's what I mean. You were right there; Justice Tulloch listened. He made the recommendation, yet we don't see that in Bill 175.

Ms. Kelly Donovan: That's correct.

Ms. Laurie Scott: Okay. I think you've made that very clear. Thank you very much, Kelly, for all your work.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Scott. To the NDP: Ms. French.

Ms. Jennifer K. French: Hi. Welcome. You got a lot into that presentation. I'm impressed.

I have a question here. I'm looking at almost the first page of your report here. You said that no oversight body has chosen to exercise their legislated authority and investigate. Perhaps you can clarify that for me, so that I have a bit more understanding of the internals and what you mean by that.

Ms. Kelly Donovan: The complaints that I made to both the OIPRD and the OCPC were both within their legislated mandates. They were complaints about people whose conduct they should be overseeing. They came from the right person. I got letters back saying that those investigations were not in the public interest, and they chose not to investigate them.

There have already been reports done where it's been stated that an internal affairs matter is a matter of public interest, because that's when police officers uphold their most integrity. How can we say that an internal matter is not a matter of public interest? If we have officers who are committing misconduct or illegal acts behind closed doors, the public needs to know that. That's where there needs to be more accountability and transparency.

I believe I did contain those letters in my submission, just so you can reference them. My responses from the OCPC and the OIPRD are both in the submission.

Ms. Jennifer K. French: Do you have specific recommendations that would address that specific piece that should be in this legislation? I'm hearing you say it's a missed opportunity, but do you have thoughts on what the specifics should look like within legislation?

Ms. Kelly Donovan: I believe there can't be any persons in policing who receive any type of immunity. I think that's where the transparency piece comes in. If it's a matter of an issue being of public interest or not being of public interest, then there has to be a public board that is consulted, a board of representatives from the community, and ask them, "Is it in your interest that we investigate this matter?" Nine times out of 10, they're going to be saying yes, where the politicians are going to be saying no.

Ms. Jennifer K. French: As you said, you feel heard by Justice Tulloch on the whistle-blower provisions that aren't in this bill. Do you have any guesses on why it would not be included in this bill?

Ms. Kelly Donovan: I think there's an honest trust and belief that a person who comes forward would not be penalized. I honestly believe that that is the trust among politicians and the community—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Kelly Donovan: —but I'm here to say that that's the opposite. That is the fear. Officers don't come forward, even if it is encouraged. They don't, because they know there will be repercussions. That's the reality.

Ms. Jennifer K. French: So the idea of it is that, like you said, there's no deterrent for a reprisal.

Ms. Kelly Donovan: Right.

Ms. Jennifer K. French: Again, what do you think that should look like?

Ms. Kelly Donovan: It would be nice if there was an offence that was almost as punishable as an offence against the SIU. If a boss took reprisal action against someone because they reported an incident, that person taking the reprisal action should be punished.

Ms. Jennifer K. French: Okay. Some light reading. Thank you.

Ms. Kelly Donovan: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. French. To the government side: Ms. Wong.

Ms. Soo Wong: Thank you very much for your presentation and your collective notes to us about what you have done.

In the proposed Bill 175, the government is proposing the inspector general position. I want to hear your opinion, so I'm going to ask you very pointedly, because of time. How do you feel about this particular position in terms of increasing police accountability and transparency—and some of your concerns? This is the public hearing stage and we're still listening to people. Although you said you don't support this proposed bill, we heard previous witnesses totally support the bill. I need to balance this piece, because the previous witnesses were the Chiefs of Ontario, and they told us, "Don't delay any further." So I'm going to hear your views. I want to hear what you have to say about this inspector general position.

Ms. Kelly Donovan: Right. So under the inspector general section—I think the opinions that you're hearing that are supporting it are the people who are given the power under that inspector general section, so the chiefs of police can decline to provide disclosure that's part of an investigation. There's an exemption of chiefs of police under that section, where they do not have to make a disclosure. If you're a subject officer in an SIU, you would be forced to, but chiefs don't have to.

The other thing is that if there's a criminal allegation against a chief of police, they appoint what the bill says is an "unrelated police chief" to do the investigation, but there is no such thing. You look at every police chief, and they've progressed through their careers with each other. They all go to these camp retreats together. Some of them have dinners outside of work together. It's a community of friendships. You can't appoint a chief, basically an equally ranked officer, to do a criminal investigation of another equally ranked officer. There is a definite conflict of interest there. So I believe that the chiefs are supporting this because it's in their best interest to do so.

Ms. Soo Wong: No, this is Chiefs of Ontario, related to indigenous—

Ms. Kelly Donovan: Oh, indigenous chiefs. And specific to the inspector general section?

Ms. Soo Wong: No, they support Bill 175. They have directed this committee to go forward.

Ms. Kelly Donovan: Right. I think there are a lot of positive parts about this bill. If I had more than five minutes, that would be one section where I would say, absolutely. And the changes to the Coroners Act are fantastic—there are a lot of things here that we need to progress with—and the changes to the SIU. I just don't understand why we have three bodies that are looking at people in policing's conduct critically, but not working together. We're all looking at different bodies, and we take complaints from different people. Why not have one agency of excellence?

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Soo Wong: Okay. Thank you very much for being here.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Wong, and thanks to you, Ms. Donovan, for your deputation.

I would now invite our next presenter to please come forward: Dahabo Ahmed-Omer, Justice for Abdirahman Coalition. Are they present? Mr. Omer? We are ahead of schedule.

I presume the folks from the Canadian Civil Liberties Association also are not here? That's Michael Bryant, whom we would recognize, and Rob De Luca. No?

Is Paul Dubé, the Ombudsman of Ontario, here?

All right, we're looking at a 15-minute recess.

The committee recessed from 1613 to 1629.

JUSTICE FOR ABDIRAHMAN COALITION

The Chair (Mr. Shafiq Qaadri): Welcome back. We will now invite our next presenter to please come forward: Ms. Dahabo Ahmed-Omer for the Justice for Abdirahman Coalition. Welcome. Fadhiiso.

Ms. Dahabo Ahmed-Omer: "Fadhiiso" is what you said?

The Chair (Mr. Shafiq Qaadri): Yes.

Ms. Dahabo Ahmed-Omer: Oh, wow.

The Chair (Mr. Shafiq Qaadri): Please do introduce yourselves. Welcome. You have five minutes to make your opening address. There will be a rotation of the questions. Please begin.

Ms. Dahabo Ahmed-Omer: Thank you, Mr. Chair. My name is Dahabo Ahmed-Omer. I am the spokesperson for the Justice for Abdirahman Coalition. Thank

you for accepting our request to appear before you today concerning Bill 175.

It is an honour to be here representing many voices, but one key voice in particular—one who cannot be here today because his life was taken much too early, one whose life could have been saved by the accountability and oversight that this bill aims to implement.

Abdirahman Abdi was a 37-year-old Somali Canadian with mental health issues. He lived in an up-and-coming neighbourhood in Ottawa with his parents and siblings. Abdirahman was killed on July 24, 2016, by an Ottawa Police Service officer. Mr. Abdi had no criminal history, and there was no indication that he posed a threat to the lives or safety of the officers at whose hands he died.

Our coalition is based in Ottawa and supported by local and national advocacy groups. We are a multi-generational team of professionals. Our coalition asserts that fairness, transparency and accountability in our law enforcement institutions are critical to ensuring all of our safety and security.

Bill 175 is being introduced at a critical time for policing in Ontario. On balance, we believe that measures proposed in this bill can serve to strengthen accountability and begin to rebuild public trust for law enforcement in this province. The coalition strongly supports the bill's proposed principles to govern police oversight in Ontario. The provisions clearly identify the importance of holding police officers and other policing officials accountable.

The coalition also applauds the legislation's significant improvements to transparency and co-operation within SIU investigations. Today, SIU investigations are shrouded in secrecy, and it has weakened community trust, because its impartiality and its independence from the police oversight process are lacking.

This is particularly pronounced in cases that have been prolonged investigations without public consultation or public disclosure of their status. For example, in the case of Abdirahman Abdi, the family and the community had to wait seven long months, adding to a mourning family's anguish.

As such, we are pleased to see that the Safer Ontario Act will require SIU investigations to be finalized within 120 days and to provide a public status update on the status of the investigation if the time limit is exceeded.

We also welcome the proposed measure to allow SIU directors to comment on ongoing investigations, in the interests of preserving public confidence.

Moreover, the introduction of penalties for non-compliance in co-operation with SIU investigators is critical. The duty to co-operate is unenforceable and therefore meaningless if the non-compliant officers are not subject to sanction for the offence. The associated penalty acts as a specific and general deterrence of delinquent behaviour. Furthermore, it represents a level of accountability that does not currently exist.

Therefore, we welcome the provisions empowering the SIU's independence to fully realize its role by ensuring co-operation through tangible consequences such as fines and even, where appropriate, imprisonment.

We also welcome the newly formed Ontario Policing Discipline Tribunal and the articulation of the standard of proof in the proposed bill as a balance of probabilities. The previous police act did not have clear language in articulating the standard of proof in civil proceedings.

This change solidifies the reality that the profession of policing matches the same standard of other noble professions, such as firefighters and medical doctors. These measures, among others, are of deep importance to us, and in our written submission, we will be sharing with you a list of provisions that we want to see maintained at all costs.

While we support the majority of this bill's proposed changes, it is not all roses, as they say. Of particular concern for our coalition is the lack of discretion afforded to chiefs of police to suspend, without pay, officers accused or convicted of criminal conduct. The coalition acknowledges the fact that the public service profession of policing is complex and difficult, and it is a dangerous one. Police officers have a sworn duty to serve and to protect us, but what happens when the opposite happens? What happens when those who have been sworn to protect and serve us become the threat? Our legislative framework around policing should be sophisticated and agile enough to delegate such authority to chiefs of police.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Dahabo Ahmed-Omer: This bill is nearly 30 years in the making. I'll conclude with this: The Justice for Abdirahman Coalition is self-funded. I'm here today on my own time and my own dime. I stand before you representing concerned citizens across the province and our great nation. You are the decision-makers, and now, this is your time. We would ask for you to rise to the occasion rather than to succumb to the arm-twisting of well-funded lobby groups. Please take a closer look at this bill and consider the words that I've shared with you in the last moments.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Omer. To the NDP side: Ms. French.

Ms. Jennifer K. French: I saw you flip past a couple of pages there at the end.

Ms. Dahabo Ahmed-Omer: I did.

Ms. Jennifer K. French: I would be more than happy to invite you to share anything that you would like to get on the record.

Ms. Dahabo Ahmed-Omer: Thank you. Of particular concern for our coalition is the lack of discretion afforded to chiefs of police to suspend officers accused or convicted of criminal conduct without pay. Now, the coalition acknowledges the fact that the police service and the profession of policing is a complex, difficult and dangerous one. What we are most disappointed about is the provision around suspension without pay.

Other points in this bill will go too far, such as the opening of police services to privatization in our communities. This is an area that should be more closely

examined. This point is further elaborated in our written submission.

The totality of this legislation is sound. It's proactive, it's sustainable and it's an effective framework for making sure that our police system is focused and that community safety and well-being is taken into priority.

Ms. Jennifer K. French: Okay. I had heard it at community forums with Justice Tulloch, and we've heard it today—and I would like to know how you feel when it comes to the privatization of police services. You mentioned that you have some concerns. I don't have the written submission in front of me. Maybe I do; I don't know. But I'm looking forward to that. Or maybe—no. Anyway, we'll find it.

I'd like to have the specifics, but while I've got you now, one of the things we've heard from the broader community is the need for what they feel is accountability. The oversight and accountability, that's where I anticipate your concerns are with the privatization, that if you have core police services looked after by a private company that's profit-driven and doesn't fall under that oversight umbrella—that's my instinct. I'd like to know your take on that.

Ms. Dahabo Ahmed-Omer: We're very aligned with what you're saying. I think that it's important to note that if it is privatized, the police service and the policing system is no longer driven by the safety and security of our community but more driven by profit. We worry about that. We worry about the fact that the police and community relationship right now is very strained.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Dahabo Ahmed-Omer: It is strained because of a number of instances in the last year, including Abdirahman Abdi's case. So it's important to note that we don't want to deter from that. What we want to do is fix the relationship between the community and the police.

Ms. Jennifer K. French: Thank you. And it turns out I did have your submission. I apologize to the Clerk. I will open my eyes next time and look. Thank you.

The Chair (Mr. Shafiq Qaadri): To the government side: Ms. Wong.

Ms. Soo Wong: Thank you very much for your presentation and your written submission. I did have a quick scan of your written submission.

I just want to elaborate and get your opinion, because you expressed your concern to the committee about privatization. I wanted to ask you, coming from the city of Ottawa—we just heard earlier from AMO, the Association of Municipalities of Ontario, claiming that one of the largest budgets for most municipalities is policing.

Would you not agree, as a resident of the city of Ottawa, that not all policing needs to be a police officer with a gun; for example, when you're hiring for online issues? There is a lot of trolling and there's a lot of organized crime on the Internet. Would you not be arguing for an officer who has the expertise? It may not be a police officer with a gun; you hire an expert when it comes to electronic safety stuff.

The other piece here is that I know that the city of Ottawa is growing. Your mayor has been working with us in terms of infrastructure. As a resident, would you hire an officer or a special constable to better start dealing with some of that construction? Because we see construction. I'm from the city of Toronto.

I just want to hear your comments about that piece of privatization, because you haven't verbalized to us about that concern, so I wanted to push out about it specifically.

Ms. Dahabo Ahmed-Omer: Sure. I think it's important to note that police officers have a very difficult job; right? There are ways that we can deal with the lack of training that they have. I think that there are ways to grow their work description. There are ways to ensure that they are equipped with the right tools to deal with different types of situations. If police officers need to have more training when it comes to mental health or when it comes to dealing with different types of situations, I think that it would help them. We would ensure that they had what they needed to do their job.

1640

I stand firmly against privatization because I think it divides the community from the police. Any time that you take a service and you take it out of the community—for now, I think the only reason why some of the relationship is not completely destroyed is because we do see the police officers in our community. I think that it's important to keep them there but also to make sure that they have the tools that they need to do their job properly.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Wong. To the PC side: Mr. McDonell.

Mr. Jim McDonell: Thank you for coming before us today.

I know I don't live in Ottawa, but I'm close enough to catch the radio stations, certainly, to hear about some of these very sad things that happen.

Now, we talk about the 120 days for completion. We also know that most of that won't happen. Do you think it's suitable to have to wait that long for some public information to come back from the commission? Because I know that part of the issue in this case here was that it's basically a secret for so long—four months—and the public sometimes needs to know some information. I think in this case here, this was one of those cases where four months is really too long to wait for any information back.

Ms. Dahabo Ahmed-Omer: I think that there's a way to find a balance between the special investigations unit doing their job properly and accurately and making sure that they have what they need to come up with findings that are appropriate and that would respond to the public. I know that when it is too long, obviously it adds on to the family's anguish and it adds on to the community's worry and doubts when it comes to policing and how they are doing their investigations. What we would like to see is a balance between the two.

When Justice Tulloch did his review on oversight, with speaking to as many people as he did, I think he was

able to find a balance between the community wanting to hear back from their law enforcement institutions as well as the SIU body doing their job properly.

I think waiting for months on end without hearing a word back is difficult for the whole community. It only adds on to the family's anguish. It adds on to their troubles. It adds on to figuring out, what is going on, what is happening within our law enforcement institutions that they're not able to give us any piece of information?

I think that with Justice Tulloch's recommendation, it's a balanced solution. I think it's great if SIU can come back and say, "Here's what we've done so far. Here's where we're at. Here's where we're going." It doesn't create doubt. You know what's going on. Nothing is being done behind closed doors, and the public can trust that their law enforcement institutions are doing their job.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Jim McDonell: I know that policing, in most cases, comes down to a matter of trust. You're fairly familiar, I would think, through your coalition on that amount of trust. Do you have any comment on trust and law enforcement?

Ms. Dahabo Ahmed-Omer: I think that there have been a lot of different instances where the trust has been broken. If we look at the race-based data report that has been done on traffic stops, it shows you that racialized communities are overrepresented. I think that it's important to note that these racialized communities are suffering at the hands of the police. They are. It's not hidden. Justice Tulloch, when he did his report—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. McDonell, and thanks to you, Ms. Omer. Shukran for your deputation of the Justice for Abdirahman Coalition.

CANADIAN CIVIL LIBERTIES ASSOCIATION

The Chair (Mr. Shafiq Qaadri): Now I'd ask our next presenters to please come forward. The Canadian Civil Liberties Association: Mr. Rob De Luca.

Welcome, Mr. De Luca. You have five minutes to make your opening address. Please begin now.

Mr. Rob De Luca: Thank you for the opportunity to appear before you today. The Canadian Civil Liberties Association is a national organization dedicated to the protection and furtherance of civil liberties in Canada. As a principles-based and strongly non-partisan association, we will focus our submission on improving the bill's provisions from a civil libertarian perspective.

In my time here today, I would specifically like to focus on the bill's provisions codifying police independence. We recommend that these provisions be revised and narrowed so as to ensure that police oversight institutions are able to effectively carry out their oversight obligations.

The act would protect a sphere of operational independence at several points. Section 38(5) of the act prohibits boards from making "policies with respect to specific investigations, the conduct of specific operations, the deployment of members of the police service, the management or discipline of specific police officers or other prescribed matters." Section 40(4) of the act then prohibits a police service board from directing the "chief of police with respect to specific investigations, the conduct of specific operations, the discipline of specific police officers, the routine administration of the police service or other prescribed matters." At sections 60 and 62 of the act, similar language prohibits the minister from making certain policies and from directing the commissioner of the OPP.

On its face, this is broad language. It prohibits municipal boards from making general policies that might be viewed as directing the deployment of police officers. It insulates both the conduct of specific operations and routine administration from direction. While these concepts can be narrowed and better defined via regulation, the statute also expressly allows for additional prohibitions on direction to be prescribed. These protections for police independence fail to reflect democratic responsibilities and obligations with regard to police oversight and accountability.

First, we share Justice Linden's observation that the arguments in favour of operational independence—minimizing the risk of political interference and obligating chiefs of police to take on the burdens of decision-making in spheres where they are best situated—should not insulate public officials, including chiefs of police, from being fully accountable to the institutions of a democratic society.

Second, we are wary of the unjustified assumption that the dangers of inappropriate political interference are more weighty than the dangers of inappropriate police behaviour, including the dangers that police behaviour might itself be shaped by political motivations or by other prejudices. These unjustified assumptions are particularly pernicious, as they encourage democratic institutions to shirk their political responsibilities, particularly in those instances of public controversy where political leadership is most in demand.

As Justice Morden concluded in his review of the Toronto Police Services Board's role in overseeing matters related to the G20 summit, in order to play an effective and meaningful oversight role, police services boards can and must provide detailed guidance to police forces on issues affecting the community. On this point, civilian oversight should not be hindered by the traditional divide between policy and operational decisions.

It is particularly important for boards to play an active, informed role on issues that have a significant impact on residents' charter- and code-protected rights. For example, in the past, the CCLA has urged police services boards in Ontario to address concerns about carding and racial profiling. The CCLA has maintained that police services boards have a positive obligation to address systemic rights issues in order to fulfill their statutory mandate. While this positive obligation would now be expressly recognized at several points in the proposed

act, we submit that the statute's overbroad conception of police operational independence would frustrate this obligation.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Rob De Luca: As such, we recommend that the bill's several provisions codifying police independence be revised and narrowed.

We have a number of additional recommendations for amendment that we will be passing along via written submissions that have not been submitted as of yet, as well as more detailed recommendations for the above provisions and sections, but I now welcome any questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. De Luca. We'll begin with the government side. Ms. Wong.

Ms. Soo Wong: Do you want to finish for the next two minutes so that we can hear what you have missed because the time is limited? Can you share with us briefly what you wanted to say—but you didn't have the time in the five minutes?

Mr. Rob De Luca: I was able to finish my expected submission.

Ms. Soo Wong: Okay. With regard to the proposed legislation, if passed, I want to hear—because you represent the Canadian Civil Liberties Association—how these changes would affect your clients and your work within your association.

Mr. Rob De Luca: How would the act, as a whole, affect our clients?

Ms. Soo Wong: Yes.

Mr. Rob De Luca: I think that's a difficult question to comment on, for a number of reasons. One is that the several schedules, if passed, would have a number of consequences. It's such a large omnibus piece of legislation that it's difficult to parcel out what exactly will affect what. That is part of the reason I'm reticent to give a sweeping indication of how it will affect people who contact us.

1650

Another issue, I think, is that at a number of points in the legislation it's expressed that a number of regulations will need to be prescribed before we know the consequences of the act. For that reason, as well, I think it's difficult to comment on how exactly it will affect individuals who contact us.

I will say that if the act is fully implemented and that we have a complaints director overseeing independent investigations and a tribunal providing independent hearings, that is the kind of independence that a number of people who contacted us with concerns about policing are looking for. But, again, I think the actual implementation of the act is still somewhat up in the air, in my opinion.

Ms. Soo Wong: Okay, thank you.

The Chair (Mr. Shafiq Qaadri): To the PC side: Mr. McDonell.

Mr. Jim McDonell: Thank you for coming out today before the committee. I know you talked about police accountability and political interference. Can you elaborate on that?

Mr. Rob De Luca: The reason I raised that concern is I think the traditional justification for codifying police independence and having a robust sphere of independence where politicians and civilian oversight bodies shouldn't interfere is in furtherance of the rule of law and the belief that, as an independent institution, police officers need the freedom to be able to—for instance, most powerfully, the independence to bring investigations when they see fit and when they have reasonable grounds to believe a criminal offence might be taking place. That itself might engage political officials.

I think that's the traditional justification for the core of police independence, but part of the point I was trying to make is that I don't think political motivations are exclusive to political bodies and that among police services and police services boards you'll also have political motivations. There is a danger in overreliance on political independence as some sort of check on political bodies. I think the danger is, and this has been noted by numerous commissions and inquiries, that if you give too much towards police independence, the police can become a sort of law unto themselves. I think that's the danger—and that ultimately in a democratic society, it is the democratic institutions that should be able to hold the police accountable.

Mr. Jim McDonell: You also talk about—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Jim McDonell: —a police service board having more ability to provide guidance, so kind of running contrary to that. So you're looking at some examples of that. Were you looking at some guidance as far as what areas?

Mr. Rob De Luca: One of the difficulties with the act is that I think it does provide that guidance at various points. The new statutory provision mandating strategic plans and the community safety and well-being plans is the kind of guidance I have in mind, in part. One of the issues—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. McDonell. To the NDP side: Ms. French.

Ms. Jennifer K. French: I kind of want to hear the end of that thought, because otherwise it's just rude, but then I have a question.

Mr. Rob De Luca: Sure. I think there are numerous provisions in the act that speak to directions that we've sought from a police services board, including in relation to issues such as racial profiling. Those are the sorts of directions that I think boards can sometimes be more forthright in pursuing. The danger of police independence is that, if it can be categorized as a specific operational decision, then that could be used to resist a direction from the board.

Another good example was—

Ms. Jennifer K. French: Also, that was his question, so I have one too. Finish that, but then I really want to—

Mr. Rob De Luca: I'll just repeat again that I think Justice Morgan details in his G20 report how this was very germane to the G20 issue.

Ms. Jennifer K. French: Thank you. Like you said, the actual implementation is up in the air, in your opinion, so I would like to hear some of your ideas on how best to implement. You also said that a number of regulations will need to be prescribed. I would love some examples, because so much is left to regulation and we never get to dig into that. That's made in backrooms, and then we wait and see. There are some pieces that perhaps should be debated as statutes. Do you have thoughts on combining those?

Mr. Rob De Luca: In general, I believe that any provisions that might affect the Charter of Rights and Freedoms should be moved to the prominence of a statutory definition as opposed to regulation. One of the key areas where I think regulation will play an important role is one that I mentioned earlier—which is that a number of these definitions regarding police independence are set by regulation.

I think another very important one is in the case of First Nations boards. These boards will be constituted upon request to the minister, and then the boards will then be completely composed via regulation—the area of the board and how the board itself is constituted. That may raise, I think, issues of First Nations policing and whether or not that should be something that should be codified.

I think that there are a number of other places in the act, but those are two that spring to mind.

Ms. Jennifer K. French: I will look forward to that written submission that outlines your recommendations. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. De Luca, for your deputation on behalf of the CCLA.

OFFICE OF THE OMBUDSMAN OF ONTARIO

The Chair (Mr. Shafiq Qaadri): Our next presenter is Mr. Paul Dubé of the Office of the Ombudsman of Ontario. I know that you colleagues know the drill very well. Please begin your five-minute address now.

Mr. Paul Dubé: Thank you, Mr. Chair and members of the committee. Bonjour et bon après-midi. Thank you for the opportunity today to speak to you about Bill 175. Significant reforms in policing are long overdue, and this bill contains many positive elements that I support.

Public confidence in policing has deteriorated substantially in the past three decades, so my team and I are pleased to finally see this bill, which constitutes a significant step forward in enhancing accountability and reforming policing in Ontario. There are some gaps in the legislation proposed, and I will highlight the most important from our perspective.

However, I am going to urge you to make the necessary amendments and expedite its passage into law. The people of Ontario have been waiting decades for an effective and credible system of police oversight, only to see recommendations from coroner's juries, commissions and Ombudsmen result in only incremental change. To adequately address the tensions between police and the community and to rehabilitate a relationship that must be built on trust and confidence, this bill should be just one step in a comprehensive process of reform that must address police culture, oversight, accountability, training and recruitment.

As you know, my office has proposed many reforms to improve public trust in police, including better training and standards and increased accountability and transparency. The need to reform and modernize policing was further underscored by Justice Tulloch's review. He and I have made similar and consistent recommendations, many of which, thankfully, are incorporated in the bill before you today.

To cite just a few:

—Extending my office's jurisdiction to the inspector general and to the Ontario Policing Complaints Agency and the Ontario Policing Discipline Tribunal, as well as the Ontario Special Investigations Unit, is a responsive and appropriate measure.

—Ensuring that police oversight bodies are supported with a robust statutory foundation with clear mandates is an historical development.

—Requiring SIU director's reports to be disclosed will go a long way to improving public confidence not just in the SIU but in the police themselves.

I support and commend these long-overdue reforms, which represent unprecedented advances in policing oversight. However, I must draw your attention to several gaps in the bill that my office has identified and dealt with in my written submission.

1700

The first two deal with civilian representation within the agencies that police the police. Public confidence requires that these agencies not be tainted by a perception of pro-police bias.

There are insufficient safeguards in the bill to ensure that complaints about the police will be investigated by civilians and not the police, so the composition of these agencies needs to be addressed. In some cases, the bill recognizes this. Unfortunately, it is not consistent. Although it bars SIU investigators who have a policing background from investigating their former colleagues, it does not do so for all the other bodies. My submission proposes amendments to the bill that would ensure greater civilian representation on all of our police oversight bodies, and prohibit them from having ex-officers deal with cases involving their former police forces.

Most significantly, I am concerned with the wording of provisions intended to make it mandatory for police services to comply and cooperate with the OSIU. That intent is undermined entirely by the qualifier, "unless it is impracticable to do so." We have seen historically the reluctance of some police chiefs and services to comply with and respect the SIU's mandate. This wording will enable and reinforce the very problem that the section was intended to remedy. Imagine the blow to transparency and accountability if open meeting legislation said meetings should be open to the public, "unless it is impracticable to do so."

We require information from the institutions that we investigate. The confidentiality provisions in Bill 175 could be interpreted as a justification for not complying with a request for information from my office. This bill expressly exempts certain offices from this non-disclosure principle, such as the Human Rights Commission and the Information and Privacy Commissioner, and my office should be exempt as well.

Finally, if policing reform is to address the crisis in confidence we are now seeing in policing, it must address the way that police interact with vulnerable people, such as those who are in crisis due to mental illness or drugs. A legislated commitment to reforming the use-of-force model and making de-escalation training mandatory is missing from Bill 175.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Paul Dubé: While the details can come out later by way of regulation, I'm concerned about the lack of concrete action on standards for police training since the minister accepted my recommendations on this in 2016. The objective of this legislation is to make Ontario safer, and a legislative commitment to a new use-of-force model, requiring officers to use de-escalation in dealing with people in crisis, is a key missing piece to this legislation. Mandatory training on de-escalation would save lives, improve public confidence and, hopefully, result in fewer cases before the SIU and the other agencies in this bill.

It's time for concrete and substantial change in the way that police are trained, carry out their duties and are held accountable in Ontario.

Le Président (M. Shafiq Qaadri): Merci, monsieur Dubé. Je passe la parole à Mme Scott.

Ms. Laurie Scott: Thank you very much. That was a lot of heavy content. Is there anything that you wanted to go over again? Five minutes is not a lot of time to specify. There are some things I know you went over quickly, so please.

Mr. Paul Dubé: Just that there's no prohibition against current or former police officers being employed by the tribunal, for one; there's no prohibition against the inspector general being a current or former police officer, or a deputy investigator; and the SIU has no limits on the number of police officers. The composition of these boards is something that I would urge the committee to address to make sure that there is no perceived apprehension of bias on the part of the public and it doesn't look like it's just the police policing the police again.

Ms. Laurie Scott: Just to follow up on that, if I may: What have you seen and what is being proposed? You're still not totally comfortable that there aren't too many police background people, I guess, on the boards or the oversights, right? You're still saying that it could be—

Mr. Paul Dubé: My office, before I was even there, reported on this in the past. It was problematic that the police culture—former police officers have a tendency, or are susceptible to, bringing that culture with them. That has to be addressed. So having a proper balance and making sure that the majority of these bodies are staffed with civilians and not police—especially if they are former police officers, that they be prohibited from investigating complaints or issues with respect to their former police forces, because potentially, it could be their colleagues.

Ms. Laurie Scott: Of course. And you still feel that that's a possibility, the way the legislation is written.

Mr. Paul Dubé: Yes. The way the legislation is drafted right now, there is no protection or prohibition against that.

Ms. Laurie Scott: What proportion of police backgrounds and what proportion of civilian—I don't know if I'm wording that right—would you like to see? Is there a percentage, or is there anything you could refer to?

Mr. Paul Dubé: I'll leave that up to the committee. I don't have a specific percentage, but enough to instill public confidence, enough so that when the public looks at this, this doesn't look like the police policing the police.

Ms. Laurie Scott: That's a fair enough comment.

How many seconds do I have left?

The Chair (Mr. Shafiq Qaadri): Forty-five.

Ms. Laurie Scott: Forty-five; all right. Can I just speak to the fact that there have been a lot of recommendations? There are going to be cost implications that there are no actual resources given for these oversight bodies. Do you have any comment?

Mr. Paul Dubé: I can only speak to my office. I think that we would be well-positioned to handle the extra oversight without any extra costs. It doesn't look like extra resources would be necessary.

Ms. Laurie Scott: In addition to what's been said in the bill or—

Mr. Paul Dubé: I'm not sure I understand your question.

Ms. Laurie Scott: In addition to the oversights that are in the bill, I just don't understand how you—

Mr. Paul Dubé: So are you asking about my office's oversight or the other bodies?

Ms. Laurie Scott: Yes, the other bodies.

Mr. Paul Dubé: I can't give a comment on—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Scott. To Ms. French of the NDP.

Ms. Jennifer K. French: Okay, my turn. Thank you for coming.

I was looking back through some notes. We had had a presentation earlier this morning speaking to the ability for more and varied civilian involvement, and ensuring that there weren't screening pieces that would deter people from getting involved. But I can't find my notes so that's not super helpful.

But in terms of the civilian involvement in—what was it, anybody remember? It was non offences. Anyway, the gentlemen who gave the presentation said, "I would be deterred if they"—never mind. I have so many thoughts and they're not lining up here because—

Mr. Paul Dubé: We have more details in the written submission so hopefully that will be helpful.

Ms. Jennifer K. French: Thanks. Okay, so I am going to do my best to focus here and come up with something useful. It's something that you had said about the bodies being not biased but perceived as biased. I guess I would like to know—because you do so much interfacing with the community and have a real appreciation for the perception of systems and how to foster that kind of trust and make improvements. Is there anything else that you would recommend that would help with that—things that may not be the nitty-gritty but broad pieces that could strengthen this legislation so that our communities do have a better understanding of the process in general, so that they can perceive it and understand it?

Mr. Paul Dubé: I just think that there are several steps in this proposed legislation that address the need to improve trust and confidence. What we've seen over the past decades is we've devolved from a model where, as Sir Robert Peel said, "The police are us and we are the police." It's kind of devolved into—this is my observation, anyway—a situation where it's more "us" than "them," where police culture is tending to insulate the police from the public.

They want protections in the way they do their very difficult work, and that's understandable, but I think we have to redress the balance and really ensure that the public has more trust and confidence. That's done by enhancing accountability.

Ms. Jennifer K. French: When it comes to oversight, if we were to privatize and remove more police services and put them outside of that oversight, how do you feel about that?

Mr. Paul Dubé: As a taxpayer as well as the Ombudsman, I can see the logic to saving costs by having certain people do certain things; you don't necessarily need a fully trained officer. I think it comes down to what the role is, the mandate and the authority—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. French. I pass it now to the government side. Ms. Wong.

Ms. Soo Wong: Thank you very much for your presentation and your written submission.

I'm going to ask specifically about the expanded oversight in the role of the Ombudsman as related to the bill. Also, we heard throughout the day about the issue of public confidence. In terms of expanded oversight in your role as the Ombudsman, how will these three police oversight boards improve—we really need to improve—public confidence? Can you put that in context?

Mr. Paul Dubé: Sure. I think that the objective is to ensure that they give people a place to go. By us having oversight over those three bodies, that ensures that there will be consistency, right? We don't redo investigations. We don't replace tribunals or investigative bodies. But what we do do is review their work when they are complained about, and make sure that certain standards of procedural fairness are maintained, and we recommend best practices. I think that that can only help enhance the oversight function and keep it consistent.

1710

Ms. Soo Wong: Thank you very much for what you do.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Wong, and thanks to you, Mr. Dubé, of the Ombudsman's office of Ontario, on behalf of the committee.

SOUTH ASIAN LEGAL CLINIC OF ONTARIO

The Chair (Mr. Shafiq Qaadri): I now invite our next presenter to please come forward: Ms. Shalini Konanur of the South Asian Legal Clinic of Ontario—replaced by Sukhpreet Sangha. Welcome. Please be seated. You've seen the drill. You have five minutes. Please begin now.

Ms. Sukhpreet Sangha: Thank you. As a community organization that has been advocating for a strong police oversight system in Ontario, SALCO commends the government for introducing Bill 175. SALCO has a long history of working with racialized communities who have tried to engage in the police complaint process. We are pleased to see the government take this important step towards strengthening police accountability and restoring public confidence in oversight bodies.

However, the bill in its present form has raised some significant concerns for us, particularly regarding matters of violence against women and the potential to expand the SIU's mandate to "related persons." In that regard, I'll raise three specific concerns.

The first is regarding sexual assault allegations against officials not being included as a stand-alone ground for notification or investigation. Despite Justice Tulloch's clear recommendation 5.7(d), "The SIU must be notified of all incidents involving allegations of sexual assault against police officers," Bill 175 does not contain a stand-alone provision regarding this type of notification.

The bill needs to explicitly name sexual assault as a particular category of incident requiring notification, apart from embedding it as a part of the "serious injury" definition. As a province, we are moving forward in recognizing the distinct nature of sexual assault as a crime and the need to encourage its reporting. It is one of the most under-reported crimes, as I'm sure you are all aware, and the government needs to take active measures to correct that fact.

Already-marginalized groups, such as our clients, are especially vulnerable to sexual violence. Many communities, including racialized, indigenous, trans, differently abled, and without-status women, also have fraught relationships with the police and therefore especially need to see that sexual violence allegations against officers are taken seriously and are subject to oversight. Carving out sexual assault as requiring particular notification and investigation is a key step in addressing widespread sexual violence. Naming sexual assault explicitly in Bill 175 in this way would also be in line with the provincial government's stated commitment to preventing violence against women.

As Justice Tulloch writes in his report, where there is uncertainty, the legislation should tend towards being over-inclusive and thereby leave it to the SIU to determine, ultimately, whether or not an incident falls within its mandate. In order for that framework to function properly, the SIU must be notified of all incidents that potentially fall within its mandate.

Our second concern is regarding the Missing Persons Act and its lack of sufficient direction for officers to consider whether a person is fleeing violence before seeking an order for production or a warrant. The Missing Persons Act does contain essential provisions mandating consideration of whether or not an alleged missing person may not wish to be located, which we appreciate and recognize for their acknowledgment of the misuse of missing persons reports by abusers seeking to locate persons who have left or are attempting to leave situations of violence and/or abuse. However, the responsibility for applying this framework rests only with justices in section 4(4), regarding orders for the production of records, and section 6(3), regarding applications for warrants authorizing entry. There is similar language to those provisions in section 5(3), regarding urgent demands for records, providing that officers must consider any information suggesting that the missing person may not wish to be located, but it appears only in that section.

Instead of this bifurcation of responsibility, officers should be required to apply these considerations in all three situations themselves prior to applying to justices for production orders or warrants. Sections 4 and 6 should include this provision for officers as well as justices to pre-empt the use of judicial resources in determining whether or not the alleged missing person is actually someone who is trying to leave a violent or abusive situation, and incorporate this necessary framework at an earlier stage of the process, thereby.

Unfortunately, our work at SALCO reveals that abusive partners and families sometimes turn to the police and claim that a person is missing in order to try and find them and bring them back into an abusive household. People even go so far as to call the police and claim that the person is both missing and unsafe or at risk due to alleged mental health concerns, spurring officers to contact shelters for wellness checks that end up signifying the abuser's continued reach and control. Officers need to be trained in spotting such abusive behaviour and misuse of missing persons reports and related measures.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Sukhpreet Sangha: An important step in preventing this type of misapplication of missing persons provisions is legislating this framework at both the officer level and the judicial level, throughout the act.

My final point is about expanding the mandate of the SIU to include non-officers.

As a comprehensive concern, we are troubled by the act's broadening of the SIU mandate to allow for the investigation of non-officers. Provisions in the act, such as section 18 of schedule 2, permit investigations to be extended to include "related persons." Put simply, the investigation of civilians by the SIU is an overreach of its mandate as a police oversight agency—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Sangha. We'll begin our first line of questioning with the NDP. Ms. French.

Ms. Jennifer K. French: Keep going.

Ms. Sukhpreet Sangha: These provisions will have a chilling effect on the participation of civilian witnesses in SIU investigations and thereby severely hinder its capacity. The extension of the SIU mandate to allow for investigations of civilians was not recommended in the Tulloch report, and it ought not to be included in this bill.

Thank you.

Ms. Jennifer K. French: Thank you.

As you know, today is the first Human Trafficking Awareness Day. We've had the opportunity to talk about it in the Legislature and now we can talk about it here. I was sort of triggering with what you were saying, with human trafficking and the horrible network that that is, to what you were saying about the Missing Persons Act. Can you maybe take a bit more time and talk about what that should look like? With that framework that we have outlined here and the concerns that you have—how can we reconcile those two? In your opinion, what could that look like?

Ms. Sukhpreet Sangha: I think there's actually quite a simple solution, which we're trying to point towards in our submissions, which is that the language that exists in subsection 5(3) already about officers needing to look at any information that suggests that the missing person may not wish to be located or is leaving an abusive or violent situation—just that that language should be imported into sections 4 and 6 as well, so that there's a preliminary step where an officer is mandated to engage those concerns and considerations before proceeding to make an application for an order or a warrant before a justice.

Ms. Jennifer K. French: So as it applies in subsection 5(3), you're saying it should then apply in sections 4 and 6 as well?

Ms. Sukhpreet Sangha: Exactly—as a preliminary step before the application for the order and before a justice needs to engage in that consideration. An officer should do so first, because then it can pre-empt the abuses of the missing persons process that sometimes take place by abusers to locate people trying to leave the abusive situation.

Ms. Jennifer K. French: Okay. We also heard earlier today from another applicant that their recommendation would be the same thing that you said—that it be explicitly named and have a stand-alone section.

Your third point, expanding of the mandate of the SIU to include non-officers: Can you give me an example of a scenario of concern?

Ms. Sukhpreet Sangha: Sure. Our clients, of course, are South Asian people of various backgrounds—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Sukhpreet Sangha: —racialized persons, who sometimes have a reluctance to engage with police for various reasons, historical and current. Our position is that clients of ours would be reluctant to provide information to an investigation knowing that that could lead to themselves being investigated by the SIU. They need a protection further than what's provided for in this act to be willing participants in SIU investigations, which is necessary to the success of those investigations.

Ms. Jennifer K. French: And that's section 18. We did hear about it earlier, but I wanted the further clarification. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. French. To the government side: Mr. Potts.

Mr. Arthur Potts: Thank you very much for taking the time and bringing your expertise into these issues.

I'm going to start with the second, but your third point as well, and then maybe work back to the first. When we're talking about civilians—in your description here, you're talking about civilians on the street, when I think the application to the SIU is the oversight of civilian people within the service of the police. So when you have police officers and then you have forensic experts who may not be police officers, but they're civilians working within the service, we want the SIU to have oversight over them. Does that clarify that section, or am I misreading it?

Ms. Sukhpreet Sangha: In our reading of the act and section 18, as Ms. French mentioned, that's not clear. That's why we're troubled by the framing of the act. The way section 18 reads now, it doesn't specify in the way that you're specifying that this is only meant to include civilians connected to the service in some way. It's overly broad. It reads as if it could include other civilians.

Mr. Arthur Potts: Maybe it has to be "civilian employees," or maybe within the definitions section, why they use "civilian." I think they're referring to civilians within the service—but okay, we can take a look and make sure that's clarified.

I'm absolutely confident that this act is supposed to be addressing serious offences, of which sexual assault is clearly a serious offence. While it may not be named specifically in the act, in the course of anyone's understanding of a serious offence, I think that it would be caught up, and it certainly may get caught up in regulations.

1720

Would you be comfortable knowing that it was going to be caught in regulations or that it would be caught up in a layperson's definition of a "serious offence" and that police officers engaging in serious offences would be investigated?

Ms. Sukhpreet Sangha: It would go some way toward satisfaction if it were included in the regulations, but our position is that it needs to be named explicitly in the act as a separate category, especially because the way the act is currently framed, it doesn't appear to catch officers who are off-duty with allegations of sexual assault. Our position on Justice Tulloch's recommendation being so broad is that it is in part to capture that conduct, which this act fails to capture unless it is in regard to an investigation that is already taking place where other officers are already captured under the conditions under section 16.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Sukhpreet Sangha: That's a grave lack, in our position. There are a lot of cases we have seen where off-duty police officers are accused of sexual assault and they are charged in the regular criminal court process, but we believe that the SIU or the future OSIU should also have jurisdiction over those issues. Therefore, there needs to be a broader inclusion of sexual assault as a stand-alone provision to fix that gap.

Mr. Arthur Potts: We love what you do in the community. You represent a lot of people in my community. Continue the good work.

Ms. Sukhpreet Sangha: Thank you.

The Chair (Mr. Shafiq Qaadri): To the PC side: Ms. Scott.

Ms. Laurie Scott: Thank you very much. You brought a lot of great points to the table. This is why we have committees and presentations: to bring forward and to say what was missed in the bill.

Do you have an example you could give? Because I think that's what we need—an example of a woman, especially, who is trying to escape and she might get caught in this situation where she's found and she didn't want to be found. Can you just give an example that you've seen? Because I know that you have been a fearless defender of these people.

Ms. Sukhpreet Sangha: The example that I touched on very briefly in our submission would be that of a woman who has left an abusive household and finds herself in a shelter, probably a violence-against-women specific shelter, to find support and services, perhaps such as our own, and then the household that she has left—perhaps her partner calls the police and says, "My partner is missing. I haven't heard from her in X number of days. I want her to be declared a missing person. Can you please help me find her?" We find that unfortunately members of police services often fall for that. It is a trap. There are cunning individuals who are calling in with these requests. It's fair that they're not always caught, but unfortunately it can lead to a situation where the police then end up supporting the abuser in tracking down the woman who has left the household. That can go so far as to calling various shelters throughout the area where the woman is known to have lived or worked and actually finding the woman.

At shelters, we've spoken with women, men and any-gendered people who work at VAW shelters who struggle with the difficulty of being confronted with a police officer knocking at the door of the shelter and looking for a person who they claim is missing, but they know has been abused and does not want that person to know where they are. It can lead to this very grey area, which I know is difficult for police to manage, and I have

sympathy for that. There needs to be more protection for women who have successfully left the house but now find themselves pursued by police at the hands of their abuser.

Ms. Laurie Scott: The possible solution that you have brought forward: Do you think that that will be to pre-empt the use of judicial resources?

Ms. Sukhpreet Sangha: Yes. We think that building that framework in very directly throughout the Missing Persons Act at both levels—for the officers, initially, to engage in those considerations, and secondarily, justices, if the officers don't make that determination. That will help because it builds the framework in to address this issue. It makes the issue explicit in the act.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Sukhpreet Sangha: It makes it explicit that there should be two levels of verification, even in the case of production orders and warrants, to confirm that that is not what is happening and the person is indeed missing. I think it would go a long way.

Ms. Laurie Scott: And you're okay with the time frame it would take—I don't know how long it would take to apply—for a double-check, basically?

Ms. Sukhpreet Sangha: Right. Production orders and judicial warrants are typically pursued very quickly. That's why there are telewarrant provisions. Officers are usually in great haste, so I don't think it would extend it to the point of being a concern.

Ms. Laurie Scott: Okay. Thank you very much. That was all.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Ms. Sangha, for your deputation on behalf of SALCO.

TORONTO COMMUNITY HOUSING CORP.

The Chair (Mr. Shafiq Qaadri): I now invite our next presenter to please come forward: Ms. Hannah Kohn from the Toronto Community Housing Corp. Welcome. Please be seated. Your five minutes begin now.

Ms. Hannah Kohn: Good evening. I'm here on behalf of Toronto Community Housing. Thank you for your time today.

Toronto Community Housing respectfully requests that this committee consider amendments to the proposed Police Services Act in schedule 1 of Bill 175. The details of that amendment are outlined on page 6 of our written brief, which hopefully has been provided.

The purpose of these amendments is to allow special constables to create and maintain youth records when acting in the scope of their appointment, without breaching the privacy provisions outlined in the Youth Criminal Justice Act, the YCJA. We believe there is an unintentional gap in the legislation in terms of equipping special constables with the necessary protections to complete their duties. In light of the language of the YCJA, we believe that our proposed amendments are the only way to address this gap and provide special constables with equitable protection under the legislation.

I'd like to briefly review the current legislative regime as it relates to special constables, which explains what we're here about today. Under the existing and the proposed Police Services Act, a police services board may appoint a special constable and confer on him or her the powers of a police officer, as set out in their appointment. Special constables must keep records of their interactions with the public while acting within the scope of their appointment. The reasons for this are twofold: (1) Documenting their activities is necessary for compliance with reporting requirements mandated by the police service from which their powers are conferred; (2) it provides critical protection and accountability in the event a complaint is lodged.

In the course of their duties, special constables may and often do interact with young persons involved in criminal activities in a whole host of capacities, which triggers the YCJA, the federal piece of legislation which governs the youth criminal justice system. The YCJA states that records may be created and maintained only by those persons that fall within one of three categories: youth courts, police forces and governments. With respect to the police force exemption, the YCJA states that a record relating to any offence alleged to have been committed by a young person may be kept by any police force responsible for or participating in the investigation of an offence.

"Police force" is not defined in the YCJA or the Criminal Code, so we turn to the Police Services Act for guidance. In both the existing and proposed Police Services Act, special constables cannot be considered police officers or members of a police force. As a result, special constables cannot fall under that exemption and are not permitted to create or maintain youth records. As the legislation stands, special constables must either cease all interactions with youth or be in breach of the YCJA and risk the associated consequences, which are quite serious.

To create and maintain youth records under the YCJA, special constables must qualify as a police force. As a result, we're requesting consideration of the proposed amendment, which would allow special constables the designation of police force solely and for no other purpose than for the lawful creation of youth records arising out of the scope of their appointment.

The current regime has the effect of preventing a police service from properly conferring on special constables police powers with respect to youth. We respectfully submit that there is no indication that such a limitation was intended. As it stands, a police service may confer on special constables police powers with respect to youth, but not the corresponding power to create and maintain records of these interactions. This interpretation raises an absurdity argument and, we feel, cannot reflect the legislative intent.

In Bill 175, the Ontario Special Investigations Unit, the Ontario Policing Complaints Agency and the Ontario Civilian Police Commission all have a mandate that includes the investigation and discipline of special

constables, who will be held to the same high standards of accountability as police. There is a patent unfairness and absurdity in holding special constables to the same standards of accountability as police while refusing them the same powers to document their activities.

Finally, we believe that empowering special constables to fully execute their delegated duties allows them to play a critical supporting role in community safety, particularly in the vulnerable communities of Toronto Community Housing, while allowing police officers to focus on their core law enforcement responsibilities.

We thank you for your consideration. Those are our submissions.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Kohn. We'll begin with the government side. Mr. Potts?

Mr. Arthur Potts: Yes, thank you very much for your submission.

Wow. I guess we have to learn that. It's part of our job here. Let me just clarify that the special constables would have the overseeing by SIU and be governed by all of their privacy considerations in our Freedom of Information and Protection of Privacy Act and all that kind of stuff.

Ms. Hannah Kohn: That's correct. As part of Toronto Community Housing, they're bound by MFIPPA and all the other privacy requirements.

Mr. Arthur Potts: MFIPPA: Not the provincial law, but the municipal law.

Ms. Hannah Kohn: Yes, MFIPPA.

Mr. Arthur Potts: I'm trying to get to this notion of, we'd want them to have the same oversight as any police operation in the province of Ontario regardless of if it's a municipal level or—

Ms. Hannah Kohn: I mean, I have some confusion myself, if I'm being honest, about the move from the independent oversight that special constables have presently today to having the police bodies oversee their activities. So I'm not totally clear myself about what additional privacy requirements that may bring with that. I could certainly report back to you on that.

1730

Mr. Arthur Potts: You don't have to report to me; I'm more flagging this. Certainly our staff and legal team who are here are taking copious notes on it.

Ms. Hannah Kohn: Unfortunately, it's just me.

Mr. Arthur Potts: What we're really here for, for our purposes, is a technical fix in order that you're included in the exemption as a police force, in order to keep youth records. Obviously, we see special constables' interaction with the youth. It's important to have those records and to keep those records private—and not to be used for any other purpose than assisting in the good order and management of the buildings.

Ms. Hannah Kohn: Absolutely. We're very open and supportive to whatever training requirements are appropriate, and obviously the IT management systems that must be in place in order to segregate those documents and be compliant in every other respect.

Mr. Arthur Potts: And a special constable is a different animal than a private security firm, certainly.

Ms. Hannah Kohn: That's correct.

Mr. Arthur Potts: We had some conversations earlier about making sure the purpose of the act actually made it clear that it wasn't just the police and the people that they serve, but it's the police, police constables and private security firms, the whole gamut that's caught in the web there. If we did amend the purpose, you would probably want us to see special constables included in that as well.

Ms. Hannah Kohn: Right.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Hannah Kohn: We think the function that they're providing through the delegated authority under the Police Services Act—they are taking on that role, in a limited scope but a critical role in the communities. But, through whatever has led us here, they don't have the full support and the full protection that should correspond to the delegated duty.

Mr. Arthur Potts: Did you take over from Harold Ball?

Ms. Hannah Kohn: I'm not sure who that is.

Mr. Arthur Potts: There was a council at Toronto Community Housing—

Ms. Hannah Kohn: Oh. I've only been there two years, so possibly.

Mr. Arthur Potts: Okay, probably not. This goes back 20 years.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Potts. To the PC side: Ms. Scott.

Ms. Laurie Scott: Mr. Potts, you're dating yourself here.

Mr. Arthur Potts: True enough. Nobody else will.

Ms. Laurie Scott: We certainly won't go there.

Thank you very much for your presentation.

This is new to me so I am glad that you highlighted this. When you first found this out, were you able to find out who you should talk to about this?

Ms. Hannah Kohn: It's been a bit of a spiralling snowball, to be honest. It was a bit of circuitous route. It was just asked to me on the fly in a hallway, and the further and further I looked into it, the bigger of a problem it became.

I know our request does have the support of the Ontario Special Constable Association, and we had started some initial conversations with the Police Association of Ontario. I believe there is a meeting tomorrow. I'm not sure what their position is. I hope to advise you in writing when they've had a chance to consider it. But from the limited conversations I've had outside of our organization, to be quite frank, I think a lot of people just aren't aware of this as an issue.

Ms. Laurie Scott: Very good. That was my suggestion to you, that it makes sense what you're saying that there is a gaping hole that was unintended, and that, if you could talk with the police associations to get the support with the special constables—because what you're recommending all makes sense, unless I'm

missing something. And I could be, because this is, as I said, the first seven minutes of my seeing this.

Okay, you're going on the right path. And then whoever else you can get who supports—when you have that, that helps all of us at committee.

Ms. Hannah Kohn: Absolutely. Are there any other organizations you have in mind that you would like to be consulted by us?

Ms. Laurie Scott: For you, I think it's really just the Toronto Police Association and the PAO. Not the OPP. Those are the three main associations that have been here today. I think if you can, of course, bring this up—the Ontario Special Constable Association; I didn't even know there was an association. I'm sorry for that. There's just too much information all at once sometimes.

Ms. Hannah Kohn: I found out about two weeks ago.

Ms. Laurie Scott: There you are. So that makes sense.

Yes, I would recommend that you get together and send us a signal because we have to know, really, by March 1.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Laurie Scott: If I can ask the Clerk: What's the end of the deadline for written submissions?

Interjection.

Ms. Laurie Scott: Oh, sorry. Anyway, we can get back to you with that. Sorry. I thought it might just be off the top of his head. The amendments have to be in by March 5, so I imagine it's March 1. Yes, I'm quite sure it's March 1. Thanks very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Scott. To the NDP.

Ms. Jennifer K. French: I am madly, madly trying to work my way through this and fill in the blanks, so I'm going to make you do it for me, if you wouldn't mind putting it into layperson's terms. I understand that there are special constables. I'm reading here that they are not police officers—I know that—yet, are we asking that they be deemed for the purpose of this, or is there another workaround? If you can just put it really simply, the tangle, because when you were talking about the absurdity—I was already lost before we got to the absurdity part. But I am interested to know if the only fix, as you had said, is to deem them police officers versus another option.

Ms. Hannah Kohn: It's a very fair question. I spent a fair bit of time on this because I suspected that having them deemed police officer, even in a very limited function, is a very contentious ask. But unfortunately, given the language in the YCJA, the use of the term "police force"—until that comes up for revision and submissions can be made that additional language should be inputted into the YCJA to include special constables acting within the scope of their appointment, we're stuck with that phrase "police force." Anything short of special constables qualifying as "police force" will not bring special constables into compliance with the YCJA.

It's unfortunate. It's those two words—

Ms. Jennifer K. French: We can't touch the YCJA in this because it's not already in it, so this is why.

Ms. Hannah Kohn: Correct.

Ms. Jennifer K. French: So you're going to need the government to do something creative about it.

Ms. Hannah Kohn: Exactly. I was hoping for a less contentious ask, but I'm stuck with those two words. There's not any other way I can find, absent an opportunity to submit on revisions to the YCJA, which I don't think is coming up any time soon. We have to have them qualify for this limited scope as a police force so that they can not be in breach of the YCJA in creating these records.

Ms. Jennifer K. French: So the problem is that we can't have them in breach of the YCJA, which says that outside of these three designations or these three groups, thou shalt not keep records on youth, but they have the opportunity to interact with and interface on a regular basis.

Ms. Hannah Kohn: Right, and it's a critical part of their serving the communities. Particularly for our organization, they play a very critical role in community safety. Removing their ability to interact with youth would be devastating to their function.

Ms. Jennifer K. French: Probably also to the broader community, as well.

Ms. Hannah Kohn: Absolutely.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. French, and thanks to you, Ms. Kohn, for your deputation on behalf of the Toronto Community Housing Corp.

TOWNSHIP OF MUSKOKA LAKES

The Chair (Mr. Shafiq Qaadri): We will now invite our next presenter to please come forward: Mr. Furniss, mayor of the township of Muskoka Lakes. Welcome. Mayor Furniss, you have five minutes to make your opening address. Please begin now.

Mr. Donald Furniss: I wonder if I might indulge the committee for one of the members to maybe give me 30 seconds' latitude to finish up my speech. I've tried to get it to five minutes, but—

Ms. Laurie Scott: That's absolutely fine. Take as much time—I can only give you three minutes in total, but—

Mr. Donald Furniss: Okay, thank you.

Chair Qaadri, thank you for giving me this opportunity. I'm speaking to you in my official capacity as mayor of the township of Muskoka Lakes. I've also been given proxy by Mayors Braid and Young of Georgian Bay and Lake of Bays to speak collectively regarding our joint concerns on the egregious injustice of policing cost allocation in the district of Muskoka.

The district of Muskoka is policed by the OPP under the Police Services Act via a non-contract arrangement. Your government, with input from AMO and a group of municipalities, spent over two years reviewing the costing of OPP policing services in Ontario. The ultimate objective was to provide fairness, uniformity and

transparency to the billing process. While the formula that was developed is far from perfect, it at least provides clarity on where costs are incurred and provides a uniform methodology to calculate the cost of policing in each of the 323 municipalities serviced by the OPP.

When the new formula came into effect on January 1, 2015, the district of Muskoka saw annual policing costs increase from $10 million to $17 million, the highest increase in the province. Prior to 2015, the district of Muskoka received one invoice from the OPP. No breakdown was provided for the six lower-tier governments. The only possible way to allocate and distribute this opaque cost was via the property tax levy. However, since 2015, the OPP, via provincial mandate, has provided a detailed, itemized bill for each lower-tier municipality in the district of Muskoka and for every municipality in the province.

1740

We know that the types of services supplied are similar for all six municipalities; however, the towns use over 70% of the policing services but are only paying 40% of the costs. The township's taxpayers are subsidizing the towns to the tune of $4 million per year. This happens for three reasons:

(1) The Police Services Act specifies that only a regional government can receive the policing invoice, not each of the lower tiers. This is egregiously unfair, as the district of Muskoka is the only regional municipality in the province using the OPP. If we were a county or like the districts to our north, south or east, each of the lower tiers would be receiving their own OPP invoices for the services that they use.

(2) The towns have 12 seats versus 10 for the townships. The towns have no incentive to change this inequity, where the township taxpayers subsidize their policing costs. The townships have introduced five separate resolutions over three years to allocate expenses on the OPP provincial formula, including one to phase in the costs to the towns over three years and one to share the cost differential 50-50. This was a $2-million-a-year concession by the townships to the towns. On every occasion, the towns unanimously voted down the motions because they have the majority.

(3) Over the past two years, we have reviewed this issue with former Minister Naqvi and current Minister Lalonde. In addition, we have discussed it with Municipal Affairs Ministers McMeekin and Mauro and with senior policy advisers in the ministers' and Premier's offices. While they acknowledge the situation is grossly unfair and they are sympathetic, they have done nothing to correct it, and it's not been rectified in Bill 175.

The government has made an exception for Oxford county, and we have proposed treating Muskoka like a county for OPP invoicing. We have also suggested that Bill 175 mandate the use of the OPP formula for billing lower tiers, unless there is unanimous approval for those lower tiers to use an alternate formula.

This pernicious situation needs to be corrected in Bill 175. The problem was created by the province, not by the local municipalities, and it needs to be fixed by the province.

The current Liberal government is running an election campaign under the banner of ensuring fairness and opportunity. This government's continued failure to address this egregious injustice, where three towns can legally extort $4 million per year from three less-populated townships, certainly does not meet anyone's threshold for ensuring fairness. In fact, the only opportunity here is for the stronger towns to continue to bully the weaker townships.

I implore you, Mr. Chair, to amend the act to restore the fairness that the OPP billing formula intended. Stop the legalized extortion from our taxpayers' pockets. There is a very simple fix: Just change the definition of a regional municipality to "a regional municipality, other than the county of Oxford and the district of Muskoka...."

The Chair (Mr. Shafiq Qaadri): Thank you, Mayor Furniss.

We'll start with the PC side. Ms. Scott. You're basically at 2.5 minutes.

Ms. Laurie Scott: Okay.

I feel I have heard this story many times, considering I represent the area just south of you, in Haliburton–Kawartha Lakes–Brock. There's no question that smaller municipalities were the big losers on this part of the change to the billing system. I leave it to the present government to see if there's a possibility of making any changes in respect to OPP billing in this bill.

I don't know if you want to expand on that further, but it has certainly been a call since it was changed and brought in. If you want to, go ahead and finish off the time.

Mr. Donald Furniss: I don't have a problem with the formula. They tried to address it. It's not a perfect formula, but it certainly has more clarity than before.

The issue that we have is, not using the formula and three towns being able to extract money, where we subsidize their costs on the townships, who don't use the volume of services that the towns are using.

That's the issue. I think it can be fixed either by putting a clause in the bill whereby you use the OPP formula for all of the 323 municipalities or—we've made a special exception in it for the county of Oxford; why, I don't know. I would like the same exception for the district of Muskoka. It seems only fair to me.

Ms. Laurie Scott: Thank you very much for coming here.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Scott. To the NDP: Ms. French.

Ms. Jennifer K. French: Thank you very much for coming. I thoroughly appreciate your neck of the woods.

I live in Oshawa, and so this is not something that I am very familiar with. If you don't mind breaking it down a little bit, I'm interested in having a better understanding of the invoice, as you had mentioned. How it is that the larger towns are able to benefit? If you can explain what the mechanism is—because I'm seeing here in your notes, which I appreciate, that you're saying that

Minister Lalonde has challenged lower-tier municipalities to resolve this issue—what it looks like and why that's problematic.

Mr. Donald Furniss: We've tried. In fairness to Minister Lalonde, she convened a conference call with the six municipalities. We discussed this.

The towns feel entitled to keep the system the way it was when it was done via the levy, before the formula was developed. They have no incentive to change. As I've said to many people, when the milk is free, you're not going to buy the cow.

This works out that the invoice comes in from the OPP to the district of Muskoka. It breaks it down in finite detail for each one of the six municipalities as to what their costs are. Our cost works out to about $2.7 million a year for the services that we used and the number of property owners that we have. That's the way the system works. It's based on the number of properties, with no differential between the properties, and the calls for service. When it comes to the district, they put it on the property tax levy because our assessments are higher. The bill that we get is about $6 million, rather than $2.7 million.

Ms. Jennifer K. French: So on the invoice, it's $2.7 million, but on your bill for the—

Mr. Donald Furniss: On the tax bill, our property tax—if we take all the property taxes and put them together, we have—

Ms. Jennifer K. French: The whole district, and then it's—

Mr. Donald Furniss: For the township of Muskoka Lakes, our taxpayers remit $6 million to the district rather than $2.7 million because—

Ms. Jennifer K. French: And you aren't—

Mr. Donald Furniss: If we got the invoice directly from the OPP—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Donald Furniss: —we would see a bill for $2.7 million, rather than $6 million. I don't know whether that explains it or not.

Ms. Jennifer K. French: We don't have that in Oshawa, and I'm glad to know that we don't. I look forward to their answer to you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. French. To the government side: Ms. Sandals.

Mrs. Liz Sandals: I'm trying to figure out whether Bill 175 says anything about how you pay for police services or police contracting, because it seems to be—we've been sitting here all day, and in all the debate I've heard in the House and all of the presentations we've heard from a variety of people, nobody has said anything about the details of police billing. Do you have any reason to believe that that's actually covered in this act?

Mr. Donald Furniss: I believe it's the way to correct it, and it's in the—

Mrs. Liz Sandals: So you're looking for a workaround for something else?

Mr. Donald Furniss: I'm looking for a change in the definitions of "municipality." And I'll read—

Mrs. Liz Sandals: In a police bill?

Mr. Donald Furniss: Yes. In the bill, it says:

"'municipality' means,

"(a) a single-tier municipality;

"(b) a lower-tier municipality in a county or in the county of Oxford;

"(c) a regional municipality, other than the county of Oxford; or

"(d) any other municipality that has constituted a municipal board under subsection 25(2)."

I'm asking that, under (c), a regional municipality be defined as "other than the county of Oxford and the district of Muskoka." I think that gets around the issue with regard to the invoicing going directly to the district. It comes to the individual lower tiers, which they calculate anyway.

Mrs. Liz Sandals: So who has the police service board?

Mr. Donald Furniss: I'm not sure. We don't. We're a non-contract municipality, so we don't have a police service board.

Mrs. Liz Sandals: So Bala's not a detachment?

Mr. Donald Furniss: It's a satellite office, but no. It's a non-contract. We have no contract with them. The OPP makes the decisions on exactly how the policing should be conducted. That's part of the Police Services Act. It is either section 10, which is contract policing where there's a police services board; or there's a section 5, which is a non-contract.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Donald Furniss: The vast majority of small municipalities are non-contract. They do not have a police services board.

Mrs. Liz Sandals: Because in the case of the exception that you're citing, you're citing Wellington, and they actually have a Wellington County Police Services Board.

Mr. Donald Furniss: What I'm saying is that on Wellington county and on SDG—Stormont, Dundas and Glengarry—they agree 100%. The other option was that you don't send the bill—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Sandals, and thanks to you, Mayor Furniss, for your deputation on behalf of the township of Muskoka Lakes.

This committee is now adjourned until Thursday, March 1, at 9 a.m., in this room.

The committee adjourned at 1751.

STANDING COMMITTEE ON JUSTICE POLICY

Chair / Président
Mr. Shafiq Qaadri (Etobicoke North / Etobicoke-Nord L)

Vice-Chair / Vice-Président
Mr. Lorenzo Berardinetti (Scarborough Southwest / Scarborough-Sud-Ouest L)

Mr. Lorenzo Berardinetti (Scarborough Southwest / Scarborough-Sud-Ouest L)
Mrs. Amrit Mangat (Mississauga–Brampton South / Mississauga–Brampton-Sud L)
Mr. Jim McDonell (Stormont–Dundas–South Glengarry PC)
Mr. Arthur Potts (Beaches–East York L)
Mr. Shafiq Qaadri (Etobicoke North / Etobicoke-Nord L)
Mr. Ross Romano (Sault Ste. Marie PC)
Mrs. Liz Sandals (Guelph L)
Miss Monique Taylor (Hamilton Mountain ND)
Ms. Soo Wong (Scarborough–Agincourt L)

Substitutions / Membres remplaçants
Mr. Grant Crack (Glengarry–Prescott–Russell L)
Mr. Bob Delaney (Mississauga–Streetsville L)
Ms. Jennifer K. French (Oshawa ND)
Mr. Lou Rinaldi (Northumberland–Quinte West L)
Ms. Laurie Scott (Haliburton–Kawartha Lakes–Brock PC)

Also taking part / Autres participants et participantes
Mr. Ted Arnott (Wellington–Halton Hills PC)

Clerk / Greffier
Mr. Christopher Tyrell

Staff / Personnel
Mr. Andrew McNaught, research officer,
Research Services

TAB 11

Legislative Assembly of Ontario

Assemblée législative de l'Ontario

Official Report of Debates (Hansard)

JP-30

Journal des débats (Hansard)

JP-30

Standing Committee on Justice Policy

Comité permanent de la justice

Safer Ontario Act, 2018

Loi de 2018 pour plus de sécurité en Ontario

2nd Session
41st Parliament

Thursday 1 March 2018

2e session
41e législature

Jeudi 1er mars 2018

Chair: Shafiq Qaadri
Clerk: Christopher Tyrell

Président : Shafiq Qaadri
Greffier : Christopher Tyrell

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

http://www.ontla.on.ca/

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7400.

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7400.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario

ISSN 1710-9442

Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

CONTENTS

Thursday 1 March 2018

Safer Ontario Act, 2018, Bill 175, Mme Lalonde / Loi de 2018 pour plus de sécurité en Ontario, projet de loi 175, Mme Lalonde JP-685
Mr. Kent Roach JP-685
Ontario Association of Chiefs of Police JP-687
Mr. Bryan Larkin
Mr. Ian Scott JP-689
London Police Services Board JP-692
Ms. Susan Toth
Mr. Jesse Helmer
Region of Peel JP-695
Mr. Michael Palleschi
Mr. David Lee JP-697
Municipality of North Grenville JP-699
Mr. Brian Carré
Mr. Don Sherritt
Ms. Samiah Ibrahim JP-701
Eastern Ontario Wardens' Caucus JP-704
Ms. Robin Jones
Canadian Corps of Commissionaires—Kingston and Region Division JP-706
Mr. Bert Herfst
GardaWorld JP-709
Hon. Christian Paradis
Affected Families of Police Homicide, Ontario JP-711
Ms. Karyn Greenwood-Graham
Canadian Mental Health Association, Ontario division JP-713
Ms. Camille Quenneville
Mr. Joseph Szamuhel
Mr. Elie Labaky JP-715
National Women in Law Enforcement Association JP-718
Ms. Kelly Donovan
Mr. Ade Olumide JP-720
Ontario Human Rights Commission JP-723
Ms. Renu Mandhane
Mr. Tim Trow JP-725
Chinese and Southeast Asian Legal Clinic JP-727
Mr. Vince Wong
Queen's University Faculty of Law JP-729
Dr. Jo-Ellen Worden

JP-685

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Thursday 1 March 2018

Jeudi 1er mars 2018

The committee met at 0900 in room 151.

SAFER ONTARIO ACT, 2018
LOI DE 2018 POUR PLUS DE SÉCURITÉ EN ONTARIO

Consideration of the following bill:

Bill 175, An Act to implement measures with respect to policing, coroners and forensic laboratories and to enact, amend or repeal certain other statutes and revoke a regulation / Projet de loi 175, Loi mettant en oeuvre des mesures concernant les services policiers, les coroners et les laboratoires médico-légaux et édictant, modifiant ou abrogeant certaines autres lois et abrogeant un règlement.

The Chair (Mr. Shafiq Qaadri): Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice.

As you know, we are here to consider Bill 175, An Act to implement measures with respect to policing, coroners and forensic laboratories and to enact, amend or repeal certain other statutes and revoke a regulation.

MR. KENT ROACH

The Chair (Mr. Shafiq Qaadri): We have our first presenter, Professor Kent Roach of the University of Toronto faculty of law, who is the Prichard-Wilson chair in law and public policy.

As colleagues will know, we have five minutes for an opening address, to be followed with a three-minute rotation of questions. As always, the timing will be enforced with military precision. Your time now begins, Professor Roach.

Mr. Kent Roach: Thank you very much for the invitation. I filed a 10-page brief, and behind the 10-page brief are about 40 pages of published commentary in the Criminal Law Quarterly that I did along with Dean Lorne Sossin of Osgoode Hall.

The bottom line is that I support the enhancements to police accountability in Bill 175, many of which implement Justice Tulloch's important report. I think the bill should be enacted, but that doesn't mean that improvements cannot be made.

Areas of improvement that I would point out are: I think the police review body should continue to have jurisdiction over complaints about policing policy, not the inspector general. I think that complainants and the police review body should be given party status, not simply intervention status, when it comes to a substantiated complaint going before the new discipline tribunal.

I support the new discipline tribunal. I support its regularization, which I think is essential for there to be public confidence in substantiated complaints.

I support the balance of probability standard and the ability to discipline even retired police officers. I think this is appropriate, given the status of police officers as highly paid professionals.

I do worry, though, as the complaints body begins eventually to investigate all complaints, that if it is starved of resources it will not have the resources to do the systemic reviews. I think the enhancement of the systemic review powers the ability to require police and police service boards to respond to systemic reviews; that is extremely important. So you might want to even consider giving both the SIU and the police complaints body status as officers of the Legislature in order to prevent them from subsequent budget cuts, which, although well intended, could take away from the effectiveness.

But the two main concerns that I have with Bill 175 is that although it implements much of Justice Tulloch's—and it responds to Justice Morden's report, and Senator Sinclair's report about the need for police service boards to be more active—it totally ignores, in my view, chapter 12 of Justice Linden's Ipperwash report. In particular, section 40 and section 62 of the new police act provide that either the board or the minister, in the case of the OPP, can give directions to the police. I think that that is appropriate but I agree with Justice Linden that those directions should be in writing, they should be transparent, and they should be available to the public.

I also worry about the effective rewriting of the contours of police independence in subsection 40(4) and subsection 62(3), where we now have the minister and the boards being told to stay away from the routine administration of the police. As Justice Linden said, the core of police independence is simply that the minister and the board should not interfere with the law enforcement, investigative and charging decisions of the police. I think all others, if you have transparent direction, are open.

Then, finally, my last recommendation would be that the advisory board for the OPP I think is a good idea, but I also think the SIU and the police review body need a

statutory advisory board. One of the things that you're going to have with enhanced accountability and enhanced transparency of SIU rapport is, you're going to have more crises. Both of these bodies need to work with a variety of community members, particularly—

The Chair (Mr. Shafiq Qaadri): Thank you, Professor Roach. We'll begin our first line of questioning with the PC Party: Mr. Yakabuski.

Mr. John Yakabuski: Thank you, Mr. Roach, for joining us this morning. A few minutes seem hardly enough to discuss a bill that I had to eat an extra bowl of Wheaties just to pick up this morning.

Mr. Kent Roach: One hundred and ninety-one pages.

Mr. John Yakabuski: Yes. It's more than I can count on my two hands.

When I look at this bill and the overview, and I can't say that I've digested it over and over again, but one of the concerns I have is that the premise of the bill—it says the "Safer Ontario Act," but it's almost like, "Let's police the police act." I've had discussions with police all over this province—everybody wants accountability. They want to be accountable.

The primary job of a police force is to keep us safe. They're the ones we depend on every day. When we get up in the morning, we believe we can walk out on our streets and we have the best police forces in the world to ensure that our safety is their number one priority.

When I look at this bill, I worry about public confidence, because when I look at this bill, it spends an awful lot of time questioning or bringing in doubt, raising doubt about the question about the credibility and the competence and the accountability of our police. For me, the number one colleague that the police have in solving crime and keeping our streets safe is in fact the public. We're the best partner they've got because there are millions of us to help them do their work.

Do you not have some concern that this bill will lessen the public's confidence—which is very high and we need to keep it that way—in our police forces?

Mr. Kent Roach: Justice Tulloch has, in his extensive consultations, documented a lack of public confidence among some groups, particularly indigenous persons and African Canadians, so I see this as responding to that. But I agree with you that accountability is not enough, and that's why I've tried to stress the governance issues, right? I think it is very important that the minister and the police services boards take more responsibility for the directions they give to the police forces.

I believe in democratic policing. I believe in transparent policing. That's why my main recommendation would be to go back to the Ipperwash report, read chapter 12 and think about the considered recommendations that Justice Linden made for promoting democratic policing, because I agree that accountability is not enough. Accountability without governance change—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski. We now pass it to the NDP: Mr. Natyshak.

Mr. Taras Natyshak: Thank you, Mr. Roach, for being here. My question is: Do you believe that the important accountability provisions which you mentioned at the top of your remarks extend far enough into the potential services that could be provided by private policing providers as stated within the context of the bill?

Mr. Kent Roach: That's very important, but again I think that's why we need police services boards and ministers to be much transparent in the guidance they provide, both to the public and the private police. I agree that there is a real danger that there will be an accountability gap with private security providers, and I don't think accountability should be exclusively focused on public security providers.

0910

Mr. Taras Natyshak: How could you see that playing out if we were to continue with the status quo and, as you said, there is a gap—or, I would say, a vacuum—bridging the accountability parameters between private providers? What are some of the pitfalls? Raise some red flags here for us.

Mr. Kent Roach: I haven't looked at this specifically, but I think you would want to have amendments or flexibility that would allow both the inspector general and the police review body to do inspections and, if need be, systemic reviews to private security providers. I think the quid pro quo should be that if they are going to receive public money for providing security, they should be subject as much as possible to the same accountability structures that we subject the public police—

Mr. Taras Natyshak: And at the moment, do you see any of those provisions built into the context of the bill?

Mr. Kent Roach: This comes back to the 191 pages. That has not been a focus of my research, but I think that that might be a fix, simply by expanding the jurisdiction of both the inspector general and the police complaints body.

Mr. Taras Natyshak: Let's hope that the government isn't averse to adding a couple of pages to this 191-page bill and adding those important protection mechanisms—

Mr. Kent Roach: Yes, and I would support that, because I think it would be a shame, after the momentum that has been built by Justice Tulloch's report, Justice Morden's report and Senator Sinclair's interim report, for this not to be enacted before the general election.

Mr. Taras Natyshak: Thank you very much, Mr. Roach. I appreciate it.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Natyshak.

To the government side: Ms. Wong.

Ms. Soo Wong: Thank you very much, Professor Roach, for being here this morning. I know you have been taking time from your class coming up soon.

Last week, previous witnesses before this committee asked for us to delay implementation. I want to hear your remarks about whether we should go forward, because that's the intent of the government. I want to hear your comments about the numerous reports about policing and oversight.

Mr. Kent Roach: Yes. Having been involved in this field for perhaps too many years, I'm a firm believer that

there is a momentum. Justice Tulloch took an awful lot of time to speak with community members, and I think that we should move forward. It doesn't mean that it's cast in stone. There's an awful lot that's done in terms of regulations, perhaps more than I would optimally see, but I do think that the bones of this provide a very principled structure and would actually put Ontario at the forefront of police accountability.

One of the things that I think is very important is that this sees police accountability as a system so it's not all the SIU; that the SIU has expanded jurisdiction over some offences, and they can also refer things to the police review board.

What I think is missing is that we have to see this as a cycle: SIU, police complaints. But also, the police service boards and the minister have responsibility to make policy in areas where there are continued complaints and continued, unfortunately, violent interactions between the police and community members.

Ms. Soo Wong: Your comments earlier—the focus should not exclusively focus on accountability.

Mr. Kent Roach: Exactly.

Ms. Soo Wong: You also urge the government to talk about the governance issues. I believe that's the intent of this bill, beside the accountability.

Mr. Kent Roach: Exactly, but I would go back to what Justice Linden said, which is that policing takes up huge amounts of resources and is a legitimate object of democratic governance. One of my concerns is that there are over-broad ideas of police independence. I'm a believer in police independence, but I believe in police independence as it has been defined by the Supreme Court, which is law enforcement police independence. It's not police independence over direction on the G20. It isn't police in independence over the policy of operations.

I think we need to encourage the governors of the police to take more responsibility and to be more transparent about the directions that they give to the police, which is exactly what Justice Linden recommended when he said that when the minister makes policy for the OPP, that policy should be in guidelines and ministerial directives that I can—that any citizen can go to the website and find out what they are. But there's nothing of that in this bill, and I find that the most disappointing part of this bill.

Ms. Soo Wong: Thank you for your comments.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Wong, and thanks to you, Professor Roach, for your deputation and presence. We wish you all success at your 11 a.m. class.

ONTARIO ASSOCIATION OF CHIEFS OF POLICE

The Chair (Mr. Shafiq Qaadri): I now invite our next presenter to please come forward: Mr. Bryan Larkin, president, Ontario Association of Chiefs of Police.

Welcome, Chief Larkin. You've seen the drill. Please begin now.

Mr. Bryan Larkin: Good morning, and thank you, members of the parliamentary committee, for the opportunity, on behalf of the Ontario Association of Chiefs of Police, to address you.

Before we get into the recommendations, we have responded to Bill 175 and provided a summary of recommendations. We have 13 key recommendations. But we believe it's also important to note that the Ontario Association of Chiefs of Police has been a stakeholder over the last six years at the Future of Policing Advisory Committee that has been hosted by the Ministry of Community Safety and Correctional Services. So we've been fundamentally involved in what we believe is reshaping public policy around policing as we head to the future.

We also believe it is extremely important and we continue to advocate for a modernized police act that actually allows us to provide high policing and excellent policing to the citizens of Ontario in a much more diverse, complex society that we police.

Equally, we still believe that our policing model in Ontario is, if not one of the best in Canada, also one that is looked at internationally as good governance, good accountability and providing good services.

We have 13 key recommendations. I'm going to focus on eight of those recommendations, the first being that this Police Services Act, and Bill 175 in general, are fairly large to digest. But in particular to the Police Services Act, it's governed by regulations and the minister will have the opportunity to implement regulations, edit and amend, as the police act moves along. From an efficiency perspective, that's something that is positive.

However, there needs to be a formalized process that should be established to allow that the draft regulations be provided to the OECP and other key stakeholders for review and comment as soon as possible, and the same process should be followed moving forward.

The second piece we'd like to address is the outsourcing of policing functions under section 14 of the Police Services Act. These need to be sufficiently constrained by regulation and/or amendment to ensure charter compliance and that we maintain the integrity of police investigations as well as we protect legal privileges such as those surrounding confidential informants. Although we appreciate that we need to find efficiencies and modernize, we do have a number of concerns around that particular section.

The whistle-blowing provisions under part VIII of the Police Services Act, we believe, should also be revised to ensure that police associations and/or their agents cannot use this part to file public complaints that they are specifically prohibited from filing under subsection 58 of the Policing Oversight Act. Although we recognize that there should be good labour relations and potentially a new approach to how we manage employment matters, we do all have collective bargaining pieces that allow for associations and their agents to come forward through different processes.

Suspension without pay: We still believe it should be similar to other provisions that exist in other provinces. While the proposed suspension without pay under section 151 of the Police Services Act does represent a limited expansion of the authority for a chief to suspend without pay, it does remain unduly restrictive.

Chiefs of police should also retain the ability to demote police officers who engage in serious misconduct, without having to apply to the Ontario Policing Discipline Tribunal to hold a hearing over the matter.

Labour relations are very important. The chief must continue to engage the labour agent, the police associations, through collegial dialogue to resolve matters and to maintain discipline and order in employment matters within the police service. Having to go to the policing discipline tribunal will potentially impact those relations. It will impact morale within the organization and create a much more adverse system than already exists.

We also believe there needs to be further discussion on the issue, including auxiliary members, of police services under the oversight authority of the Ontario Special Investigations Unit and the Ontario Policing Complaints Agency. Auxiliary members are citizens, are volunteers. They do incredible ambassador work across our province. They promote special events. They do crime prevention initiatives. We're very concerned about that piece.

We support the government's proposal to adopt the balance of probabilities as the new standard of proof in police discipline hearings. This aligns with other professional discipline tribunals in Ontario.

Finally, we support sections 38(5) and 65 of the police act, as these provisions maintain the long-held common-law principle of police independence while providing much-needed clarity in terms of distinguishing the board's and/or minister's role in governance and oversight roles from the chief or commissioner responsible for administering day-to-day policing operations.

Again, we appreciate that the government of Ontario has actively listened to the views of the Ontario police leaders. We also believe that Bill 175 reflects much of our input during our participation in the Future of Policing Advisory Committee. We're also strong supporters of the recommendations made by Justice Michael Tulloch on police oversight and a strong governance model for Ontario.

0920

The Chair (Mr. Shafiq Qaadri): Thank you for your expert timing, Chief Larkin.

We will begin with the NDP: Mr. Natyshak.

Mr. Taras Natyshak: Thank you, Chief, for you deputation here today. You presented eight of your priorities—eight of 12 from your submission. I'm wondering if you wanted to elaborate on the remaining four that you weren't able to touch on. I'll hand over my time to you to do that.

Mr. Bryan Larkin: Yes. Thank you very much. One of the key pieces, obviously, is around section 149 of the Police Services Act, around clarification of the complaints director around the termination of a police officer without a hearing before the Ontario Policing Discipline Tribunal. Obviously, it's a marked departure from the democracy that we currently have, where the officer would be entitled to a hearing. We believe that that needs to be clarified.

We also believe that section 115 of the Police Services Act needs to be clarified around an officer who is incapable of performing or fulfilling the essential duties or requirements of a police officer and who is assigned to a civilian position—around remuneration and what that looks like. I think that there are some unknowns in that process. We also have a duty to protect those officers who are injured in the line of duty etc. There needs to be more conversation and dialogue.

We also believe that, clearly, the Police Services Act, subsections 156(2) and (3), need to be revised to allow police service boards to use their police services' own records and discipline records to defend ourselves in civil proceedings. We currently have that provision; in the proposed act, it seems to have disappeared. That could be an oversight, but obviously, we do have to defend, and often the only record we have is our own discipline records.

We also believe that the new Police Services Act, which excludes the chief and deputy chief from the collective bargaining process—it hints that we're employees of the board or that the commissioner is an employee of government. It should be broadened to include civilians and civilian professionals in executive positions. Roles such as the chief administrative officer, director of finance, human resource experts, legal service experts, legal counsel, often are in a conflict because they provide direct recommendations and opinions to the chief and/or executive. Yet, they're in a bargaining agent.

Last, we believe that members of police services are uniquely qualified to provide advice and information to assist municipalities and First Nation communities in the preparation of the community safety and well-being plan. For the record, we fully support community safety and well-being and moving the needle upstream in addressing social issues. That being said, we should be included in parts of the planning process, including the advisory committee. In the current proposed act, we don't have that opportunity.

Mr. Taras Natyshak: Thank you very much.

The Chair (Mr. Shafiq Qaadri): To the government side: Ms. Sandals.

Mrs. Liz Sandals: Welcome, Chief Larkin. You mentioned section 14 and some issues around charter compliance and accountability if services are outsourced. Could you expand on what you're looking for there?

Mr. Bryan Larkin: Yes. From an efficiency standpoint, we do appreciate the potential merit of outsourcing non-core policing functions as well as some of the administrative aspects of investigative supports—clerical staff etc. However, the wholesale privatization of sensitive policing functions, such as wiretaps or the interception of conversations etc., physical surveillance—for

us, they give rise to serious concerns, including charter issues, in the sense that, how do we maintain the integrity of the investigations? How do we protect potential confidential informant issues? They can be constrained through further regulation or amendment to the bill, but we have concerns.

Obviously, we recognize that there needs to be movement on some issues, such as around crime prevention, crime scene analysis and forensic identification. We believe that there is potential merit, and those potential merits should be involved in dialogue with our bargaining agents, our associations around how we move forward, how we find efficiency standpoints.

Similarly, we believe there is an oversight with the impending legalization of cannabis and upcoming amendments to the Criminal Code for drug-impaired driving etc. The police service and police services board should be allowed to look at outsourcing or contracting blood, urine, saliva collection similar to the addition of breath analysis.

Our key focus is on very sensitive information which could be related to national terrorism, domestic terrorism, items of national safety interest, as well as significant organized crime investigations. We have some concerns around that piece, and we think it should be constrained.

Mrs. Liz Sandals: Just to make sure I'm understanding correctly, then, the concern would be that if you were to contract out some things that are highly technical—IT sorts of things, forensic investigation sorts of things—because those functions overlap with investigation, you would need the same framework, the legal framework and accountability around those investigations that you would have when it's done by a direct employee of the police service board.

Mr. Bryan Larkin: That's correct, Minister Sandals. We obviously have some concerns about privileged information and access to privileged information, which the police services have significant accountability for.

Mrs. Liz Sandals: Okay. Another area that you mentioned was moving to balance a probability. I wonder if you could just talk about what you see the advantage—

The Chair (Mr. Shafiq Qaadri): With regret, Ms. Sandals, that question will remain rhetorical.

To Mr. Yakabuski: three minutes.

Mr. John Yakabuski: Thank you very much, Chief Larkin.

The only time I heard the word "current" about the bill was when you finished your time, when you used Mr. Natyshak's time. Every reference was to the Police Services Act. Just to clarify, you're talking about what is currently the legislation?

Mr. Bryan Larkin: The proposed Police Services Act of 2017.

Mr. John Yakabuski: Okay, the proposed—

Mr. Bryan Larkin: I cut "proposed" out to save on some time.

Mr. John Yakabuski: Okay. That's what I was trying to clarify, because there are a lot of sections here, and again, you're going through it in a very quick way.

But you did talk about the outsourcing thing, which certainly does raise a lot of questions. You yourself said there's a lack of clarity. What is the situation with regard to non-oversight when outsourcing police duties? Those people would not be full-fledged officers, or whatever you want to call them—sworn-in officers or whatever. How do you deal with the issue of non-oversight for those persons?

Mr. Bryan Larkin: That's one of our concerns that we think need to be clarified or constrained by regulation or amendment. When you're looking at enhancing the oversight model and you're looking at increasing accountability, one of our concerns, as the chiefs of police or senior police leaders, is: What framework do we have to hold our outsourcing privileges in account with the current proposed legislation?

Obviously, we believe that, from an efficiency standpoint, there are some non-core essential duties that we need to change. We need to modernize and we need to reflect the current employment model of good policing.

That being said, though, there's nothing that clarifies that. It seems to be either an oversight, a missing link or something that needs to be addressed.

Particularly, our significant concern is on privileged investigations, and that's one of our focuses. When you look at some of the severity of crime in Ontario and across Canada—we need to maintain some balance of managing those investigations and the privileged information that comes from those.

Mr. John Yakabuski: Okay. You also talked about provisions regarding the disability of an officer. No matter where anybody works—and you obviously run a department and you're the head of the chiefs of police—no matter where you work, whatever kind of environment it is, the number one prerequisite to a successful workplace is the morale of the workforce. Would you not agree?

Mr. Bryan Larkin: Yes, absolutely. Hence, labour relations are extremely important.

Mr. John Yakabuski: Absolutely.

Mr. Bryan Larkin: Our work with our association friends, many of them in the background here, is very important.

Mr. John Yakabuski: That's right. If you've got people who really enjoy their work and feel that they're rewarded properly and recognized for good work and a job well done—this is one of the things that I'm concerned about: the morality of the police force—pardon me. Let me correct that: the morale of the police force. When we start talking about things that, in my opinion, bring me concern that we're actually doing things—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski.

Thank you, as well, for your deputation and presence, Chief Larkin.

MR. IAN SCOTT

The Chair (Mr. Shafiq Qaadri): I now invite our next presenter to please come forward: Mr. Ian Scott—

not the former Attorney General, but a different Ian Scott.

Mr. Ian Scott: Rumours of my death are greatly exaggerated.

The Chair (Mr. Shafiq Qaadri): Exactly. Welcome. You've seen the drill: five minutes. Please begin now.

Mr. Ian Scott: Thank you. By way of background, I'm currently a visiting professor at Western law school, teaching criminal law, criminal procedure and a course called Police Accountability and the Law. I was the director of the Special Investigations Unit for five years, and the president of the Canadian Association for Civilian Oversight of Law Enforcement.

I'm also the author of three editions of the annotated Police Services Act, and the editor of a book called Issues in Civilian Oversight of Policing in Canada.

I've had the opportunity to speak about police oversight at conferences throughout the world.

The overall lesson I have learned is the importance of public confidence in policing, and the role of oversight in facilitating that public confidence.

0930

I would like to congratulate the government on the drafting of Bill 175 and encourage it to pass the bill largely in the form it presently is in. I have some suggestions to improve it, which I will address in a moment.

Before doing so, I'd like to take a step backward and look at the last time this province engaged in major police reform. It was the passing of the Police Services Act in 1990, the one that's still in effect. At that time, the government passed into law an act that had two groundbreaking ideas: a province-wide public complaints system and the start of the Special Investigations Unit. While the complaints system went through a rocky history, the SIU is now deeply entrenched into the culture of this province. No one suggests nowadays that we should go back to the pre-1990 days of police investigating police in death and serious injury cases. It took another 17 years before another province, Alberta, adopted the SIU model. Now, virtually every province has or is on the verge of instituting an SIU-like model when the police cause serious injury or death. In other words, Ontario is a role model for most other provinces and years ahead of its time.

Now, 28 years later, Ontario is on the precipice of again becoming the country's role model in police oversight by incorporating recommendations of the Tulloch report into Bill 175.

In my view, the most important aspect of the bill is not the changes to the SIU, but the ones to the public complaints system. If passed, for the first time in Canadian history, public complaints will be investigated, prosecuted and adjudicated by independent agencies outside of the policing structure. The current system, as we know, is largely a filtering one. Most complaints are either filtered out or go back to the affected police service. Most complaints are not going to lead to discipline, even if there is effective investigation. There will always be suspicion if the police control the complaints system, even when they do an effective job.

One comment about the public complaints system, then a few about the proposed changes to the SIU part of the act: Recommendation 8.1 of the Tulloch report recommends that independent police complaints prosecutors who work for the Ministry of the Attorney General should prosecute these matters. The proposed bill is silent on that point. Section 79 says that the matter should be referred to the tribunal if the public complaints director has reasonable and probable grounds to believe that misconduct took place. Is the idea that the tribunal will be responsible for both adjudication and prosecution?

I simply remind the committee of the 2004 Gardner decision, where the problems that used to exist with cases prosecuted and adjudicated by OCCOPS, the predecessor to the OCPC. The bill should be clear on who will be the prosecutor, and it should be an arm's-length relationship from the tribunal.

Turning to the SIU, the biggest concern I have is the watering down of the duty to co-operate provision. This is an area of ongoing friction between police agencies and the SIU. Let's go back to the current drafting of the Police Services Act, subsection 113(9): "Members ... shall co-operate fully" with the SIU. Then please refer to the Tulloch report on the issue at page 110, leading to his recommendation 5.8. The spirit of the recommendation is to strengthen rather than weaken the duty to co-operate, and at one point, there's a recommendation that a failure to co-operate could lead to a provincial offence. Then let's look at the drafting in the current Bill 175. Subsection 33(1): Police shall co-operate "unless it is impracticable to do so."

In my view, there's simply no need to include this phrase. The SIU has existed for 28 years without this inclusion. It would be a grave mistake to include it, and it will lead to endless arguments about who decides what's impracticable and whether it was impracticable.

I might add that this same phrase exists in section 100 dealing with public complaints, and I would recommend that you delete that as well.

The other big point—I have a number of them which I may not get to; if I can have somebody's time, I'd be happy to take it—is that of stripping the director of discretion. A couple of provisions unnecessarily strip the director of discretion he or she ought to have as the head of the investigative unit. Subsection 17(5): The director shall cause an investigation if his designated officer gives notice. It means the chief can force investigations on the SIU.

The director needs the discretion to decline to accept cases. A good example would be a sexual assault investigation which is well into the middle of it, and there's no need or no desire to change to a different investigative agency—

The Chair (Mr. Shafiq Qaadri): Thank you, Professor Scott, for your introductory remarks. We move to the government side: Ms. Wong.

Ms. Soo Wong: Thank you very much, Mr. Scott. I know we don't have lots of time to ask you questions this morning. Can you ensure with the Clerk your presenta-

tion gets sent to the committee, so that we can get follow-up?

Mr. Ian Scott: Shall do. I mean, my presentation is basically a series of talking points—yes.

Ms. Soo Wong: Okay. That would be really helpful.

The previous witness just shared with us his suggestion. I know that there have been numerous concerns raised to this committee and the Minister of Community Safety and Correctional Services dealing with police oversight. In terms of Bill 175 as it is right now, can you see that these changes will improve public confidence? That's what we consistently heard: that there's a lack of public confidence right now, dealing with the oversight piece. Can you see this—

Mr. Ian Scott: Oh, absolutely. It's a large step forward with respect to that. There was a large step forward that happened in 1990 with the Police Services Act. I'm strongly of the view that it will facilitate public confidence.

Ms. Soo Wong: You also mentioned earlier the whole issue of the newly created public complaints system. How do you see that in terms of communicating to the public? So much of what we do—we can write lots of legislation and lots of regulations, but how do you ensure that the public understands this new system of complaints?

Mr. Ian Scott: It requires a very strong outreach department. I know that the OIPRD has tried to involve—these are difficult issues. The general oversight business is somewhat complex from the outside, but I would like to think that effective oversight—I know the SIU has tried to develop this as well, even though the complaints are not generated by the public. It actually doesn't need oversight as much as the public complaints system does.

Ms. Soo Wong: One of the witnesses spoke earlier about the importance of accountability but also the issue of governance.

Mr. Ian Scott: Yes.

Ms. Soo Wong: In terms of Bill 175, do you see some improvement in terms of the issue of governance?

Mr. Ian Scott: I defer to Professor Roach on this issue. It's really an issue which he is a renowned expert on.

Ms. Soo Wong: I know, but as a former SIU, in terms of your previous role, and now in terms of being a witness to this particular committee today, how do you see this proposed Bill 175 improving governance issues?

Mr. Ian Scott: In terms of the relationship with the SIU, the fact that it's going to be a stand-alone bill, as opposed to part of the Police Services Act, at least on a symbolic basis, supports that.

I've actually recommended that the SIU director be appointed by the Legislature, much like the privacy commissioner or the Ombudsman's office, so they have complete independence. That was not adopted by either Justice Tulloch or by the bill.

Ms. Soo Wong: You want to see the SIU director as an independent officer of the Legislature?

Mr. Ian Scott: I recommended that, in an ideal world. We don't live in an ideal world. It would have been nice to have. But they've gone a long way in the sense of making it a stand-alone piece of legislation

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Wong.

Now to the PC side: Ms. Scott.

Ms. Laurie Scott: Thank you very much, Mr. Scott, for being here today. I know you wanted some more time. I'll just ask one quick question to you.

Mr. Ian Scott: Certainly.

Ms. Laurie Scott: When you were talking about the stiffer penalties for members of the police associations that don't co-operate—I just wanted you to comment. In your history—and from what I've learned—is there actually any history of officers who never co-operated?

Mr. Ian Scott: Oh, yes, there's an extensive history. It has been extremely well documented by articles in the Toronto Star, both last year with respect to the current director, and during my tenure. I left in October 2013.

When I completed every investigation, I had to send a report to the Attorney General, and I would send a reporting letter to the chief. I would document to the SIU when there were purported breaches of the regulations in the Police Services Act.

I was trying to develop a protocol, when I was there, to amend these issues and resolve them, and I was largely unsuccessful, actually. But I documented well over 100 cases, mostly to do with delayed notification and non-notification.

This is an ongoing issue with the SIU. In fact, we're seeing it arise right now in the Dafonte Miller case—we're in the middle of the preliminary inquiry right now—where there was a very serious injury to a fellow named Dafonte Miller, and no call by either Durham police or Toronto police to the SIU.

Ms. Laurie Scott: Okay. I wanted you to finish what you were saying about section 100 and a victim of sexual assault and changing the investigator—if you could finish that thought. I just wanted to hear that more fully, if you could, please.

Mr. Ian Scott: Yes. The reality is that police services always have the discretion to move investigations out of their police service or to decline taking the investigation at all. The director should not be in a position where he has to accept an investigation from the chief of any police service. The way it's worded right now, it's mandatory, with the word "shall." In my respectful submission, it ought to be changed to "may," which is exactly the wording in section 16, so that there's some discretion in this area.

I'd go further in terms of this issue of stripping the director of discretion.

If you go to section 34, it reads that if there are reasonable or probable grounds for "an offence under any federal or Ontario statute, the SIU director shall cause charges to be laid against the person." This is much too broad, in my submission. The director would have to charge civilians who gave statements, if he thought they

had lied, with public mischief, or the police with minor HTA offences when they're investigating, say, a dangerous-driving-causing-death case.

0940

There are a number of problems with this. First of all, it's going to play havoc with the way statements are taken from witness officers. If a witness officer is suspected of a criminal offence, the statement and their notes have to go back to the police service. The SIU can no longer rely upon them.

Secondly, there's a case called Beaudry from the Supreme Court of Canada, 2007, which says that all police officers—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Scott. We now move to the NDP side: Mr. Natyshak.

Mr. Taras Natyshak: Thank you, Chair. I yield my time to Mr. Scott.

Mr. Ian Scott: Okay. All police officers have discretion not to lay charges as long as they do so for bona fide reasons. Why should the director of the SIU be in a lesser position than any other police officer in the province, or in the country, for that matter? I think that what they ought to do, when you go back to section 34, is simply change the "shall" to "may." Give the discretion to the director, which, frankly, every police officer in this province has.

I have some more points, if you'd like to hear them.

Mr. Taras Natyshak: Absolutely.

Mr. Ian Scott: Okay, let me go ahead. Section 29 of the proposed act, Bill 175: the right to consult with a lawyer and/or representative before the interview and to have them present during the interview. The question I have for the committee is this: Why is the right being broadened to include both a lawyer and a representative during the same interview? There is no need.

The current section is disjunctive: either a police association representative or a lawyer. They're changing it to expand it. So in the room you're going to have the subject of the interview—the witness officer; one or two SIU investigators; and currently one lawyer—it's going to be now a lawyer and an association representative. I iterate on this point: These are witness officers. They're not suffering any criminal jeopardy.

In fact, I've documented in an article that was published in the Criminal Law Quarterly in 2013 where police association lawyers have interfered with the witness officer interviews. In my respectful submission, this could make it worse by having two representatives in the room at the same time.

I have a couple of other points, if you'd like to hear them.

Mr. Taras Natyshak: Absolutely.

Mr. Ian Scott: Okay. Turning to section 27 regarding the timing of interviews, there's a term in there: "if there are appropriate grounds for delay." In my respectful submission, this is not necessary. Once again, the issue of discretion is not clarified. Whose appropriate grounds for delay? If this section stays in there, it ought to be that it's the SIU's decision to delay an interview more than 24 hours, which in effect it is right now.

Finally, securing the scene: If you go to section 22, it's a very unnecessarily complicated new provision. In my respectful submission, why not simply say that the scene should be secured pending SIU arrival, and any attempt to obtain or preserve evidence requires prior SIU approval?

I wanted to end with a quote. May I use some more of your time?

Mr. Taras Natyshak: As much time as is left.

Mr. Ian Scott: Very good.

The Chair (Mr. Shafiq Qaadri): Twenty seconds.

Mr. Ian Scott: Pardon me?

The Chair (Mr. Shafiq Qaadri): Twenty seconds.

Mr. Ian Scott: All right, I'll go right to—

Mr. Taras Natyshak: Hurry up.

Mr. Ian Scott: Yes, I'll do it quickly. A quote from Justice Cory, who was retained by the Republic of Ireland to look at unresolved killings: "If you have a society, you must have an authoritarian arm of that society. That society must have confidence in that branch, be it police or the army." This bill goes a long way towards facilitating public confidence.

The Chair (Mr. Shafiq Qaadri): Thank you, Professor Scott, for your deputation.

Mr. Ian Scott: Thank you very much.

LONDON POLICE SERVICES BOARD

The Chair (Mr. Shafiq Qaadri): I now invite our next presenters to please come forward. The London Police Services Board: Jesse Helmer and Susan Toth. Welcome. Please be seated. Your time begins now.

Ms. Susan Toth: Good morning, committee. Thank you so much for having us here today from London. My name is Susan Toth and I'm the vice-chair of the London Police Services Board. With me is Jesse Helmer, who is also a member of the police services board.

I just wanted to start by saying that there are lots of positives in the Police Services Act changes. I wanted in particular to highlight, as a board member, how grateful I am for some of the clarity, especially around the operational and policy divide, which has been a source of tension on police services boards in terms of dealing with issues and facing some resistance from management. That is much appreciated.

Similarly, the sections that address closed meetings are going to be really important. Transparency is crucial for public confidence, so I really appreciate that those sections are specifically being addressed. It's something that's not really currently present.

When I started on the police services board in April of last year, my training consisted of a one-hour meeting with the board lawyer, and very little beyond that. I'm lucky I have a legal background, so I had some familiarity with the Police Services Act. The mandatory training is absolutely crucial. This is a really big organization and a very complicated act, and we're seeing members come

in with absolutely no training or very little training and without the capacity to make some really important decisions. So thank you for that as well.

Whistle-blowing protections for police officers are crucial. No one knows better than individual police officers where the problems within a service lie, so I think that's also very important, and I thank the committee for highlighting those things in the new act.

Some of the areas I'd like to highlight in terms of potential concerns: Right now, section 13 and section 14 talk about police functions without actually defining what those core police functions are. I gather that it's probably going to be put in the regulation. In my opinion, it's not something that's appropriately left to be defined in a regulation. The core of the Police Services Act should include defining police functions right away, contained within the act itself.

We had a situation in London, unfortunately, involving a board member. There is a section of the current regulations, the code of conduct, which requires a board to make a finding that another board member has breached the code of conduct before it can be referred to the OCPC as it is now. Should this act pass, there's now going to be an inspector general; it would be good to see a change in the regulations about the code of conduct that would allow a board to immediately refer any code-of-conduct issues to the inspector general. I don't think the board is the best place to make those preliminary findings. It's a conflict. You're working with these people. It's best to be resolved independently by an outside body.

Section 115(2): I'm sure that you're aware, and I'm sure other people have raised, that the legislation currently requires, if an officer cannot do the essential duties of the job, that the board, before they terminate that employment, provide medical evidence from two doctors and then prove that there is undue hardship to accommodate that police officer. Essentially what that does is put the burden with the employer, which is the police services. The way the proposed legislation reads now is that that burden actually shifts over to the police officer. In other words, if the chief finds that a police officer cannot do the essential requirements of the job, they can be shifted over to a civilian or can be terminated. I think that that already overburdens the police officer, and there's too much stigma that could occur.

I'm going to turn it over to Mr. Helmer.

Mr. Jesse Helmer: There are two other points where we have some concerns. One is in the timing and how long it takes to have an SIU investigation completed. Right now we're seeing officers under investigation for up to two years and sometimes longer. That is not good for the officers; it's not good for the police service; it's not good for the community. Everybody is in strong alignment to say that these things should be happening faster. We would like to see some kind of articulation of what the expectation is for turnarounds on investigations in the legislation.

Secondly, we don't think it's appropriate to make SIU investigate a case where officers have provided life-saving measures and that's all that has happened. For example, if they were to administer naloxone to somebody who was in the middle of an overdose and that was what is the cause of the death, unless the person was in custody—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Helmer. We begin with the PC side. Mr. Yakabuski?

Mr. John Yakabuski: Thank you very much, Susan and Jesse, for coming in this morning and helping us on this new piece of legislation. Susan, you made a comment that nobody is in a better position to understand the needs—I'm just paraphrasing—than police officers themselves. When I look at this bill and when I have discussions with many police officers, they ask themselves and ask me, "Where were the discussions with us, the people on the ground every day, before this legislation was drafted?" I certainly share their concerns. They clearly indicated to me that this was never part of the drafting of the bill, yet they're the ones who are very much affected by this.

Jesse, you talked about the length of SIU investigations for matters that sometimes either shouldn't be there or should be cleared up quickly. Yet my understanding is that the plan is to—we're opening up the Police Services Act to all kinds of new and more investigations, but they're not putting the resources in there, so we're going to put more lives on hold for longer and longer periods of time.

0950

The officer, their family, when you've got a cloud hanging over you, you can rest assured that you're not likely to be getting any promotions, transfers or anything that might be good for the officer who could have no guilt of any kind. Plus the level of proof under the complaints provision in this act goes way down from where it used to be, from a clear and convincing level of proof to a balance of probabilities.

Do you not have some concern that all of these things are going to do great damage to the morale of the very people we have on the ground protecting us?

Ms. Susan Toth: Thank you for your comments. I would actually disagree that the standard has dipped to something that is unreasonable. A balance of probability standard brings police officers in line with the standard used in every workplace investigation. I don't think police officers should be held to a standard that is harder to achieve than the rest of the population. If anything, they should be held to a higher code of conduct, essentially. So I don't have a problem with that section.

Having said that, I do think it's important that police feel that they're able to take their complaints and that they be investigated externally. Right now, even though there is whistle-blower protection, internal complaints are still dealt with internally. If a police officer has an issue with another police officer or is seeing issues, that should all go externally. I think that should be part of the act as well.

Mr. John Yakabuski: So you say—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski. We now move to the NDP section: Mr. Natyshak.

Mr. Taras Natyshak: Thank you very much for being here. It's 191 pages; there's no way two and a half minutes each is adequate enough. I'm going to give you the time to elaborate on some of your thoughts and some of the points that I know you wanted to get to. So the time is yours.

Mr. Jesse Helmer: Just to finish off on the life-saving measures: We just don't want to waste the SIU's time. We understand that they have to investigate a lot of things, and when an officer has just administered naloxone and there has been a death, as long as that person was not in custody, we don't think that that should be automatically referred to SIU, especially if the director doesn't have the discretion to refuse. So that's one thing.

I would say, on the issue around properly resourcing SIU so it can meet the timelines, we're giving feedback on the legislation, and our feedback on the legislation is that we'd like to see there be some expectation around how long these things should take. Then, we would hope all parties would support the budgets that are necessary to accomplish that.

Ms. Susan Toth: I would just add very quickly that I want to support Mr. Scott's pointing out that section 32 of the SIU act right now has that term "impracticable," which I don't think is necessary. I think it weakens that section to a point where there almost is no point. I would personally like to see that section removed.

I think those are all my comments.

Mr. Taras Natyshak: Do you have any thoughts on the provisions of outsourcing police services and the lack of accountability and oversight mechanisms built into the bill?

Ms. Susan Toth: Yes. Thank you so much for raising that. Absolutely, that's a concern. I think that while the police services board association points out that there are some cost-saving measures to be derived from that—and certainly costs for municipalities are growing because the cost of policing is getting so high. However, the act needs to specify that if any of that is downloaded, there still has to be oversight accountability. The list is long, and again, without defining the core functions of policing, there is so much unclarity and confusion around what exactly is going to be downloaded, other than what the list has already provided, and how exactly we are going to provide oversight for that mechanism. So I have some significant concerns. I like cost savings, obviously, from a municipal perspective, but I don't like the idea of this Walmart-ization, privatization of policing.

Mr. Taras Natyshak: Did you want to elaborate on that?

Mr. Jesse Helmer: I think without having the core functions of policing defined in the legislation from the outset, it's hard to comment on whether different pieces can be civilianized or privatized. I do think we need to have police officers who are highly trained focus in on the things that only they can do and that they're best equipped to do. I think, for example, of the number of times that police officers are called to deal with someone who has mental health issues. They don't necessarily have the training—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Natyshak. To the government side: Mr. Potts.

Mr. Arthur Potts: Thank you, Ms. Toth and Mr. Helmer, for the work you do on the board, stepping forward for that. I appreciate very much your comments around the training aspect. It's critical. I'm in the city of Toronto, and police board oversight issues were front and centre as I was coming into my own. June Rowlands, the first female chair of a board, was constantly up against a wall when it came to trying to wrestle some kind of reasonable oversight. I appreciate your support for the bill.

I know that Justice Tulloch in his review listened to associations, boards and police officers individually and collectively. Did you participate in that process? Did you have any experience about—I find it just plain misleading for a member opposite to be talking about no consultation with rank-and-file officers. Would you want to comment on that?

Mr. Jesse Helmer: I can say that certainly our police association locally is well aware of the bill and has been providing comments. We've heard from them; I imagine everybody has. They're pretty well organized and paying very close attention to Bill 175.

Mr. Arthur Potts: Thank you. I appreciate that. I would agree with you. We've had in-depth opportunities to consult with all interested stakeholders across this whole process.

Your comments on naloxone—I understand the concern police officers may be having about being subject to investigations in the use if there's a death following. Could you comment on whether you see that as being something which would actually stop a police officer doing a life-intervening application? My sense is that if the investigation—it could be very quick, if the person was in crisis: "We tried the best we could, and that's the end of the investigation." How would you respond?

Mr. Jesse Helmer: I would say that it's unlikely that would stop an officer from administering naloxone. I think in a situation like that, they're going to respond as most people would and according to their training, which is to help try and save this person's life. What I do think it would do is potentially waste a lot of time. In London, for example, we have a lot of people who are overdosing on injection drugs; police are sometimes involved in those situations. It's something that is growing rather than declining in terms of being an issue in the community.

We're just concerned about the allocation of resources from SIU and a really short investigation that's not necessary. We've got a lot of things that are necessary that need to be done.

Mr. Arthur Potts: Fair enough. Anything else you want to comment—

Ms. Susan Toth: I would just add to that that I had a long conversation with a police officer yesterday and even though I agree with Mr. Helmer completely that a police officer would never hesitate to provide life-saving measures, I can tell you that in my conversation with

him, every time they enter into any situation, SIU flashes in their minds, even as they're making those split-second decisions. While I appreciate that public confidence is paramount in terms of oversight, I sympathize with the officers.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Toth and Mr. Helmer, for your deputation on behalf of the London Police Services Board.

REGION OF PEEL

The Chair (Mr. Shafiq Qaadri): I now invite our next presenters to please come forward from the region of Peel: Mr. Palleschi and Mr. Cristiano. Welcome. Bienvenido. Please be seated. You have five minutes' opening address. Please begin now.

Mr. Michael Palleschi: Thank you very much, committee. Thank you, Mr. Chair. Good morning. My name is Michael Palleschi. I'm a regional councillor in Brampton, representing approximately 130,000 people in wards 2 and 6. I'd like to thank the committee for the opportunity to present on Bill 175.

Let me say at the outset that the region of Peel supports the province's overall direction on community policing as proposed in the bill. While we support the general direction of the bill, the region has three concerns with schedule 1 of Bill 175 that would increase municipal costs and limit our ability to deal with rising police budgets. These three areas are:

(1) mandating community safety and well-being plans;

(2) rising police service budgets; and

(3) the budgetary implications of police board member training.

Mandating community safety and well-being plans: Our first concern with Bill 175 is about the requirement for municipalities to develop community safety and well-being plans. The region sees community safety planning as a good thing as it promotes collaboration across sectors. However, we are concerned that this measure will impact our resources.

We believe that the province has not fully considered how this requirement would affect a municipality's capacity to deliver on it and ultimately drive up costs.

The region of Peel, like other municipalities, is responsible for funding and delivering a host of services that our residents and businesses need, including the requirement to fund adequate and effective police services in our community. As you probably are aware, police services are largely funded by municipal property tax dollars, which are already stretched.

To help municipalities carry out the new responsibility, the province should provide funding. We are therefore calling on the province to create a grant program to provide financial support to help municipalities in developing their community safety and well-being plans.

1000

Number two, the rising police services budgets: Our second concern is that the bill does not adequately address the ability of municipalities to effectively manage rising police services budgets. Policing is the largest expense in the region's annual budget, making up 40% of each tax dollar collected, and the police budget is overwhelmingly driven by labour costs, which make up more than 90% of Peel's 2018 police budget.

As the region and other municipalities deal with this fiscal reality, it is important to find ways to effectively manage the police budget. One option is allowing the police service to use civilian or non-police personnel to carry out non-core police services at a reduced cost.

We acknowledge that Bill 175 does allow some police services to be carried out by non-uniformed police officers and contractors, but we don't think it goes far enough. The province should expand the functions that contractors or civilians can perform to include traffic management, minor property offences, prisoner escort, court security and crime scene security.

Number three is our budgetary implications of the police services board member training. The region has concerns that the mandatory training of police services boards will put financial pressure on police budgets. While the proposal to require police services board training is a positive development, who will deliver and pay for board training still needs to be determined. For this reason we support AMO's call for the mandate of the provincial inspector general to include financial support to police services boards for the mandatory training programs.

We would also like to see provincial dollars dedicated to helping police services boards effectively carry out their roles and responsibilities and enhance their capability.

In conclusion, I'd like to thank you for listening to the region of Peel's concerns. As mentioned, we are concerned that the mandate to create community safety and diversity plans will add to municipal costs. You also heard how municipalities can better address police budgets by allowing more flexibility in the way we deliver police services. Like you, the region wants to build safer and more secure communities, and we believe that the concerns and proposed changes we expressed will help us achieve this goal in a more effective way.

On behalf of the city of Brampton, the city of Brampton supports the region of Peel's and AMO's submission.

The Chair (Mr. Shafiq Qaadri): Thank you, Councillor Palleschi. We begin with the NDP side: Mr. Natyshak.

Mr. Taras Natyshak: Thank you very much, Mr. Palleschi, for being here. In the absence of a community safety and wellness plan, what would the city of Brampton have to coordinate the resources and to ensure that they're adequate, and that, in the event of an emergency, they're adequately focused and resourced?

Mr. Michael Palleschi: As of right now, we would depend solely on the region of Peel to administer any emergency measures that need to take place. On behalf of the city of Brampton, we started the process of establishing a safety advisory committee. It has taken us well over

a year just to have the right composition, and with this introduction of the bill, we still don't meet that legislation.

Mr. Taras Natyshak: So just to get people together who are charged with the function of developing a plan is a challenge for your region?

Mr. Michael Palleschi: Absolutely. It's a very difficult challenge. We've noted, and I believe AMO has as well, the fact that it's a lot of public consultation, finding the right composition. The training, therefore, is a tough task.

Mr. Taras Natyshak: Okay. You mentioned that you believe that the provisions around outsourcing some police functions don't go far enough in terms of the potential savings that municipalities would like to benefit from through that mechanism. Are you concerned at all with the lack of oversight for those functions and for those potential private providers?

You talked about securing crime scenes. I play that out in my head and it turns into a terrible television show where it compromises the entirety of the potential case and the crime scene. Given that those safeguards aren't there and those oversight mechanisms might not be there as well, do you have any of those concerns, given that there is not really clarity on oversight?

Mr. Michael Palleschi: I'm sure I have the concerns, as you do and everybody would. It would be creating that plan, though, to try to understand and try to have the ability to make sure that those concerns are met with the proper oversight. But the ground level where the training comes into play, and ultimately there would be some sort of head figure administering and making sure that—but it all goes back to that plan and the fact that so many resources have to go into the plan. Staff resources are a huge part of it.

Mr. Taras Natyshak: I can appreciate that, and I thank you for your comments on that. In my experience in this building, when it comes to the outsourcing and privatization of core functions—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Natyshak. To the government side: Ms. Wong.

Ms. Soo Wong: Thank you very much for your presentation and also your written submission. I noticed that your presentation as well as your submission focused mainly on the issue of budgetary concerns. Just so it will be on the record, the Minister of Community Safety and Correctional Services is still looking at the funding model. We will be having more conversations with our adversaries across.

In my time in the ministry, the budgetary concerns of policing across the province, whether it's an urban centre or a rural centre, have always been an issue. I just want that to be on record as well.

I noticed in your first comments dealing with the mandatory community safety and wellness plan—I want to push that out in terms of the previous witnesses before this committee. Professor Roach and a former SIU director, Mr. Scott, talked about the issue of accountability and the issue of governance. As you know, governance is a big, big concern. Given that the proposed legislation will be asking each municipality to create this safety and well-being plan and work collaboratively with the various organizations—that's good for accountability, that's good for governance issues, and more importantly, that whole issue of public confidence and trust.

You have a very diverse community called Brampton. Do you see merit in support for these kinds of plans and making sure your community is listened to?

Mr. Michael Palleschi: I think that any time we're talking about safety for any community—and in the region of Peel, our diversity is very strong and a benefit to the region. I think that when you mirror safety and accountability, it's hard to say anything other than yes. It goes hand in hand. We appreciate the fact that the province is trying to bring forward more accountability, so yes, we agree 100%.

Ms. Soo Wong: Okay, so, because time is limited: I think there were some concerns raised about the core functions of officers. It is intended by the government, by the minister herself, that the core functions of police will stay with police. The whole issue concerning privatization—you have asked us to push out the issue of non-police work: Can it be met by some non-profit organization? We have witnesses coming before this committee this afternoon to talk about non-police types of activities. I want to be very clear that the core function of policing will stay with the police. It is not going to be privatized etc. I know you asked us to remove—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Wong. To the PC side: Mr. Yakabuski.

Mr. John Yakabuski: Thank you very much, Michael, for joining us this morning. Most of what you're talking about this morning revolves around the cost and the impact it has on your taxpayers, ratepayers, in Peel region, with policing being a huge part of that cost.

The mental health issue: It used to be that one in 20 police calls dealt with a mental health issue. Statistics are showing that it's now more like one in six, and not only the effect that that has on your budgets and your costs because it takes so much of the police officer's time, but also the effect that it has on them directly, because they didn't train to be psychiatrists, but they're dealing in mental health issues so much of the time, which puts an additional pressure on the rank-and-file officers as well.

So first of all, would it not make sense—the province has to look at mental health funding as a core function of making our police officers able to do their jobs better. We've got to do more in mental health funding. Would you not agree?

Mr. Michael Palleschi: I would absolutely agree with that statement. Our Peel Regional Police have done a phenomenal job in trying to get people with the training out there to calls, but with the increase in the percentage of calls that just relate to—I hate using the term "mental health" because it's putting people in a box who essentially have a disease that is misdiagnosed and untreated. I could go on and on about that. But it's just the fact that

this issue is increasing, and I don't believe that we're ahead of it; we're certainly behind it. So it's definitely an issue.

Mr. John Yakabuski: But it certainly increases the pressure on the rank and file of on-the-street officers as well, would you not agree?

Mr. Michael Palleschi: There's no doubt. Yes, absolutely.

Mr. John Yakabuski: Have you met with the police officers themselves? You made a submission that talked mainly about funding. Have you met with them, as a municipality that has a police force, to listen to their concerns about how this bill would affect not only police morale but their ability to do their job? There are an awful lot of components in this bill that make police officers, I would say, hesitant and concerned about maybe doing their job because of the changes in this act.

Mr. Michael Palleschi: You're absolutely right. I just had a discussion yesterday with a Peel Regional Police officer. The concerns that he had—I'm sure I don't have time—were of great concern.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski, and thank you, Councillor Palleschi and Mr. Cristiano, for your deputation on behalf of the region of Peel.

The committee is in recess till 1:30 p.m.—not 2 p.m.; 1:30 p.m.—in this room.

The committee recessed from 1011 to 1331.

MR. DAVID LEE

Le Président (M. Shafiq Qaadri): Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice.

As you know, we're here to consider Bill 175 in the afternoon session. I invite our first presenter to please come forward: David Lee, director of Campus Community Police at the University of Guelph.

Welcome. Mr. Lee, you'll know we have five minutes for your opening address and then a rotation of questions, three minutes by each party. Please begin now.

Mr. David Lee: Thank you. I'm here to speak specifically to section 127 of Bill 175. That's the section that talks about the use of the word "police" in relation to special constables.

A bit of my background before we start: Prior to 2015, when I took over this job, I was an OPP inspector and commissioned officer and I worked all around the province—Far North, far south, and in the centre, around Haliburton county. At that time, I was a member of the OACP, and I'm a current administrative member of the OACP.

Campus special constables serve the University of Guelph by providing law enforcement and security services and investigating activity that may violate federal or provincial legislation. We're the front-line responders, in other words. My purpose here is to speak to you about the specific need for continued use of the word "police" by Ontario campus special constables. Not all special constables in the province are the same. In most cases, special-constable roles are very narrow in scope, including prisoner guards, prisoner escort, court security, transit security and that kind of thing.

In contrast, special constables are front-line officers who handle calls for service within their community. At the University of Guelph, that community is over 30,000 people. A special constable who is assigned to a prisoner escort, in contrast, is provided with a very limited assignment; they do not behave or engage with the public in the same way that special constables do. I feel that they should have the word "police" on their uniform.

Special constables have authorities by virtue of appointments that are afforded only to police. At the University of Guelph, special-constable authorities are granted by appointment by the Guelph Police Services Board and include sections of the Highway Traffic Act, Liquor Licence Act, Mental Health Act, Youth Criminal Justice Act and Trespass to Property Act.

Special constables are also peace officers under the Criminal Code. Special constables can, therefore, exercise police powers under these acts, and they are doing that right now at the University of Guelph. A policing services agreement exists between the University of Guelph and the Guelph Police Service to support this front-line response. Guelph police screens all special-constable applicants, ensures that proper training is provided, provides investigative oversight, and takes the lead on a defined set of major investigations. Otherwise, front-line service is delivered by Guelph special constables.

To make the contrast with other special constables very clear, campus special constables are routinely first responders to calls which include theft, liquor infractions, assault, fraud, hate crimes, domestic violence and sexual violence—all calls that police would normally go to.

I know that many members of the public and, indeed, police officials are not familiar with special-constable powers. Without the word "police" on our uniform and on our cars, campus special constables are often mistaken as security guards. By taking away the word "police" from their branding, this would, in effect, render the workplace less safe due to ill-informed decisions made by some members of the campus community who may not understand the special constables' authority. The word "police" is universally recognizable and brings with it a basic understanding of authority by the members of the community.

The point I'm making is this: I agree that the vast majority of special constables should not display the word "police," as section 127 contemplates; they are simply not expected to engage the community in the same fashion as campus special constables do. Campus special constables serve a much broader purpose with much broader authorities. People know what a security guard is and people know what a police officer is, but very few people know what a special constable is. It causes confusion.

The word "police" on a campus special constable's uniform is for unambiguous public understanding. That's

what it's for. It has nothing to do with special constables wanting to be police officers. The word "police" is for public consumption and public understanding.

In summary, when Guelph Campus Community Police are dispatched to calls and attend, the word "police" is visible on their shoulder, as it has been since 1964. A campus community can be kept safe by the implementation of several safety programs. That's my job; that's what I do. But equally as or more important, the campus community members must feel safe. My efforts to create a safer environment are lost if the community members do not feel safe.

I'm not suggesting that any new authorities be granted, nor am I asking for any other considerations, other than maintaining the status quo with respect to campus special constables' branding: using the word "police" on our uniforms. The word "police" is internationally recognizable: It provides a feeling of safety for our campus community members and supports wellness and security on Ontario campuses.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Lee. We'll begin with the PC side: Ms. Scott.

Ms. Laurie Scott: Thank you very much. I don't think that has been brought to our attention in any of our deputations so far. Have you worked with other universities? Is this a similar issue across universities? I know you're representing Guelph today, and I appreciate that, but could you just fill us in: Is this universal?

Mr. David Lee: Yes. There are 10 campuses in Ontario—nine are universities and one is a college—that have special constables. We meet in a group called OACUSA—I believe OACUSA has provided a submission to this committee—on various issues of security. We exchange ideas around this point. OACUSA has submitted a document in support of issues related to this bill, including the word "police" being displayed on our uniforms. So, yes, we are talking about that. It's a concern across Ontario.

Ms. Laurie Scott: Okay. And were you consulted or anything before the drafting of this bill, that you had been given any heads-up that this might be occurring?

Mr. David Lee: We were invited to a discussion about a year ago, here in Queen's Park, to go over this very issue. We were invited to speak with a committee and express our opinions, which we did. That was last March, I believe.

Ms. Laurie Scott: This is something that's in the bill. It's not going to be in regulations; it's in the bill, and that's very concerning to you.

Mr. David Lee: Yes, section 127.

Ms. Laurie Scott: Yes. So that's very concerning to you.

Mr. John Yakabuski: I was looking at section 117—sorry about that. Anyway, your concern is not the identification of special constables on campus; it's special constables otherwise—correct?—where they would be identified as police. Yours are identified as police, your special constables?

Mr. David Lee: They are right now. This act is contemplating taking that away. My point is that we need to keep it to maintain the service level that we're delivering right now.

Mr. John Yakabuski: Are they contemplating, under the act—because we have not had this—taking the word "police" off all special constables?

Mr. David Lee: Yes.

Mr. John Yakabuski: Okay. I wasn't aware of that. I apologize for that.

Mr. David Lee: It talks about that no one can hold themselves out as a special constable. But it also says that no employer can use the words "police," "police officer"—and it goes through the list of types of phrases—if they have special constables. My position is: I agree, except in the cases of special constables where we need to be seen as police in our community. Being seen as police in the community is a major concern to police service boards all over the place. In our community, we have the same issues.

Mr. John Yakabuski: Are your police on the campus able to lay charges under the Criminal Code and all other—

Mr. David Lee: Yes. We can seize evidence, hold evidence and present the evidence in court. Under section 495, we can arrest after the fact. It's not a citizen's arrest or a security-guard arrest. We can arrest after the fact, following an investigation—go back days later or weeks later and make an arrest, as a police officer would.

Mr. John Yakabuski: Do they have the—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski. To Mr. Natyshak of the NDP.

Mr. Taras Natyshak: Thank you very much. Can you give us a real-world scenario where this change would jeopardize public safety?

Mr. David Lee: What I see happening is, a call for service comes in on, say, a Friday night—

Mr. Taras Natyshak: On campus.

1340

Mr. David Lee: Yes, on campus. The officers go. The officers don't have the word "police" on their uniforms as we do now, and people who might not be familiar with special-constable powers—I submit that that's a lot of people—object to officers making a seizure or attempting to gather evidence or attempting to make an arrest that they feel is unlawful. They're standing up for themselves, is what they're doing.

The word "police" avoids that misunderstanding, because people know what police are. People do not know what special constables are. That's the problem that I see, so therefore it could escalate unnecessarily, to the point of physical violence.

Mr. Taras Natyshak: What do you think the rationale is for this change?

Mr. David Lee: The rationale for the change—and in broad terms, I completely agree with it—is that there are special constables that do nothing but singular tasks: moving prisoners, guarding prisoners. For doing some lab work, they have to be special constables, because of the things that they handle. They don't need police anywhere around. They don't need to be seen as police

officers. But those of us who deliver front-line service like a police officer, like I used to do as an OPP officer, need to have that word so that it's a clear understanding.

Again, this is for public perception, for public consumption. It's not for us to say we're the police; it's so that people see when the uniform is coming that that's a police officer, and that people understand how they should react or behave, and a general understanding of police powers. That's what we're after: to avoid that confusion.

Mr. Taras Natyshak: So your request is to maintain the status quo?

Mr. David Lee: Maintain the status quo for special constables on campuses.

Mr. Taras Natyshak: Okay. Thank you very much.

The Chair (Mr. Shafiq Qaadri): To the government side: Ms. Sandals.

Mrs. Liz Sandals: I do agree that certainly the perception in the community is that people would refer to you as the campus police. That's very much the perception in the university community. Thank you for clarifying that you're actually city of Guelph special constables, that you actually are special constables. I know that you've got a long and positive working relationship with the city police. If you talk to successive police chiefs in Guelph, they would say the same thing that you've just said.

Do all the campuses that have special constables refer to themselves as police, or is it just some of the special constables that call themselves campus police?

Mr. David Lee: Currently there are five that call themselves campus police. It's Waterloo, Windsor, Western, Guelph and U of T—U of T since 1904. I mean, this isn't new. Other places had it, such as Laurier, but they don't have it; for whatever reason, they've changed their name. They still retain the exact same powers. Brock doesn't have it. McMaster doesn't have it, or Carleton. Fanshawe College, actually, has special constables. They don't use the word "police" right now.

Mrs. Liz Sandals: You've pointed out that special constables can either have what you've got, which is the ability to enforce, and other special constables have other duties which really aren't police. Somewhere in this brief from the association, does it suggest what the appropriate wording would be as an alternative to what's in the proposed act now, to sort out this distinction?

Mr. David Lee: It doesn't come up with that. The common one would be "special constable," to just have those two words, as opposed to—

Mrs. Liz Sandals: Yes, but because you're suggesting that the law should distinguish between special constables with some powers and special constables with the other powers that you've got, I'm just wondering if there is a suggestion about how we would sort that out in law.

Mr. David Lee: No, that hasn't been put in our submission from OACUSA, the association that submitted that. It hasn't come yet. Nor does the letter from the vice-president of the University of Guelph contemplate that.

It's more of a position that you're in. If a special constable is hired to move prisoners, to do prisoner transport, they might have powers under one or two provincial acts, but the distinction is that special constables on campus are in a community, no different than any other community I've ever policed, and there are all kinds of issues in that community.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Lee, for your deputation on behalf of the University of Guelph.

MUNICIPALITY OF NORTH GRENVILLE

The Chair (Mr. Shafiq Qaadri): I invite our next presenter to please come forward: Mr. Carré and Mr. Sherritt of the municipality of North Grenville. Welcome, gentlemen. Please do introduce yourselves. Be seated. Your time begins now.

Mr. Brian Carré: Thank you very much, Mr. Chair. My name, as you mentioned, is Brian Carré. I'm the chief administrative officer with the municipality of North Grenville. With me today is Mr. Don Sherritt, chairperson of the section 10 North Grenville Police Services Board.

Acknowledging that our time before you is limited, our comments will focus on two key areas of Bill 175 that our municipal council has deemed will directly impact our community if the bill is passed in its current form.

Ms. Lynn Dollin, president of the Association of Municipalities of Ontario, once stated to this very committee that municipal governments are the front line to the people. This certainly holds true with this particular piece of legislation, as policing is fundamentally a local community function. As you know, council members will be the first to hear how any shortfall of Bill 175 affects their respective communities.

It is for the above reasons that we are here before you today to identify changes that we support and two critical areas of Bill 175 that we respectfully submit require your attention and subsequent change.

Mr. Chair, we will be addressing, in the first instance, the absence of detail on critical issues that affect our municipality, and, secondly, the abolishment of the North Grenville Police Services Board through schedule 1, part V of the bill.

At this time, I would like to call upon Mr. Sherritt to speak to some of the changes we support, our first area of concern being the lack of detailed information relating to proposed OPP detachment boards.

Mr. Don Sherritt: As mentioned by Mr. Carré, I would like to speak to some areas within the bill that we support.

We appreciate that the minister is taking the responsibility for police board training, something that has been lacking in Ontario and can only enhance the ability of police service boards to satisfy their responsibilities.

The municipality recognizes and supports the approach taken with respect to the establishment of section

31 municipal boards. The provisions to establish section 31 municipal boards are an enhancement to the existing legislation as they provide needed clarity and are stand-alone provisions that do not rely on unwritten regulations to outline the implementation.

An example: When it comes to the establishment of section 31 municipal boards, the bill clearly defines the size and membership of these boards. The proposed act defines how a municipality can establish either a five-member, seven-member or nine-member board and clearly defines the membership for these three options. In the case of municipal boards, there is absolutely no reliance on yet-to-be written regulations to establish the needed criteria.

While there are many examples of provisions related to OPP detachment boards that rely on the yet-to-be written regulations, to respect the time constraints I will speak only to two examples. Lack of detail makes it difficult to assess the impact that the creation that the creation of these boards may have on the ability of the municipality to establish local priorities and needs.

The first section is section 67. Section 67 states in part, "There shall be an OPP detachment board, or more than one OPP detachment board in accordance with the regulations, for each detachment of the Ontario Provincial Police that provides policing in a municipality." It goes on to say, "The composition of the OPP detachment board shall be as provided in the regulations."

The lack of detail in this provision is a concern as we understand that boards within an OPP detachment boundary will be combined to create one board.

In the case of Grenville county OPP detachment, this would involve the amalgamation of four existing section 10 OPP contract boards and one section 5.1 community committee. Each one of these existing boards and committees is representing municipalities with large variances in population and financial resources. Without knowing the composition of these boards, the question we can't answer is: Will the blending of these boards create winners and losers when it comes to cost-sharing and the development of local priorities and action plans?

Section 71 only compounds our concern. This section deals with how municipalities will share policing costs, but once again, this section references yet-to-be written regulations. Section 71 states in part: "The OPP detachment board shall submit the estimates to every municipality that receives policing from the detachment along with a statement of the municipality's share of the costs, which are to be determined in accordance with the regulations."

1350

The problem is, without the referenced regulations—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Sherritt. Sorry to interrupt your remarks. We begin with the NDP: Mr. Natyshak.

Mr. Taras Natyshak: Mr. Sherritt, I'll allow you to continue and finish.

Mr. Don Sherritt: The problem is, without the referenced regulations, we don't have the needed details to evaluate the impact that these proposed changes may or may not have on the costs of policing services and the ability for the boards to establish local priorities.

Mr. Taras Natyshak: I am sensing some frustration with the vagueness of the regulatory framework and what is to come. Am I correct? Here's a question: Does the municipality of North Grenville operate its municipal legal framework under the same sort of parameters whereby things are done post—do you have a regulatory, yet-to-be-determined regime, or when the council decides that this will be the function, whether it be through bylaw or otherwise, it's clearly articulated?

Mr. Brian Carré: Yes.

Mr. Taras Natyshak: What I want to do is welcome you to the world of Ontario politics under the Liberal Party of Ontario, whereby much of their initiatives are done after the fact, under the cloak of who knows what, at cabinet. We don't see a clear picture of what their direction is, and it's incredibly frustrating.

Mr. Don Sherritt: Not to be argumentative—and I understand exactly what you're saying—the fact is that in this particular bill, I would almost argue that there are two distinct drafting styles. When you're dealing with the provisions that address municipal boards, there is no reliance on regulations to be written. It's extremely clear. When you get into how these boards will be formed, it clearly states how a municipality will go through the bylaw process to decide whether it will be a five-, seven- or nine-member board. It clearly defines that a five-member board will consist of the mayor, a member of council, an appointed representative by council who is not a member, blah, blah, blah, and then it goes on to say that there will be two provincial members.

When it gets into the composition of a detachment board, we will have to wait for the regulations. So I understand what you're saying, but the principle has not been applied consistently.

Mr. Taras Natyshak: I understand what you're saying, and I appreciate your concern. I thank you for making your submission here today and expressing that concern, which I believe is probably shared by municipalities around Ontario.

Any other time on the clock? No. Done.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Natyshak. To the government side: Ms. Sandals.

Mrs. Liz Sandals: Yes, thank you. What is the situation right now? Is there a North Grenville police service board?

Mr. Brian Carré: Yes, there is.

Mrs. Liz Sandals: I'm assuming that there is a detachment somewhere. How many police service boards are there for that detachment?

Mr. Brian Carré: There are four section 10 police services boards, and one section 5.1 within Grenville detachment.

Mrs. Liz Sandals: Okay, so depending on how you look at it, there's four PSBs plus another municipality all coming under one detachment. Is the issue that you don't want to have a consolidated board, or is the issue that you

want to have more influence over the rules on how that's made up?

Mr. Brian Carré: I think I would say "both," with all due respect. As Mr. Sherritt explained, we have nothing in the bill that guides us as to how these detachment boards will be established when we compare it to section 31 on municipal boards. Where we get very anxious, and it's in pieces that I'd like to bring to your attention, is that the municipality of North Grenville is the third-fastest-growing community in all of eastern Ontario per capita. We've experienced growth of 1.3%, on average, since 2001, by census, and between 2016 and 2017 that increased to 1.7%. What happens is that, of our colleagues within the proposed detachment area, two are experiencing decreasing growth and two have very limited growth.

I would suggest that we are extremely influenced by the city of Ottawa, for a lot of good things, but when you look at the experiences that we have been seeing, there is an increase in violent crime and property crime committed by individuals that reside in Ottawa. We are perceived by these perpetrators as not having modern urban policing systems, which makes us, in their minds, an easy target.

We are of the opinion that we are unique. We are a community in transition. We are growing. If you know the city of Ottawa and the outskirts—places like Barrhaven, Kanata—they've all exploded in the last 15 to 20 years. It's spilling over adjacent to the city, which is where North Grenville is, because we border with Ottawa and with the Rideau River.

It's a two-sided concern. Yes, we don't have that information, but we would submit that the bill needs to recognize that some municipalities are in unique situations. It may not be to their advantage to be grouped together in a detachment board. What we're trying to show you this afternoon is that we are one of those municipalities. We firmly believe that we are unique and cannot be brought into a general—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Sandals. To the PC side: Mr. Yakabuski.

Mr. John Yakabuski: Thank you very much for joining us today, Brian and Don. I was looking at section 31, and I think I completely get your point. It's very definitive. There's not much left to wonder about how the board is going to be composed and how it's going to function. When I look at the other sections that you looked at—67, 71 etc.—it's quite vague. In fact, there's nothing prescriptive at all. I can understand your concern.

The bill was tabled on November 2. In that period of time, either through AMO or through ROMA, because I've got to believe that North Grenville is not—I come from a rural area too. We have police services boards that are going to be asking the same questions. Through AMO or ROMA, have these concerns been taken to the community safety minister's office, or to the Attorney General's, and have they been asked, "Why are we being left in the dark?"

To the point of Ms. Sandals, you're wondering how you're going to manage your police services when you don't even know how the boards are going to function or be made up. This is all of a sudden going to become law. You're the ones who are going to have to pay the policing costs, and you have absolutely no way of even estimating what those costs are going to be. Is that a fair way of putting it?

Mr. Brian Carré: It's an absolutely fair way of putting it. To your question, sir, we've reviewed the submissions from ROMA and AMO, and I believe AMO does a good job with respect to the implications of establishing the detachment boards and the impact on section 10 police services boards.

I know that my colleague Mr. Sherritt has been in communication on many occasions with the Ontario Association of Police Services Boards. If we can leave one recommendation with this committee, it is that the disbandment of any section 10 OPP contract police services boards should be a municipal decision rather than a provincial one, because at this time, as you say, we have no criteria. There is no specific information to guide municipalities, and the residents of our community are fearing that this will contribute to increased costs and a loss of autonomy.

Mr. John Yakabuski: Thank you very much. I appreciate that. We'll look over the AMO submission and see if there's an appropriate amendment that could be tabled from them.

Mr. Brian Carré: Thank you.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Mr. Carré and Mr. Sherritt, for your deputation on behalf of the municipality of North Grenville.

MS. SAMIAH IBRAHIM

The Chair (Mr. Shafiq Qaadri): I now invite our next presenter to please come forward: Ms. Samiah Ibrahim. Welcome. Please be seated. Your five minutes for introductory remarks begin now.

Ms. Samiah Ibrahim: Good afternoon, and thank you for allowing me to present my view before this committee, specifically with regard to schedule 8, the Forensic Laboratories Act.

My name is Samiah Ibrahim. I am a forensic document examiner working in both the private and public sectors. I received my forensic training in the laboratories of the Canadian Security Intelligence Service and worked there for four years as an examiner. I then moved to the department of Revenue Canada, customs and excise, which evolved into the present-day Canada Border Services Agency.

I am a member of the American Academy of Forensic Sciences and on the academy's international affairs committee. I am a member of the Chartered Society of Forensic Sciences and a member of the American Society of Questioned Document Examiners, for which I hold the office of membership and credentials committee chair. I am active nationally and internationally.

1400

For the past eight years, I've been the manager of CBSA's forensic document examination section, with a

staff of 12 scientists and technicians, all working on casework for a variety of clients. For example, we conduct our work for CBSA directly; for Immigration, Refugees and Citizenship Canada; for the Canada Revenue Agency; and, from time to time, for other clients as well—federal, provincial, US and international.

Our reports are used in matters before criminal court, civil proceedings, the Tax Court of Canada, and administrative tribunals such as the Immigration and Refugee Board, which is Canada's largest independent administrative tribunal and is charged with hearing and determining claims for refugee protection.

Our casework spans issues of criminal fraud with respect to immigration, taxation, customs and excise, election fraud, employment fraud, national security and war crimes, to name a few.

I'm not here representing the Canadian federal government or the CBSA. My words and opinions are mine alone and do not necessarily represent those of my federal employer. However, I mention our work to provide you with a better idea of the scope of work of forensic document examination at the federal level.

As a private forensic science provider, I work with one other forensic document examiner to conduct casework for private sector clients not in conflict with the federal government, as well as in capacity development in forensic sciences. In this venture, we also work both nationally and internationally.

I have several concerns with the proposed legislation regarding mandatory accreditation of forensic laboratories because I believe the scope is too broad and without appropriate consideration about how forensic science is currently used in the many legal settings in Ontario, what constitutes forensic science, and how specifically this will impact the private sector, the public sector and the justice system.

I understand why accreditation is seen as a good tool to ease concerns about quality assurance of outputs for management, but I don't believe it's a panacea to prevent errors. Some very public errors have been the result of non-forensic providers assuming they can work forensically without appropriate training or work practices. Just because you are a scientist will not make your methods and work forensically acceptable. We in the forensic science community are keenly aware of this, as evidenced by the progress made since the release of the 2009 American National Academy of Sciences report. We continuously work to improve our science, our methods and our communication of results to ensure we are easily understood by all stakeholders, not overstepping our scope or giving in to bias. In Canada, forensic science has piggybacked on this effort because there is no Canadian equivalency studying forensic science nationally.

Each time I have appeared in court, been subjected to cross-examination or spoken with clients or lawyers, I have explained my credentials and why I am qualified to offer opinion evidence. Quality is fundamentally anchored in the individual performing the work. In my 24 years as a practising forensic scientist, I have only been asked once in court if my laboratory is accredited.

For the majority of private forensic scientists, the cost of accreditation is prohibitive and the logistics illogical. Private examiners cannot afford the financial demands of accreditation and will not or cannot hire a quality assurance manager to oversee their single-person company.

Given the many forensic disciplines that exist, what consideration has been given to all of the other forensic reports provided to the judicial system outside of the typical crime lab?

There are many examples of non-obvious providers and users. The Ontario College of Physicians and Surgeons uses private examiners in their fraud investigations. Manufacturing companies, such as the producer of the Canadian passport, conduct forensic analyses. And what about out-of-province forensic science service providers?

Private examiners are retained by clients in all matters—criminal, civil, regulatory and in tribunals. Public institutions use private examiners. I expect in our adversarial court system to have an opposing expert. With the criteria of accreditation legislated by the Ontario provincial government, this expectation will be curbed.

The proposed legislation will result in a two-tiered justice system wherein the crown will have access to forensic science and others will not. There will be few, if any, forensic science expert witnesses available—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Ibrahim, for your introductory remarks. We'll begin with the government side: Ms. Wong.

Ms. Soo Wong: Thank you very much for your presentation. Do you want to wrap up what you just said so that—I want to hear what you have to say.

Ms. Samiah Ibrahim: Thank you. It's just two sentences. There will be few, if any, forensic science expert witnesses available to the defence and even fewer for legal aid cases or other lower-income defendants. Without access to adequate private forensic science service providers, the province will be limiting the ability to launch a proper defence.

Ms. Soo Wong: Okay. My question, through the Chair to you: If this legislation is passed, the province of Ontario will be leading the way to have accredited, certified forensic laboratories. What I'm hearing, from what you presented orally as well as your written submission, is that you don't support that model.

Ms. Samiah Ibrahim: I think that model is too broad. For public laboratories and for large institutions, that model will work just fine. But for private labs, for the university professor of anthropology who also conducts forensic anthropology, for a single-person forensic document examiner like myself, the logistics behind ISO accreditation or the Standards Council of Canada don't really allow for an accredited model of a sole provider.

Ms. Soo Wong: Okay. My next question is—pushing out the evidence-based, given the concerns that the government just recently had with the Motherisk file—

how do we elevate your sector to be accredited, to be recognized? No hospital in Ontario is unaccredited and no long-term-care facility is unaccredited. How do we encourage your sector? Because Ontario is leading the way on a number of fronts—whether it's OHIP+, the pharmacare file, the pension file—

Ms. Laurie Scott: Hah!

Ms. Soo Wong: You can laugh all you want; it's true, okay?

My question to you: How do we ensure that your sector is elevated in terms of accreditation? Because health care should be evidence-based, right?

Ms. Samiah Ibrahim: Absolutely.

Ms. Soo Wong: How do we ensure these forensic labs to be at that level? Because I know that, across Canada, it's hit-or-miss. I hear the concerns that you raised about the smaller laboratories and the concerns about that piece. How do we ensure that every forensic lab in this province is at the accreditation level? Because their lives are going to be affected.

Ms. Samiah Ibrahim: Accreditation is an external, third-party oversight that says that the management of the laboratory is going well. If you're a sole provider, if you're working for yourself, then you are accountable. From my knowledge, all forensic examiners in almost all of the disciplines have a certification process. Accreditation is third-party oversight; certification—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Wong. To the PC side: Ms. Scott or Mr. Yakabuski, as you like.

Ms. Laurie Scott: Okay. I'll just follow up quickly and then hand it over to Mr. Yakabuski.

Following up on Ms. Wong's point: You feel that you, as a sole forensic auditor—I'm not sure—

Ms. Samiah Ibrahim: Document examiner.

Ms. Laurie Scott: Thank you; document examiner—that you will never be able to actually be accredited under the present form of this bill. You, as well as other sole providers, wouldn't be able to afford to. Am I getting the right drift of what you're saying?

Ms. Samiah Ibrahim: Yes, just because of the logistics, because the way that ISO and the SCC have arranged the concept of accreditation is for a larger provider.

Ms. Laurie Scott: Do you have any other jurisdictions that do it differently that you can—

Ms. Samiah Ibrahim: The entire world seems to be struggling with this right now. Accreditation is for large organizations; what do we do with sole providers?

Ms. Laurie Scott: Okay. Sole providers: How much are they used now in cases, as opposed to—

Ms. Samiah Ibrahim: Public laboratories don't typically do private casework. Anything in the private sector, anything for civil court, any defence that you want mounted—if you want to defend yourself and hire a forensic expert for whatever discipline in forensic science that you need, you have to go to the private sector route. There are no public laboratories that are available to you. It's the entire other half and the entire civil sphere that will be affected by this.

Ms. Laurie Scott: Okay. Go ahead.

The Chair (Mr. Shafiq Qaadri): Mr. Yakabuski.

Mr. John Yakabuski: Just one question—because you are talking about court proceedings and prosecution versus defence—is there anything in this act that prevents you, if you're called as an expert witness by the defence, from testifying in court and bringing your expertise and showing that as part of an examination that you yourself have conducted? Is there anything that prevents you from actually testifying? The accreditation has nothing to do with your ability to testify, correct?

Ms. Samiah Ibrahim: It has everything to do with my ability to do the examination and write a forensic report that will be tabled in court.

Mr. John Yakabuski: You cannot conduct the—

Ms. Samiah Ibrahim: As a sole practitioner, I could not conduct forensic work, as deemed under—and it's very vague, as it's written now, on which forensic tests would come under this. It just says "forensic tests as prescribed." I don't know where they're prescribed.

1410

Mr. John Yakabuski: So it's somewhat vague. But I'm concerned: If you're saying what I think you're saying, this law, this bill as written today, would essentially put you out of business as a private contractor for forensic testing?

Ms. Samiah Ibrahim: Many, many private examiners would be put out of business, yes.

Mr. John Yakabuski: Okay. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski. To the NDP: Mr. Natyshak.

Mr. Taras Natyshak: Thank you very much for being here. Thanks for informing us.

Are there standardized models of forensic investigations in your universe, in the document examining or financial auditing?

Ms. Samiah Ibrahim: Not financial auditing. Document examination is the scientific examination of documents to link them to people, places or events.

Mr. Taras Natyshak: Where are those standardized models derived from?

Ms. Samiah Ibrahim: Presently there is an American standards board that creates standards that we abide by. In Canada, we're too small to create our own; this is why the piggyback. European models have standards, and we ascribe to those, as well as Australia and New Zealand, so there are international standards for the work we conduct.

Mr. Taras Natyshak: In your line of work, you reference those standards in applying the work that you do when you're required to present evidence.

Ms. Samiah Ibrahim: Yes.

Mr. Taras Natyshak: Would that change between a forensic business that is accredited and one that isn't? Would those standards change?

Ms. Samiah Ibrahim: They should not.

Mr. Taras Natyshak: So essentially you're both doing the same thing. One is accredited, one has been verified by a third party, and one has not, but you're still applying the same principles and the same standardized models that are accepted generally in civil courts and everywhere else.

Ms. Samiah Ibrahim: We should, absolutely.

Mr. Taras Natyshak: We should, or we do? Is there variance?

Ms. Samiah Ibrahim: I do. I cannot speak on behalf of every other forensic provider in the province. But this is what the court system allows, the adversarial court system where I am challenged in court to show how I have done my work, to show my credentials, to show the standards I used and how I administered those standards. Every single time I testify, that is challenged.

Mr. Taras Natyshak: Is there a peer review model as well?

Ms. Samiah Ibrahim: Yes, of course. It is best practice for all casework to be peer-reviewed.

Mr. Taras Natyshak: Really? I'm learning a lot here. Thank you very much.

Well, you've presented another area in which I don't think the government has quite duly considered the ramifications of the bill, so I appreciate your information. Thank you so much for being here.

Ms. Samiah Ibrahim: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Ibrahim, for your deputation.

EASTERN ONTARIO WARDENS' CAUCUS

The Chair (Mr. Shafiq Qaadri): I now invite our next presenter to please come forward: Ms. Robin Jones of the Eastern Ontario Wardens' Caucus. Welcome, Ms. Jones. You've seen the drill. You'll have five minutes in which to make your opening address. Please be seated, and please begin now.

Ms. Robin Jones: Thank you very much. As you've heard, my name is Robin Jones. I'm the mayor of the most beautiful Victorian village in Ontario, called Westport, and I am the chair of the Eastern Ontario Wardens' Caucus. In case you're not aware, the caucus is an incorporated not-for-profit organization comprised of the heads of council of 11 counties and two single-tier municipalities in eastern Ontario. We represent almost 25% of municipalities in the province.

There are many good parts of the act I'm going to talk about, and three on which we have some significant concerns.

The first issue is the lack of civilianization, of increased roles for civilians or non-sworn people, in police services. When I was at AMO in Windsor and Minister Naqvi announced that the Police Services Act was going to be opened up, I was gobsmacked for a moment and then pleased the next moment, because it had been around for so long. I truly hoped, as a former chief of police, that civilianization would move further.

When I was in charge of OPP uniform recruitment and deployment, we had filing cabinets full of applications. It took about a year to process an application because so many people were applying to the police service. As you're well aware, that's not the case anywhere across North America. So one has to wonder, when many of the jobs proposed by AMO and other organizations don't require a sworn officer to do the job, why we wouldn't be more strategic and allow some more civilianization where there are people who could easily fill those positions, and not have to require the police training. We would be able to bring a much more diverse community into policing by also extending the civilian roles in other areas. Hiring civilians who have the competencies, experience and training to perform many of the roles just makes sense. It makes a much better police service.

The second issue I wanted to talk about is police services boards. We know that the Police Services Act is going from what we would call the old section 10 and that there will be a police services board per detachment area. Here are a few concerns.

Most of the communities in eastern Ontario are the old 5.1s. They were not part of a police services board, but they had access to the police personnel and the detachment commander through community policing advisory committees.

This bill would eliminate almost 100 police services boards. Particularly in rural Ontario and specifically in rural eastern Ontario, these are large areas, and we need to have some consideration in a couple of areas. We need to ensure that each municipality has a representative on the police services board. Diversity on the board is necessary, but in addition to diversity, we need to make sure that we are appointing people with the competencies, skills and experience to do the job. I don't think we want police chiefs training members of the police board in organizations—or perhaps you do. I know there's the OAPSB, and they do a great job. When it comes down to the day-to-day work, though, it's often the police chief who is sharing this information with the board. So we need to ensure there's diversity, and we need to make sure that the police services board appointees have the requisite competencies and skills, and that the provincial appointments are done in a timely way.

Removing the sections 5.1 and the 10 opportunities really makes me feel that gone are the community policing officers and gone are the zone officers. There's nobody in my community who's there on a regular basis anymore. If you make a complaint to the police—I'm an hour away from Brockville, which is where we are policed out of in my community, but it may be that that in any other community is where the police detachment is.

Finally, the community safety and well-being plans: I am confused, to say the least, and I am concerned and I am shocked that we would mandate—when the adequacy standards came into being, when they were first proposed, they were so strict. And then they softened a bit, and you know, they've worked. The direction that the community safety and well-being plans are going, with

no involvement of police, with no money to fund it, with no guidelines, and yet with the authority to mandate it in the communities, is beyond me.

With a community safety issue, how do you move forward unless the police are involved so that there can be buy-in? How do we compel the provincial agencies who are supposed to be part of the community safety boards to be there? Who's going to pay them? How do we arrange it? What authority do they have?

I guess, finally, in wrapping up, nowadays we know officers—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Jones, for your introductory remarks. We will now move to the PC side. Mr. Yakabuski?

Mr. John Yakabuski: Thank you, Robin, for joining us today.

Ms. Robin Jones: Thank you.

Mr. John Yakabuski: Thank you for recently hosting us in the beautiful community of Westport, an hour away from Brockville. That is the closest police detachment to you?

Ms. Robin Jones: No, sir, it's not.

Mr. John Yakabuski: No?

Ms. Robin Jones: No, there's much closer, but that's an ongoing discussion with the OPP. Perth is 20 minutes away.

Mr. John Yakabuski: Perth is 20 minutes, on the other side.

Ms. Robin Jones: "Different court jurisdiction" is the explanation, but 34 years of policing has me challenge that.

Mr. John Yakabuski: I appreciate the concerns that you're levelling here today. Some of them would be similar to the ones of North Grenville with regard to police boards, but you're also talking about the delivery of community safety services.

Ms. Robin Jones: Correct.

Mr. John Yakabuski: Can you be a little more specific about some of the tasks that you think could be conducted by non-sworn officers in communities such as yours or mine, and all the rural communities—in any community?

Ms. Robin Jones: Sure. So, civilianization?

Mr. John Yakabuski: Yes.

Ms. Robin Jones: Yes, just so I'm on board.

When you consider that police officers come off the street to be hired, they have an education, but most things you need to train them for. We could train non-sworn people who don't need a use-of-force option to do the job. So there are many things. Where do I see that it's a waste of time for me to have a uniformed officer? Guarding crime scenes; offender transport; investigating minor property offences.

Many police services have long stopped rolling a police officer to the scene, and they call it by a different name, but you phone your complaint in. That could be easily staffed by civilians. And if there are issues, we could have criteria in place so that if there's an investigation, if there's a serial matter, any of those other dramatic things that we hear, it could be given to a police officer. There is no reason for a police officer, with all the use-of-force options, to go out and direct traffic, run radar and other things. We've got research all across North America and in Europe where they have changed sworn officers and replaced them with civilians, and the world's not falling apart. They're doing a great job.

1420

It also gets the opportunity to bring some more diversity into it, and a whole separate set of skills.

Being a beat officer, being a senior officer in a regional police, the OPP, and then the chief of Nishnawbe-Aski police, I love having more police officers because the argument is "more depth." But the reality is, there is a strong role for civilianization and I'm not sure why we stopped so short.

Mr. John Yakabuski: I know you're here representing not only Westport but the Eastern Ontario Wardens' Caucus, and congratulations on being elected to the—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski. To the NDP side: Mr. Natyshak.

Mr. Taras Natyshak: Thank you very much, Your Worship. Thanks for the information you've provided. Thanks for the work and the service that you've provided throughout your career as well. We appreciate that.

Are you suggesting that there was a hard stop at the use of civilians for some of the roles that you had just highlighted in place of where they've opened up some of those roles to private security forces that may provide those services?

Ms. Robin Jones: I'm not suggesting that. I know your question—so you would have to ask a different way for me to go there.

Mr. Taras Natyshak: But is that why there weren't two options given?

Ms. Robin Jones: Are there two options given in the draft bill?

Mr. Taras Natyshak: Yes.

Ms. Robin Jones: Yes, there is.

Mr. Taras Natyshak: Okay. Explain that to me.

Ms. Robin Jones: Well, you can explain it. I'm confused by that—that it seems that private policing gets a significant toehold in the legislation, where why wouldn't we apply those same job functions to our own civilian employees? There is so much to be made for blending the civilians with sworn people, as far as the effectiveness of the police agency as a whole.

Mr. Taras Natyshak: Do those civilians have a pipeline into then becoming full, sworn officers down the road? Is that typically a career path that people—

Ms. Robin Jones: It's a pool. It's certainly a pool of candidates, whether you're talking about civilian employees, people in the auxiliary program or co-op, because it helps them in the process during their interview. They're much more worldly; they have a better idea of what policing is all about. In all of those organizations that I've worked for we very clearly see civilian staff and auxiliary members as a pool for recruitment. They're not too happy, sometimes, when we

go and recruit from them for the sworn side of it, but yes, it really helps in the process.

Mr. Taras Natyshak: When you commented on the requirements of the mandated community safety and wellness planning, your comments were that there are just no resources attached to this to allow you to actually develop that.

Ms. Robin Jones: There are no resources and there is no plan. In my municipality, there would be a bit of an advantage because I sit as head of council. But where are you going to start without the guidance, the buy-in and the support of the police? It boggles me that there is going to be this plan that the police need to be part of once the plan is approved, and yet there is no police involvement.

It also bothers me that this is a whole other layer of bureaucracy in the ministry. Ministry people are here today so they need to hear that. The 444 community safety plans to get approved by the minister—well, that takes people. I'm sure that Matt Torigian doesn't have those people in his shop today to take care of that, so what is the purpose? I don't see the benefit of them. I don't know how we compel people to be—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Natyshak. To the government side: Ms. Wong.

Ms. Soo Wong: Madam Mayor, thank you for being here today. Pushing out your comments, I just want to get clarification: You want the government of Ontario, in this proposed legislation, to expand further the civilian officers in the various police forces across Ontario? Have I got that?

Ms. Robin Jones: I don't think you meant that as a question.

Ms. Soo Wong: Okay.

Ms. Robin Jones: I want them to expand the role of civilians, not officers.

Ms. Soo Wong: Civilians, yes.

Ms. Robin Jones: That's correct.

Ms. Soo Wong: I want to make sure I got that, because—

Ms. Robin Jones: I sat on the AMO task force for modernization of policing, so I'm well aware of the research that we put together—solid research of where it has worked in other jurisdictions.

Ms. Soo Wong: This is great to hear, that piece.

Now, you made some comments on the community safety and well-being plan. I heard that piece. I wanted to get some clarification, because this particular plan—if this legislation is passed, it will provide more flexibility for your board to meet local needs.

You commented earlier about the diversity piece. Every policing board is very unique, and local needs have to be respected. If the legislation is passed, it will provide your board more opportunity to collaborate with the various organizations to meet your needs, but I hear you express concern about this particular plan. Can you drill down some more on what some of the concerns are? Can you clarify?

Ms. Robin Jones: Sure. A couple of things that, with respect, I challenge in what you've said, that the police services board will be unique and drilled down for local needs. Where is that information going to come from, to a police services board? One would assume it's going to come up through the chain of command to the detachment commander by the chief of police, but that person is not on this committee. That's the gap.

You can stipulate in the legislation that they not chair it, but if they don't have that involvement of law enforcement—we're talking about social issues. How are we going to get the police, then, to come and say, "We've got this plan, and we have to put it in place"? You play a big part in putting it together and being able to demonstrate to the minister that it was a good plan and it worked.

To get buy-in, you need the police on the committee. Maybe it would be natural that they may want to chair it, so make it that they don't chair. But they need to participate. You need to give guidelines to the municipalities on really what you were expecting.

My municipality, as beautiful as it is, has a population of 700 people. Because the way the act is worded, I would expect a seat for my municipality on the police services board, but that probably is not going to happen. At the same time, my needs are going to be much different because, although we're rural—it's a small village—the township we would be policed by—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Wong, and thanks to you, Ms. Jones, for your deputation on behalf of the Eastern Ontario Wardens' Caucus.

Ms. Robin Jones: Thank you very much.

CANADIAN CORPS OF COMMISSIONAIRES—KINGSTON AND REGION DIVISION

The Chair (Mr. Shafiq Qaadri): I'd now invite our next presenters to please come forward: Mr. Herfst and Mr. Voith of the Canadian Corps of Commissionaires—Kingston and Region Division. Welcome, gentlemen. Please be seated. Do introduce yourselves. Your time begins now.

Mr. Bert Herfst: Thank you, Mr. Chair and members of the committee. My name is Bert Herfst. I'm the chair of the board of governors of the Kingston and region commissionaires. With me is my CEO, Mike Voith.

We have a single, fairly straightforward issue that we would like to draw your attention to. In summary, that is that the Ontario divisions, which I represent here today—there are four divisions—desire an amendment to the bill to clarify that not-for-profit corporations will be included in the prescribed entities that may provide certain policing functions described in section 14 of the bill.

By way of background, the Canadian Corps of Commissionaires is a federation of independent not-for-profit corporations comprised of 15 divisions, four of which are located here in Ontario: Commissionaires Ottawa, Com-

missionaires Great Lakes, which is Toronto, Commissionaires Hamilton and ourselves, Commissionaires Kingston and region.

The four divisions employ approximately 6,000 trained security personnel and generate in the order of $180-million worth of gross annual revenue. Fully 95% of that gross revenue is returned to our employees in salary and benefits.

The Ontario divisions are incorporated under either federal law or under the Ontario Corporations Act. The objects of each of the corporations include reference to the public benefit foundation of the corporation being for the purpose of providing meaningful or suitable employment to veterans of the Canadian Armed Forces, Royal Canadian Mounted Police and others. This social mandate is the core principle that guides our business considerations when seeking out employment opportunities for our veterans and other employees.

1430

Nationally, the corps has been in existence since 1925. It is the largest private employer of veterans. We offer a wide range of security services, including professional guarding, monitoring and surveillance, threat and risk assessment, bylaw enforcement, digital fingerprinting, criminal and employee background screening, investigations, and security training.

Of note, in light of the proposals found in the bill, the corps of commissionaires has gained significant experience providing non-core policing functions with both municipal police and the RCMP across western Canada and the Maritimes as well as in some of the Ontario municipalities.

Bill 175 includes a very welcome proposal, in our view, to allow private sector corporations to undertake certain policing functions, thereby giving police services boards a useful tool to more economically achieve overall effective policing in their respective communities. It is recognized that the intent of the legislation is not to displace the police; rather, it is to permit a limited and enumerated range of policing functions not requiring police or peace officer status to be undertaken by those in circumstances where it makes good sense to do so. I think Mayor Jones has adequately addressed that issue.

Throughout section 14, the bill uses several different terms. Here's where the issue lies for us: these different terms that refer to those who may provide certain policing functions.

Subsection 14(1), for example, refers to police services boards or the commissioner entering into written agreements with "a prescribed entity." Then in subsection 14(3), when referring to those who are limited to providing only certain policing functions, the provider is referred to as "a for-profit entity." Subsection 14(4) then defines this term as meaning "a corporation incorporated under the Business Corporations Act or the Canada Business Corporations Act." Nowhere do we refer to legislation with respect to not-for-profit corporations.

It's our view that the drafters of the bill likely did not understand that the corps of commissionaires includes not-for-profit corporations. Nor were they aware that we have a long history of providing non-core policing support to many municipalities.

We certainly believe that there is a gap in the legislation which needs to be remedied. For that, we would suggest that the terms that I've made reference to be changed so that they include both for-profit and not-for-profit entities.

We certainly welcome the initiatives contained in this bill to improve the provision of policing services but, given our extensive experience, we would like to be able to continue to assist—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Herfst, for your introductory remarks. We now pass it to the NDP: Mr. Natyshak.

Mr. Taras Natyshak: Thank you, Mr. Herfst, for your submission. Thanks for clarifying that the bill does contain provisions for providers to outsource and to privatize some of the aspects of their policing. It was argued by the government during the debate when the bill was initially tabled that that wasn't the case, but I read it as you do, and so here we are.

My question is, where the commissionaires already do provide policing services that you would like to provide in Ontario—you mentioned western Canada, I believe, and the Maritimes were mentioned as well?

Mr. Bert Herfst: Yes.

Mr. Taras Natyshak: Do they operate under the same scrutiny as a regional policing or provincial policing unit would? Are they beholden to the same policing oversight mechanisms and accountability mechanisms? Or is there a separate set of rules that allow them to just operate and do the duty and not be liable in any sense?

Mr. Bert Herfst: There are standards applicable to the security services industry to which our employees have to comply. But they are not peace officers nor do they have peace officer status, so it wouldn't fall under the regime that deals with those who have that status.

Mr. Taras Natyshak: If it was, if the regulations were changed where now, even though you are a non-profit agency that is providing duties that fit the parameters of those non-sworn officers—do you believe that your model would be able to maintain its profitability? Or do you think it would even be viable, given that there would be an extra layer of accountability and scrutiny and oversight built into the job that you would do?

Mr. Bert Herfst: I don't believe that oversight and extra scrutiny would be of any particular harm to our service, because we are a premier security provision service and we like to think that we set the standard.

Mr. Taras Natyshak: What if somebody else is setting the standard for you now and that standard is aligned with those that are applied to sworn-duty officers? Do you think there would be some costs associated with that in terms of mandating quality and training? I'm sure that already happens, but now you're stepping it up. Now we're saying that yes, you can do

this job but we are treating you under the same laws that govern sworn officers.

Mr. Bert Herfst: Again, I would simply say that were that the case, were those new requirements imposed on us, we feel that we could meet those standards. If there is a cost involved with it, it would be part of the overhead that we would have to consider.

Mr. Taras Natyshak: And that it might potentially change the viability or the savings that a regional force might find—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Natyshak. To the government side: Ms. Sandals.

Mrs. Liz Sandals: I'm just making sure I follow you. You support Bill 175 and what it says with respect to companies being able to do some non-core policing services. Any accountability requirements that are in there, you're supportive of that as well.

Mr. Bert Herfst: We would be, yes.

Mrs. Liz Sandals: Okay. So if I understand you correctly, then, your concern is that your particular group of commissionaires would be excluded from providing those services because you're actually not a for-profit private company; you're a not-for-profit private company? Am I following this right?

Mr. Bert Herfst: You're right. The point is that the legislation only refers to for-profit corporations and it only refers to the Corporations Act and the federal business corporations act.

Mrs. Liz Sandals: Then precisely what is the change that you're requesting?

Mr. Bert Herfst: If there were a reference that included not-for-profit corporations, either directly in the definition or by reference to the Not-for-Profit Corporations Act of 2010, which is still not in effect but could be added to the definition, and reference to the federal not-for-profit corporations act, which came into effect in 2014, then it would be clear that not-for-profit corporations such as ourselves would be eligible for consideration when it came time to employment in these non-core policing functions.

Mrs. Liz Sandals: Is it your feeling, then, absent those changes, that the commissionaires would not be able to do the work they're doing now or just that you're concerned that's a possible interpretation?

Mr. Bert Herfst: It is my reading of the legislation that the absence of reference to not-for-profit corporations lends doubt to whether we would be eligible. Given that we currently provide non-core policing, we would like to continue to do so, and it would certainly provide certainty in the language of the bill if those additional pieces were in there.

Mrs. Liz Sandals: Okay. Thank you. That clarifies what you're looking for.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Sandals. To the PC side: Mr. Yakabuski.

Mr. John Yakabuski: Thank you for joining us today. I was getting a little sidetracked with the questions from Mr. Natyshak. I don't think for a moment that your group is looking to deliver the core services of policing.

Mr. Bert Herfst: Not in the least.

Mr. John Yakabuski: I just wanted to clarify that, because it sounded like you felt you could provide them if that was the mandate, but you're not looking to do that.

Mr. Bert Herfst: No.

Mr. John Yakabuski: It says, "The Ontario divisions were incorporated under either federal law or the Ontario Corporations Act." So that is different than the Business Corporations Act or the Canada Business Corporations Act.

Mr. Bert Herfst: That's correct.

Mr. John Yakabuski: Correct. So those are the two challenges. If they had been under the Business Corporations Act or the Canada Business Corporations Act, they may qualify, or would we still have to have the non-profit salutation in there to make sure that you were covered as a non-profit?

Mr. Bert Herfst: There is a distinction in the law between a for-profit and a not-for-profit. We are the not-for-profits who have been left out of this particular piece of legislation.

Mr. John Yakabuski: I see that. So really, all that would need to be done is an amendment that allows specifically the commissionaires—because most people probably don't realize you're non-profit.

1440

Mr. Bert Herfst: And they probably don't realize that we are not part of government, that we are completely self-supporting and self-sustaining, and that we have that social mandate, yes.

Mr. John Yakabuski: Most people would think that because you employ people, you're not a non-profit.

Mr. Bert Herfst: Right.

Mr. John Yakabuski: I don't know if this was out of omission or neglect, but it would seem to me that as it is written now, you could not enter into a contract with an entity that required security and in the past would have had it delivered by the commissionaires. You no longer could provide that under this act, as it is written. Is that correct?

Mr. Bert Herfst: It's my position that there is uncertainty, some real doubt, and those people who would be administering the act would not know for certain whether we could or could not.

Mr. John Yakabuski: So clarification for non-profit would satisfy the qualification that would allow you people to continue to do the good work that you do and employ more veterans than any other group out there.

Mr. Bert Herfst: Exactly.

Mr. John Yakabuski: I thank you for your time and appreciate your submission.

Mr. Bert Herfst: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski. As do we, Mr. Herfst and Mr. Voith, for your deputation on behalf of the Canadian Corps of Commissionaires.

GARDAWORLD

The Chair (Mr. Shafiq Qaadri): I now invite our next presenter to please come forward, Mr. Christian Paradis of GardaWorld.

Welcome. Please be seated. Your time begins now.

Hon. Christian Paradis: Thank you very much, Chair. I want to thank the members of this committee for inviting us to appear before this committee for hearing our perspective. GardaWorld is one of the largest private security companies in the world. This is a Canadian-born and -based company.

First and foremost, what we are advocating for in regard of this bill is outsourcing of support services. We're not advocating whatsoever about police privatization. We don't want to take any jobs from police officers. We have high respect for police officers. What outsourcing means for us is security guards performing support duties so police can focus on their core duties or their key front-line duties. Then, after that, they have full support from the private sector.

We welcome the tabling of this bill. As we all know, policing is becoming more and more unsustainable, and the costs of policing are constantly increasing. This is why we need to find some solutions to make sure that we can still deliver good-quality services to our population.

There was an event that was held last year in Ottawa, gathering many people from across the spectrum, including union officials, the private sector, chiefs and others, to have this inclusive discussion and see what could be done. There was an agreement about the fact that we need to change some things in terms of management and others, but also that partnership could seriously be considered. There were questions about the public's opinion, though, and I will come back on that.

If I come back on the bill itself, of course, this is, for us, a good point. We think, though, that the private sector can provide a lot more than the tasks that are listed in section 14. I'm going to give some examples, even if I have heard some so far. Also, crime prevention in section 14 should be widely interpreted to make sure that we can ensure some flexibility here. On the regulation aspect in section 200, also, we should make sure that it allows for flexibility to regulate and bring adjustments when needed.

In terms of examples of support, when we speak about security for major events, detention services and transportation, traffic management and bylaw enforcement, we can consider the same things on the administrative side: facilities management, administrative support, vendor and front desk management, fingerprinting, and so on and so forth.

Now, the question is, where do Canadians stand on this? There was a poll conducted by Ipsos Public Affairs last November, and 60% of Canadians support this proposal. But also, it was made clear that this proposal is never to the detriment of public safety. It's always a hand-held-out approach in terms of being complementary.

The industry now looks like this: There are 140,000 licensed guards throughout the country. Several organizations oversee this. We also keep pushing, always, for having better regulation, for having better professionalization. How to do it? I heard some questions. Of course there are some case studies that I've put in my presentation—

The Chair (Mr. Shafiq Qaadri): One minute.

Hon. Christian Paradis: Yes, thank you. And then, of course, by the contract, we have to define the scope, set the boundaries, put strong KPIs and then, after that, constantly monitor.

One great case study we can cite is the Canadian Air Transport Security Authority, where it is managed by the federals, but, when you get to the pre-boarding screening process, this is done by the private sector with strict KPIs. We are doing this already.

Finally, just about what I heard from the commissioners, I just want to make sure that we level the playing field in the sense that the restrictions are not only for the not-for-profits. If it's the intent of the government to have the non-profits not listed on this restriction list, I will come from the other side and say that we are all private sector anyway, so we should level the playing field—just in the case there was the intent of having the opposite approach. Thank you, Chair.

Le Président (M. Shafiq Qaadri): Merci beaucoup, monsieur Paradis, pour vos remarques introductives. Maintenant, je passe la parole au gouvernement. Madame Sandals.

Mrs. Liz Sandals: Yes, thank you very much. If I understand you correctly, you're advocating that there should be more services allowed in the list of non-core services that can be contracted out. Is that correct?

Hon. Christian Paradis: This is correct. But I understand that this is a start. This is why, if the government says, "Okay, we'll go and we're going to test and gauge how it's going," I'd just make sure that we can allow the regulation to make sure that we can adjust, if we see some success. Because now, from what I see, most of the services that are prescribed would be investigative support services, but we do protective services. This is why I'm talking about interpreting "crime prevention" largely, because one of our good businesses that we're good at is to come in as support when we go securing large events, for instance.

Mrs. Liz Sandals: So this act that's proposed—the act that has been tabled, Bill 175—is actually more restrictive than the current act with respect to those services that can be contracted out. In that list of things that you would like to have contracted out, are some of those things you are already doing that you would no longer be able to do under this act? Is it actually restricting the services you can provide?

Hon. Christian Paradis: No. We are already doing things like—this is why I brought some more examples like traffic management and crime scene security and guarding, which are not allowed by the act, I think.

Mrs. Liz Sandals: Are you doing that now?

Hon. Christian Paradis: Not here in Ontario, but we are doing it in many other places. What we are advocating for is to say that it should be considered. This is the same position that I saw from the Association of Municipalities of Ontario. Of course, we are advocating that we can do more and that we can be more complementary in that regard, yes.

Mrs. Liz Sandals: So, in your opinion, this act is restrictive in terms of the list of things that it would allow you to do and it would prevent you from doing things in Ontario that you do in other jurisdictions.

Hon. Christian Paradis: I'm not saying that, because I see that we are talking about crime prevention, so that can be large, and I also see that the regulations can be made by the Lieutenant Governor according to section 200. This is why I'm saying that, as a first step, we could provide more duties that could be listed there, but if it's not the intent of going right away, for XYZ reason, regulations should be flexible.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Sandals. To the PC side: Mr. Yakabuski.

Mr. John Yakabuski: Thank you very much, Christian, for joining us today and for your submission. It's really confusing sometimes when you're hearing contradicting—I don't call it "testimony" because we're not here in a court law, but contradicting submissions. I look at one thing, and I have seen surveys to the effect that 80% of the population is opposed to privatization of policing—

Hon. Christian Paradis: And I am, too.

1450

Mr. John Yakabuski: And that is a little different than your survey. I recognize that, but it can be a little bit confusing for people who are trying to work their way through the maze. So you are not interested in taking over core police functions?

Hon. Christian Paradis: Not at all.

Mr. John Yakabuski: But there's not much definition in this bill, either, that actually clearly defines what those functions are. Would that be a fair statement as well?

Hon. Christian Paradis: Yes. I see some duties that are there, and it goes with the previous question. I understand that core duties will be defined, so this is what we're saying: We have to look at the programming, and it's not black and white. There can be coordinating by the police services, but after that, some executions of tasks can be fulfilled by the private sector. This is why, with what we're seeing, we say that as it is now, there are some duties that can be fulfilled.

But if it is the intent to go larger than that, no doubt we can do it, but never to the detriment of public safety, and never talking about privatization. This is not our business.

Mr. John Yakabuski: The other question I have, then, Christian, is that one thing about this bill is that it has huge changes in regard to the oversight of police, but for those who are non-sworn officers, there's no definition, no provision. How do we, as a society, ensure that there's oversight of those people, Garda or whoever, private security—can I call it that? Where are the provisions for oversight, and how are we to be assured that we have the same kind of protection and oversight of those people providing that kind of security?

Hon. Christian Paradis: Yes, accountability and transparency are key, and this is why I cited the case of the Canadian Air Transport Security Authority. We also do the same thing with the Canadian Border Services Agency, when we do detainee transportation and guarding. Contracts are there, very strict, with strong KPIs—

Mr. John Yakabuski: With strong what?

Hon. Christian Paradis: Strong key performance indicators.

Mr. John Yakabuski: Oh, KPIs. Okay.

Hon. Christian Paradis: And believe me, if we're not compliant, that's very strict—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski. I pass it now to the NDP: Mr. Natyshak.

M. Taras Natyshak: Merci, monsieur Paradis, pour votre présence ici. Ça va être vite; on a seulement trois minutes.

L'hon. Christian Paradis: D'accord.

Mr. Taras Natyshak: How much does an armed guard with Garda security make on average, per hour or annual?

Hon. Christian Paradis: It depends where you are. It's $17 in Quebec. It might be $14 or $15 in Ontario. It depends on the laws and markets.

Mr. Taras Natyshak: What is GardaWorld's current credit rating, either by Moody's or any credit rating agency? Are you familiar or aware?

Hon. Christian Paradis: No, I'm not very familiar on that.

Mr. Taras Natyshak: The latest I could find from Moody's, from April 2007, was that your credit rating was downgraded from B2 to B3 and a probability of default from B2-PD to B3-PD, which puts it in the middle of the road—certainly not AA or AAA, as we would hope any of our private enterprises would be.

Do you know the current credit rating of the province of Ontario?

Hon. Christian Paradis: If your question is about credit rating, I'm here to say that we've been in business for 20 years. We have 65,000 employees, and this is part of our business to—

Mr. Taras Natyshak: Do you know the credit rating of the province of Ontario?

Hon. Christian Paradis: No, I'm not—

Mr. Taras Natyshak: It's AA, which is not bad, which means they will be able to pay the bills, and they'll certainly be able to afford—

Hon. Christian Paradis: We're able to pay the bills, I guarantee you. We always pay our bills. We are one of the largest—

Mr. Taras Natyshak: There's a hesitation. What I'm getting at, Mr. Paradis, is that we have to be assured, because policing our communities is our paramount job

in this place, to ensure the safety and security of our constituents.

Hon. Christian Paradis: I agree.

Mr. Taras Natyshak: We have to make sure that those men and women who do that job for us are being remunerated for that, and my goodness, the province of Ontario will always be able to ensure that those people are paid. That's what I'm getting at.

Hon. Christian Paradis: I totally agree with you.

Mr. Taras Natyshak: Does GardaWorld's business model, as you see it under these new opportunities under this bill—if those GardaWorld employees were to take up some tasks that are not core duties, but were under the scrutiny of the Police Services Act and under the scrutiny and accountability regimes and parameters that current real cops are under, do you think that would change your business model? Would it change the viability of your business model? Would you still be able to make money under that model that current police officers have to operate under?

Hon. Christian Paradis: I cite the Canadian Air Transport Security Authority because this is exactly it: The wages per hour are not the same, the training is not the same, and yes, it's still viable. We are dealing with national security information. Believe me, it goes well so far. It's a win-win partnership. That's a great example. So of course we can replicate it. This is our core business.

Mr. Taras Natyshak: Thank you. You cited an example of securing a crime scene. Do you think that that person should be an armed person?

Hon. Christian Paradis: Never. I'm talking about back-up. For instance, if you are on a crime scene—

Le Président (M. Shafiq Qaadri): Merci, monsieur Natyshak, et merci à vous aussi, monsieur Paradis, pour votre députation et pour votre présence.

AFFECTED FAMILIES OF POLICE HOMICIDE, ONTARIO

The Chair (Mr. Shafiq Qaadri): I call now our next presenter to please come forward: Ms. Greenwood-Graham of Affected Families of Police Homicide, Ontario. Are you present? Oh yes, you are. Please come forward.

Ms. Karyn Greenwood-Graham: The same chair?

The Chair (Mr. Shafiq Qaadri): Any chair you would like. Please be seated. You've seen the drill. You have five minutes to make your opening remarks. Please begin now.

Ms. Karyn Greenwood-Graham: Thank you for the opportunity.

In November 2007, my son Trevor was shot and killed by Waterloo police. The next morning, I had two people come to me to tell me that my son had died. I was given a card for the affected persons coordinator at the Special Investigations Unit, and they left. I was devastated, very angry, confused, in denial; I punched holes in walls—that much I do remember.

I started connecting with other affected families in any way I knew—I would attend funerals, whatever—to be a peer support for them and to create an advocacy group that was well needed.

The only way I know to explain to others what it's like—it's like having your leg amputated and having no help: no home supports, no physiotherapy, no follow-up calls, no visits, no crutches and no coping counselling—nothing. We get nothing. You and each of your family members learn to live with the amputation every day after that loss. There are families like me who had to give up good jobs. They were no longer able to function with all this anger and grief. We are mentally and financially crippled, and some are living on social assistance like myself. I have been for 10 years now. This cost alone should warrant putting good trauma supports in place.

Many of us have seen the videos of our loved ones killed just before the coroner's court, which is long after we need to see it. We see it on social media and we see it on the media, just like Sahar Bahadi, Sammy Yatim's mother. She's part of our group. It has a devastating effect. It's a very cruel and inhumane way to deal with someone who has lost a loved one to a trusted, state-sanctioned policy of shoot to kill.

We see these images daily in our minds. It is well recognized that a traumatizing event can paralyze a first responder, but what about the families? What about the families or someone who loves this person who was shot and killed, and have no answers? We have nobody to help us.

Over the years, I have worked with the citizen advisory committee for federal corrections. I'm a member of Parents for Children's Mental Health and I'm an original member of the lived experience and family members expert panel at CAMH. At CAMH, we consult with doctors, researchers, the Ministry of Health and Long-Term Care, the Canadian Mental Health Association and community groups. I went back to college at age 54 to learn more. I became a social service worker. I wanted to know more about the psychology of how I could support others.

Feeling alone, I started contacting other families who had lost loved ones, and we are Affected Families of Police Homicide. We have met and consulted with policy-makers over in eight years, primarily the Ombudsman a number of times, the SIU, the Ministry of the Attorney General—I've met with Yasir Naqvi personally; I've met with Marie-France Lalonde, the Minister of Community Safety and Correctional Services; I've met with their team as well.

I've met with the Ontario coroners, a number of them, in particular Dr. David Eden. Justice Michael Tulloch: When he did the police oversight review, I was the first one to get an email from him, because it was well known in government circles that we do have solutions that we can bring to the table.

1500

Justice Tulloch really listened and asked important questions of all the families present—

The Chair (Mr. Shafiq Qaadri): One minute.

Ms. Karyn Greenwood-Graham: —which was reflected in chapter 4 of his report to the Ontario government. We were in a private meeting with Justice Tulloch just yesterday.

I also heard Kathleen Wynne say, "All Ontarians deserve trauma supports." That was when my light went on and I thought, "I have to present to this committee."

Based on research and knowledge, we want to see Justice Tulloch's recommendations for support to us brought forward. We want you look at it, and we want you to actually—I would like to be involved in that at the table, because there are certain ways it can be done easily and not so hard, and it can be streamlined.

The other thing I'd like to see is a whistle-blower program for policing. I would really like to see that.

Having consulted with many police in the province—ex-police—when you look at all sides of it, we all suffer in this. I want to see trauma supports for police as I do for our families. This is a very positive way to keep Ontarians safe. This is part of the—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Greenwood-Graham. We now pass it to the PC side: Ms. Scott.

Ms. Laurie Scott: Thank you very much. I was so involved in your story. First of all, I'm very saddened. I thank you and admire you for your strength in what you have been able to go on with, to try and help with yourself, with families and with police officers in a very holistic approach. I appreciate the fact that you've done that.

For some recommendations—I don't know if you've read the bill in depth. Is there some way, within this bill, that we can expand on what you have done in your work?

Ms. Karyn Greenwood-Graham: I don't know. That's a question that perhaps I would put back to you: Is there? I haven't read the bill back to front—

Ms. Laurie Scott: It's a lot. Don't worry. But in general—

Ms. Karyn Greenwood-Graham: It's a lot; I have it at home. But I have spoken with Justice Tulloch personally, and we've talked about the things that I want to see in that.

Since I formed this group and organized, we've been advocating for changes in policing and oversight and coroners' inquests. I just want to be part of the change that's good for everybody. That's all I'm here for. I want to see everything happening that should be done.

Trauma supports are one big thing. That's what I started this group for; that's what I'm doing here today.

Ms. Laurie Scott: I could only imagine how you felt that morning. If I can pull on my nursing from 20 years that I did, it sounds like, right then—and we always learn from past behaviours—there should have been a group of people who were at that doorstep with you or who were immediately activated to come in. I couldn't imagine—who knows what family supports different people have? Some don't have any; some have some. But that real counselling from people who have been trained in trauma counselling—I apologize that that did not happen. I think we all do.

Ms. Karyn Greenwood-Graham: It's not your fault.

Ms. Laurie Scott: I know it's not my fault personally, but just in general. I don't think anybody, looking back, wanted you to go through that alone. There should have been more supports.

Ms. Karyn Greenwood-Graham: It shattered our family. My son, my second son, is now in trauma because of it.

Ms. Laurie Scott: Yes. We have to do better.

Ms. Karyn Greenwood-Graham: We do.

Ms. Laurie Scott: It ties in to what I think we've all been talking about, which is more supports for trauma, for the mental health situations that occur, and how things can be so much more improved in our society.

Police officers themselves—now the calls are up. One in six are now calls dealing with mental health, as opposed to one in 20.

I know we only have a few minutes, but I wanted to thank you for your courage and what you've done and all your work, and continue advocating.

Ms. Karyn Greenwood-Graham: Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Scott. To the NDP: Mr. Natyshak.

Mr. Taras Natyshak: Thank you very much, Ms. Greenwood-Graham. My condolences. I cannot imagine, and never want to have to—

Ms. Karyn Greenwood-Graham: He was married. When he died, my grandchildren died.

Mr. Taras Natyshak: Thank you for your strength, and for being here today and continuing on what I believe is honouring your son's memory and legacy, and the work that any great mom would endeavour to do if they had the strength that you obviously have.

Ms. Karyn Greenwood-Graham: Thank you.

Mr. Taras Natyshak: Not knowing the circumstances around your son's death, I just generally would pose the question to you: We see an explosion of interactions between the police and people who have mental health needs, who have drug and addiction needs, who are poor. Simply because they're poor, it puts them in interaction with police forces.

Ms. Karyn Greenwood-Graham: That's exactly what trauma does to us.

Mr. Taras Natyshak: I've listened, and I've heard that post-incident trauma support is important, and I would agree. But on a proactive level, would enhanced investments in mental health supports, addiction counselling and crisis intervention supports—do you think that would play a role in lessening the incidents of police violence in interactions with civilians?

Ms. Karyn Greenwood-Graham: I think a complete overhaul of the education of police would be in order to do that. We have a lot of things we would like to see happen. I'm concentrating on this one thing today only because it was my original goal and it's still my goal. There are many things that we've met with ministers

about. As I said to Justice Tulloch, "Why are we doing this again? They didn't implement everything that was in your report. They hand-picked."

Mr. Taras Natyshak: So what are the specifics out of the Tulloch report, the glaring omissions that you could point to for us?

Ms. Karyn Greenwood-Graham: Well, at 4.65 in chapter 4, it does explain that we deserve supports, and it does say in there that he feels that the SIU should have the funding to have a coordinator, a bigger amount of resources, to support affected families.

I have talked and worked along with Nickie Buchok, who is the affected-persons coordinator at the SIU. I've brought solutions to the table. But a lot of people's hands are tied because, number one, they don't have the funding, nor is there the political will. That is what we need to see, the political will.

Mr. Taras Natyshak: In terms of funding, is there a number associated with the added resources that you can point to?

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Natyshak. To the government side: Ms. Wong.

Ms. Soo Wong: Thank you very much, Ms. Greenwood-Graham, for being here today and for your continued advocacy work. I know it continues to be painful to talk about this topic, but I wanted to say thank you for your advocacy work because now not only do we get your written submission, but we're here seeing the face of the family, which is very important.

What I'm hearing today in your presentation and your written submission is that you're focusing on ongoing victim support. Am I correct to say that?

Ms. Karyn Greenwood-Graham: Yes. You could use the terminology "victim," but I think "affected families" probably sits with the public and a lot of people involved as to who we are.

Ms. Soo Wong: The other piece here is, as you probably know through your conversation and your meeting with Minister Naqvi and Minister Lalonde, that the government provided support for the first time this past summer dealing with the coroner's inquest. I know that we have been dealing with the jurors as well, recently—the support, which is really important, the PTSD.

Ms. Karyn Greenwood-Graham: Vicarious trauma, yes.

Ms. Soo Wong: Exactly.

I'm also hearing your comments that we need more expanded services and support, because these kinds of trauma are quite long-lasting: not just one year, two years, that kind of thing. I'm hearing it could be, as in your case, over 10 years—it has been over 10 years since your son was killed.

Ms. Karyn Greenwood-Graham: I'm still in treatment for post-traumatic stress disorder.

Ms. Soo Wong: Is there anything else you can suggest that we could do better in this proposed legislation in terms of supporting families, besides the dollars and cents?

Ms. Karyn Greenwood-Graham: Well, Justice Tulloch has recommended that—and I'm wondering where exactly it is. I think it was 4.9 or 4.6. There are many recommendations in the fourth chapter about supporting the affected persons, and he uses that term.

"Affected persons support staff should make initial contact with affected persons who are not witnesses. They should maintain ongoing, proactive communication with all affected persons throughout an investigation."

But beyond that, there should be trauma supports. I mean, that's right in his report. He's so right. He listened, and I think that was wonderful.

Ms. Soo Wong: Thank you very much again for being here and for your written submission. We really appreciate it.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Ms. Greenwood-Graham, for your deputation and presence.

Ms. Karyn Greenwood-Graham: Thank you.

CANADIAN MENTAL HEALTH ASSOCIATION, ONTARIO DIVISION

The Chair (Mr. Shafiq Qaadri): I would now invite our next presenter to please come forward: Ms. Quenneville and Mr. Szamuhel of the Canadian Mental Health Association, Ontario division.

Welcome. Please be seated. Your five minutes for opening remarks begin now.

1510

Ms. Camille Quenneville: Thank you, Mr. Chair. Like all of you, I'd like to commend the previous speaker on her presentation.

My name is Camille Quenneville. I'm the CEO of the Canadian Mental Health Association, Ontario Division. I'm happy to be here with my colleague Joseph Szamuhel, who is our acting director of public policy.

CMHA has 30 branches across Ontario. Our 3,900 staff provide front-line mental health and addictions services to tens of thousands of Ontarians. We would like to thank and commend Minister Naqvi and Minister Lalonde for introducing the Safer Ontario Act and seeking to implement many of the recommendations of Justice Michael Tulloch's Independent Police Oversight Review. CMHA Ontario supports the province's intention in this legislation to modernize and transform policing in Ontario, and we appreciated the chance to offer our feedback during its development.

Our stakeholders will all benefit from a shift to a more collaborative approach to community safety and well-being planning, the enhancement of police accountability and the strengthening of the police oversight system. As a measure of increased transparency, we're pleased that this legislation will make certain documents related to policing oversight proceedings public.

Our main concern, however, is with respect to the collection, retention and disclosure of personal health care information, especially mental health and addictions-related information.

Our organization, CMHA Ontario, has been working to address issues related to mental health police records for a decade, and we were really pleased to work closely with Minister Naqvi on the Police Record Checks Reform Act in 2015. We strongly recommend that this legislation strictly align with the guidelines established by that act. It restricts the disclosure of mental health and addictions-related information, including contact with police or a hospital during a mental health crisis situation.

Mental health information is helpful for police to use internally to immediately assist a person experiencing a mental health crisis, but the disclosure of such information for other purposes can create barriers for people who are already vulnerable and can increase mental health stigma. If the disclosure of such information is pertinent in a particular case, then it should only be made public with the explicit consent of the individual, or their next of kin if they are unable to do so.

The Safer Ontario Act grants the Special Investigations Unit director the power to investigate incidents involving police that result in a serious injury. CMHA Ontario strongly believes that the definition of such a serious injury be expanded to include psychological injuries such as post-traumatic stress disorder or PTSD that may be incurred from interactions with police.

PTSD is a psychological injury that can develop after an individual is exposed to a particularly stressful or traumatic event. CMHA Ontario understands the serious impact that PTSD can have on an individual's health and well-being. We heard that from the previous speaker.

We have been working for some time on destigmatizing PTSD and promoting recovery, especially with our partners in the first responders community. If we hope to treat our mental health like our physical health, then acknowledging the severity of psychological injuries that may result from interactions with police is necessary.

The Safer Ontario Act also grants the SIU director the power to investigate incidents involving police wherein a police officer discharges a firearm. We strongly recommend that incidents where a conducted energy weapon or taser is discharged at a person also be automatically investigated by the SIU.

Issues relating to the use of conducted energy weapons, or CEWs, by police officers have been significant to CMHA Ontario. The safety of CEWs, especially with respect to their use on vulnerable populations, is not clearly understood by the medical and mental health and addictions communities. CEWs should only be used by police as an alternative to deadly force and as a last resort following the unsuccessful use of all other de-escalation techniques. Given the serious effects that the discharge of a CEW can have on a person, it must be accorded the same accountability as a firearm in this legislation.

I'd like to end my remarks by thanking you all for your interest in reforming policing in Ontario. If Ontario seeks to move to a more effective, sustainable and community-based model of policing, organizations like ours, who serve to speak for vulnerable Ontarians, have a valuable role to play in achieving that vision. I would be happy to be a part of it and to take your questions today.

The Chair (Mr. Shafiq Qaadri): Thank you. We'll begin with the NDP: Mr. Natyshak.

Mr. Taras Natyshak: Thank you very much, Ms. Quenneville, for being here. Thanks for your submission.

Do you believe that the Canadian Mental Health Association was adequately consulted throughout the crafting of this legislation?

Ms. Camille Quenneville: To be quite honest, I felt that we were. I felt we were accessible. We're not shy; we're very quick to offer an opinion.

Mr. Taras Natyshak: And in being accessible, were you accessed by the government?

Ms. Camille Quenneville: We were.

Mr. Taras Natyshak: How many times did they talk to you? And why did they miss some of the points that you've raised, like conducted energy weapons and the need to include them in PTSD support?

Ms. Camille Quenneville: Just to answer your initial question, yes, I feel we were adequately consulted.

With respect to conducted energy weapons—and I'll encourage my colleague to respond as well—from my perspective, I think that there is a whole lot that is unknown still about conducted energy weapons. It's unknown by the policing community, and it's unknown by folks who work in my field.

You and I have both heard of and seen incidents where people are seriously harmed, or in fact have died, as a result of the use of those weapons. So our advice, as I indicated, was to ensure that there is a way of determining when they're used and to what impact. They should only be used to de-escalate a situation. There are lots of steps to get to a point before somebody should even take out a conducted energy weapon.

Mr. Taras Natyshak: In the use-of-force model, is that what the intended purpose or use is stated to be for a conducted energy weapon: to de-escalate? Is that within the protocol?

Mr. Joseph Szamuhel: There is certainly a spectrum of training that comes along with use-of-force training in de-escalation. Robust training suggests that the use of a conducted energy weapon is at the end of, and the exhaustion of, all other techniques.

The Chair (Mr. Shafiq Qaadri): Mr. Szamuhel, you just need to introduce yourself, if you please.

Mr. Joseph Szamuhel: Sorry. I'm Joseph Szamuhel. I'm the public policy team lead at CMHA, Ontario.

What we try and stress is, again, that this is a very serious weapon, and it should be used with a great deal of education and accountability.

Mr. Taras Natyshak: In general, are investments, as a province, in mental health supports in our communities—do you think the lack of support contributes to a higher incidence of interactions between police and civilians?

Ms. Camille Quenneville: I'm not sure how we would make that direct link. But I don't think there is

enough support for mental health and addictions across Ontario.

Mr. Taras Natyshak: So you haven't studied any correlation between decreasing amounts, or flatlined amounts, of supports and higher levels of interactions with—

Ms. Camille Quenneville: That's the link I'm—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Natyshak.

To the government side: Ms. Wong.

Ms. Soo Wong: Thank you very much for your presentation and your participation and ongoing discussions with both Minister Naqvi and Minister Lalonde in dealing with Bill 175.

I just want to go back to your comments earlier dealing with Justice Tulloch's report and the recommendations. Can you share with the committee, when it comes to dealing with this particular bill, Bill 175, in terms of the value of public reporting—there have been a lot of concerns raised about a lack of transparency, and public confidence and the issue of trust, which is critically important, when we pass this bill. Can you share with the committee in terms of how you see the value of public reporting and the communication with agencies like yours and the general public? Because some concerns have been raised to this committee from various witnesses about that piece. Can you share with the committee on that part?

Ms. Camille Quenneville: We supported the notion of public reporting. I think where we want to be very careful is in how personal health information for anybody who has a mental health issue or addiction—how any of that information could potentially become public. We've seen time and again where people have an inability to find employment as a result of that. We want to be very careful about the stigma that is associated with that. So we have supported it, with the exception that we want to be very careful about what that process looks like.

We respect that for policing, it's very helpful to know and understand, if a police officer is going into a situation where somebody is in a mental health crisis, if they have had a previous attempt of suicide or if there is a history. That can be done without that information ever being public. That's what we have requested.

Ms. Soo Wong: There have been some witnesses before this committee who asked the government to delay the implementation, as well as the passage, of Bill 175. What does your agency say about that delay being suggested or requested by different agencies? Do you want the government to go forward with Bill 175?

Ms. Camille Quenneville: I think my remarks indicate that we are highly supportive of much of it. I think we also raised some very specific concerns. I would really be delighted if they were addressed. I'm not sure I'm in a place to determine what the legislative calendar is.

1520

Ms. Soo Wong: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Wong. To the PC side: Mr. Yakabuski.

Mr. John Yakabuski: Thank you very much, Camille, for joining us this afternoon. I appreciate the work that you do. Mental health is something that I feel very strongly about. Two of my brothers committed suicide and I certainly understand the effect that mental health issues have on our society, so I appreciate your coming in.

On the policing side of it—Mr. Natyshak touched on it, maybe the need—not maybe—the absolute need for more investments in mental health services. My understanding is that one in six policing calls involves a mental health issue. Years ago it was one in 20. We clearly have a much greater problem today. I certainly understand and respect that when we're dealing with people, the police have to certainly be bound by stringent rules, as well.

I don't want it to appear that every person who deals with the police is somehow dealt with improperly. Would you agree that the vast majority of them, including those with mental health issues, are dealt with quite professionally by the police?

Ms. Camille Quenneville: First, I want to say, Mr. Yakabuski, I was unaware of your personal story and I'm terribly sorry.

I would just say that without question I have faith in policing—without question. That is an extremely difficult job and it's done well across Ontario every single day in circumstances that none of us are aware of. So, yes; the short answer is yes.

I can tell you that the policing community has also been very good to my organization. I have a chief of police on my board. Their concern about these issues has certainly risen as a result of the issue you raise, which is, what does their everyday look like? It's very often coming into contact with people who are struggling with their mental health. I think we're really all trying to find a way forward as a result of that.

To answer your question, yes, we have great faith in policing. I think, really, it's an issue of saying—I wouldn't be doing my job if I didn't come to you and say: Let's be very responsible in how we're using things like conducted energy weapons because there are de-escalation techniques.

Mr. John Yakabuski: Absolutely, and there has to be a process by which we are able to oversee the conduct of people in any profession, and police cannot be exempted from that.

Ms. Camille Quenneville: Yes. I think that's fair.

Mr. John Yakabuski: I appreciate that and I appreciate your submission today. Thank you very much.

Ms. Camille Quenneville: I appreciate your question and your comment.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Ms. Quenneville and Mr. Szamuhel, for your deputation on behalf of the Canadian Mental Health Association.

Ms. Camille Quenneville: Thank you, Mr. Chair.

MR. ELIE LABAKY

The Chair (Mr. Shafiq Qaadri): I'd now invite our next presenter to please come forward: Professor

Abdillahi. Is Professor Abdillahi present? If not, is Mr. Elie Labaky? Great. You have the floor. Please be seated, and thanks for coming earlier. You're welcome to begin now.

Mr. Elie Labaky: Thank you for having me here today. I'm legal counsel and I represent the interests of police officers in the province of Ontario in matters stemming from the Police Services Act. I work with the PSA regularly, and I'm also completing a doctorate in law focusing specifically on the PSA.

I feel very strongly about this proposed bill and have travelled from Ottawa to be here today.

From the outset, I'd like to advise you that my position is in support and in agreement with those of Mr. Bruce Chapman, Mr. Rob Jamieson and Mr. Peter Brauti, and in support of the oversight legislation. I will consequently not address it. But my alarm and concern mirror those that Mr. Peter Brauti, counsel for the Toronto Police Association, brought to your attention last week.

There need to be substantial changes to the PSA. I support change, but not this bill in its entirety, certainly not at the expense of officers. It's the province's duty to ensure that our officers are afforded the necessary tools to appropriately serve and protect the citizens of Ontario.

Outside oversight: It's clear that this bill was brought forth with haste and lack of knowledge as to the fundamental principles of policing. The act works in congruence with other parts. We cannot simply address one part and not the others.

I need to bring to your attention an important distinction that must be made. Justice Tulloch authored the report of the Independent Police Oversight Review, and that's exactly what this report is: a review of independent police oversight, not a comprehensive review of the Police Services Act, and it should not be treated as such.

Should it be passed unaltered, this bill will have a detrimental impact on our policing. I will bring four issues to your attention.

(1) The privatization of policing: I don't support it. We've recently seen the impact of hiring private security to replace police in Maniwaki. The public suffers. Frankly, the citizens of this province deserve better. I believe Mr. Chapman made that clear in his submissions last week; I can address that in questioning.

(2) The inspector general: It's not a new concept. It's clearly outlined in subsection 3(2)(e) of the current PSA, and has been since its inception in 1990. The problem with this section is that it outlines several duties that the minister shall do. The word "shall" ought to be changed to the word "must." "Shall" simply means "you have a duty to." It denotes a future intention do something, as opposed to an absolute obligation. The word "must" provides the safest, most definitive drafting route to capturing the intended absolute obligation for the province to exercise its duty. I can expand further during questioning.

The province has never enacted regulations or made efforts to inspect police services in holding them accountable to provincial standards falling directly under its jurisdiction for the past 28 years. We don't even have a provincial police standard after the Ontario Police College. The manner by which the legislation is drafted between sections 87 and 98 suggests that investigators are arbitrarily selected and could be currently serving police officers seconded to the office. These criteria should be addressed directly in the act and not in the regulations.

(3) Section 95 suggests that if the inspector general is notified that a chief, deputy chief or board member has committed a criminal offence, "The inspector general shall refer the matter to the chief of an unrelated police service." We are faced with the executive officers investigating each other and two-tiered systems of discipline. Front-line officers are subject to rigorous independent impartial oversight, whereas top-ranking executives are investigated by other top-ranking executives.

I am alarmed by this section and so many others. We're sending the message that front-line officers will be treated differently than top-ranking officials.

(4) Lowering the standard of proof to a balance of probabilities is a big mistake. Police officers ought to be held to a high standard, yes, but lowering the standard of proof will not hold them more accountable. It will hurt the public. Knowing that a member of the public must only prove that the officer erred on a standard of 51% will only cause officers to be more hyper-vigilant and subsequently reduce how they exercise discretion on the front line.

The parameters placed on police discretion of authority can mean the difference between someone getting a second chance or having a criminal record haunt them for the rest of their lives. Doctoral researcher and former police sergeant Greg Brown recently released a study showing that officers are, in fact, "de-policing," or avoiding proactive policing, out of fear of being scrutinized by the public.

No other profession is scrutinized as highly as policing and no other profession holds the risks and dangers policing does. Lowering the standard of proof is going to effectively turn our officers into ticket-issuing robots who only respond to low-risk calls, for risk of reprisal. As a doctoral researcher on this topic, I am very concerned by the impact this will have on our front-line officers.

This legislation proposes a safer Ontario, but my question to you is: safer for who? It seems the province has shifted its approach from being tough on crime to being tough on police. We need to take a step back and clearly examine the damage this will have on our police, our people and our province.

Police officers must make a split-second decision that lawyers and judges must spend years arguing. This bill should consequently afford them a higher degree of deference.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Labaky. We begin with the government side: Ms. Wong.

Ms. Soo Wong: Thank you very much for your presentation. Are you submitting anything in writing to the committee?

Mr. Elie Labaky: No.

Ms. Soo Wong: You're not. Okay. I just wanted to check about that.

I know in your presentation—I don't recall hearing it, so I just want to get some clarification on your views on the independent tribunal. Can you share with us about that particular tribunal being considered for this proposed legislation, and what are your views on this tribunal and how it's actually going to affect your clients?

Mr. Elie Labaky: Again, that falls under the oversight regime, and my views support those of Rob Jamieson, Mr. Bruce Chapman, and Mr. Peter Brauti of the Toronto Police Association. I won't address oversight because I believe that oversight has been overly addressed in part of this bill. Oversight is part of the bill, not the entire bill. There are other very important sections. Because we've opened this legislation and we're open to discussing it, we need to address other sections. There are other sections, and if you don't address them and you focus only on oversight, it's not going to work.

Legislation is like a living organism. It has moving parts. You can't—

Ms. Soo Wong: Okay. I don't have a lot of time. I'm going to have to ask you some questions.

Mr. Elie Labaky: Okay, sure.

Ms. Soo Wong: Previous witnesses asked about the whole issue of not just oversight, but also the issue of governance. Can you share with the committee, with regard to Bill 175, in terms of improving the governance issue with the police services boards?

Mr. Elie Labaky: Again, that falls under oversight. I have no issue with governance in the way it's running right now. There have been some issues that board members have to appear before bargaining committees. That's something that perhaps you should address. But again, I don't want to address any oversight issues because there is so much more to the Police Services Act than oversight and just simply one part.

1530

Ms. Soo Wong: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Wong. We'll go to the PC side: Mr. Yakabuski.

Mr. John Yakabuski: Thank you, Elie, for joining us today. You've raised some concerns that have been raised previously. You touched on one, and that is the requirement for split-second decisions that police have to make on many occasions, and with some of the changes with regard to the balance of probabilities versus—

Mr. Elie Labaky: Clear and convincing evidence.

Mr. John Yakabuski: —clear and convincing evidence, which used to be the bar that was required under complains under the police act, that a police officer may just notice that they happened to look the other way rather than getting involved in something that is not major, because they're concerned about what might happen if they actually get involved with that situation on the street. That's not going to make our streets safer. That, in fact, is going to make them less safe.

I know that police associations have pleaded with the government to restore the clear and convincing level of proof as a requirement. Is there any sense that the government is listening, or is this really going to be a bill about oversight on the police as opposed to making our streets safer, which involves oversight on the police but it has to be more far-reaching than that?

Mr. Elie Labaky: That's exactly why I refuse to address the oversight section. It has been reviewed, but there is so much more to discuss.

With respect to the point you bring up with the standard of proof, police officers are professionals, but their duties are different and their responsibilities are different. Accountants don't have numbers lunging at them with knives. Engineers don't have algorithms attempting to rob them or assault people. Police officers, as state agents, should be afforded a higher degree of deference in dealing with these types of situations.

This legislation is making it so easy to complain about police. I'm all about oversight; don't get me wrong. I support oversight to a certain degree. But we're putting so much pressure on these officers and we're just facilitating the complaint process and the oversight process so much so that you're stripping away the discretion of the officers in that, anything they do, you just have to prove on a balance of probabilities that it probably happened.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski. To the NDP side: Mr. Natyshak.

Mr. John Yakabuski: Thank you very much.

Mr. Taras Natyshak: Thank you, Mr. Labaky. You referenced the privatization of community policing and your concerns around it. Mr. Paradis from GardaWorld talked about how he doesn't want to take over any core duties of policing. Do you believe that to be the case?

Mr. Elie Labaky: I don't support privatization of any policing—

Mr. Taras Natyshak: Do you believe GardaWorld's submission and interest in this bill relegates them to just basic policing duties, or do you think that they would probably jump at the opportunity to perform core policing duties if the legislation allowed it?

Mr. Elie Labaky: I can't speak to what they meant by their submission.

Mr. Taras Natyshak: Do you believe that the component that opens up the door to privatization of policing services—

Mr. Elie Labaky: Of course; of course.

Mr. Taras Natyshak: Hold on; I'm not done my question. Do you believe that component is wide open and isn't prescriptive in terms of relegating it to minor duties?

Mr. Elie Labaky: Yes. Yes.

Mr. Taras Natyshak: Explain that to us.

Mr. Elie Labaky: Anybody can jump in.

Mr. Taras Natyshak: And do what?

Mr. Elie Labaky: And get involved in—it's not about core policing duties or general policing duties. Policing is policing. Having a police officer at a festival is just as important as having a police officer respond to calls front

line. Police officers at festivals—the communities are usually apprehensive. I can speak about my community. The community is very apprehensive about having the officers there, but by the end of the festival, you'll find the kids have more focus on the officers and wearing their hats and smiling and taking pictures with the officers than actually playing the games. That's what policing is—

Mr. Taras Natyshak: There's a community involvement component to it as well.

Mr. Elie Labaky: Yes, there's a huge community component to this.

We want police officers to just arrest people and just break up fights. You're making everyone nervous, because now it's scaring individuals from the police.

Mr. Taras Natyshak: There's a scenario that has been presented around guarding crime scenes. In my mind, I don't think that in any way any private security firm should be providing that service. It lends itself to a terrible CSI episode where that private security officer, who is making 15 bucks an hour, potentially is compromised because, hey, they need to get into that crime scene and alter the evidence there somehow; there are criminal elements that want to do that. That's a scenario that I can't contemplate actually being allowed in this province.

Mr. Elie Labaky: But even when you're guarding the crime scene, you're guarding it in the community. Community members will approach you and speak to you.

There was a crime scene in my neighbourhood, and every one of the neighbours developed a relationship with the officers—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Natyshak, and thanks to you, Mr. Labaky, for your presentation today.

NATIONAL WOMEN IN LAW ENFORCEMENT ASSOCIATION

The Chair (Mr. Shafiq Qaadri): I'd now invite our next presenter to please come forward. I believe it is round 2 for Ms. Donovan of the National Women in Law Enforcement Association.

Welcome. Please begin.

Ms. Kelly Donovan: Thank you. Good afternoon. My name is Kelly Donovan. The scheduled speaker, Angie Rivers, is a police constable with Waterloo Regional Police. Angie is a representative plaintiff in the current class-action lawsuit against the service, and she's a founding member of the National Women in Law Enforcement Association. Angie suffers from depression and PTSD resulting from her employment at WRPS and was not well enough to attend today. She has asked me to present on her behalf so this critical matter can be addressed.

Section 115, the section dealing with disabled officers, is of critical importance. Passed as is, police chiefs can demote and fire injured and disabled officers for no reason other than that they are disabled. When people hear of this, the consistent reaction is that of shock and disbelief.

The fact is, under the current PSA, chiefs already have the power to fire an officer for disability under the current section 47. Under the current PSA, the chief must first hold a public hearing and consider the evidence of two qualified doctors before the officer is dismissed. In the proposed legislation, these requirements are removed. The chief will not be compelled to hold a hearing or hear the evidence of medical professionals; the officer can only request an arbitration after the fact. Will these arbitrators be well versed in the limitations of a first responder suffering from PTSD?

For an officer who suffers from mental health issues and who struggles to leave the house or place a phone call, responding to a notice that they are being terminated within 60 days and preparing a case for arbitration will be a prohibitive task.

Angie Rivers represents hundreds of officers who could be fired after this legislation is passed, and the catalyst of her PTSD is the way she was treated while working for the Waterloo Regional Police. Is it fair to continue to give the police service the power to terminate her employment?

Due to the culture of policing, officers are extremely hesitant to admit to and seek treatment for mental health issues. This legislation will undo the progress that has been made in destigmatizing mental health in first responders.

Recent events, such as the apology from Commissioner Bob Paulson following the settlement of the RCMP class-action lawsuit, prove that the culture within police services is what is keeping qualified female officers from applying to the profession or remaining in the profession.

In response to the $167-million class action against the Waterloo Regional Police Service, the service's lawyer stated in a press release that affidavits filed by the plaintiffs contained "untrue, exaggerated, misleading and/or defamatory allegations." In Chief Bryan Larkin's sworn affidavit filed in December 2017, he called the allegations "unfounded" without any investigation. "Unfounded" is a police reporting classification meaning a crime never occurred and was not attempted.

An investigation by the Globe and Mail's Robyn Doolittle showed that between 2010 and 2014, the national "unfounded" average for all police services for sexual assaults reported was 19%. For Waterloo Regional Police, it was 27%.

In January 2018, Sara Casselman, who is the head of the Sexual Assault Support Centre in the region of Waterloo, helped write an open letter to Chief Larkin. She states, "The police's lawyer very strongly denied the allegations.... If there are survivors that are listening, how safe do they feel coming forward?"

Not only that, but how do female officers feel when they see that Sergeant McInnis from the Toronto Police Service was charged with Police Services Act charges after she filed her human rights complaint?

1540

There has to be an acceptance of what is wrong within our police services if things are ever going to improve. Empowering the people who are causing the toxicity that is prevalent in policing is an obvious move in the wrong direction. Until police officers can be protected under the Occupational Health and Safety Act, we cannot allow Bill 175 to pass and give more power to chiefs of police, who are currently in denial that any problems exist.

The Chair (Mr. Shafiq Qaadri): One minute.

Ms. Kelly Donovan: The bill will only serve to push more good people out of the profession.

Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Donovan. We begin with the PC side: Ms. Scott.

Ms. Laurie Scott: Thank you very much for appearing here again this week in committee, and for filling in for Ms. Rivers. Please pass on that we hope she is feeling better.

Ms. Kelly Donovan: Will do. Thank you.

Ms. Laurie Scott: I want to highlight a couple of the things that you said. Maybe just give us a statistic—if you have it, in general terms—of how many women actually enter the police force and how many women actually leave, some type of reference so that the committee can understand.

Ms. Kelly Donovan: That would actually be a nice statistic if it was ordered to be produced by police services, because I know—

Ms. Laurie Scott: But from your knowledge.

Ms. Kelly Donovan: I was one of eight recruits when I was hired who were female. It's pretty typical that there are one or two females in a recruit class, which is below our 20% that we have now, so I think there are fewer women applying, and I do see a lot of women who are qualified leaving long before retirement. We need to start looking at why we are not keeping them—I have my own thoughts on that—but also why we cannot recruit them. Why are we not attracting them to the profession? It's what they see. It's what they hear. It's not an appealing profession, to be a woman and a minority in the service.

Ms. Laurie Scott: Okay. That's something we definitely need to look at.

Also, I want to talk about the fact that this legislation could give new powers to police chiefs. You have the example of Ms. Rivers, who suffers from PTSD, and that they will then have the powers to terminate them, which is—

Ms. Kelly Donovan: I think it's evident in Sergeant McInnis's case, where she came forward with a human rights complaint and she then faced a Police Services Act charge and had to surrender time through an informal process. Because the chiefs are afforded the ability to do an internal investigation through a chief's complaint, they can charge an officer criminally or through the PSA, and they can do so with no oversight.

In my case, I reported corruption. I faced eight Police Services Act charges under investigation. The women in the class action lawsuit have been threatened with Police Services Act charges because they took photocopies of their notes, which are evidence in the civil litigation. They didn't do anything wrong, but they're being threatened with these charges. It's because of the power that is afforded to police chiefs.

Ms. Laurie Scott: Okay.

The Chair (Mr. Shafiq Qaadri): One minute.

Ms. Laurie Scott: Go ahead. Did you have anything?

Mr. John Yakabuski: Under the bill as it is written, am I correct in understanding that someone on the police force suffering from PTSD, disabled, could actually lose their job?

Ms. Kelly Donovan: The way it's written currently, there would be a hearing and there would have to be evidence from two medical professionals. Although having it in there, period, is a negative thing for police officers, at least under the current Police Services Act there is a formal hearing where the evidence of two doctors would be presented. That has been removed in the new bill.

Mr. John Yakabuski: So in the new bill, it would be much easier to dismiss that officer?

Ms. Kelly Donovan: Yes. It's on the opinion of the police chief and the board.

Mr. John Yakabuski: That's got to change.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski. To Mr. Natyshak of the NDP.

Mr. Taras Natyshak: Under those same parameters, is it not conceivable that an officer could be terminated with the rationale of not being able to fulfill their duties because of pregnancy?

Ms. Kelly Donovan: Yes. I believe it's worded as "a medical disability," whether that's physical or mental.

Mr. Taras Natyshak: Do you think that should change?

Ms. Kelly Donovan: I think the ambiguity in this bill needs to change in several sections, but absolutely, for that section, yes, it does.

Mr. Taras Natyshak: How would that not be a human rights violation?

Ms. Kelly Donovan: It's carefully worded that it has to fall under the guise of the Human Rights Code, but I know there is already case law saying that occupational health and safety doesn't apply to police officers, because the PSA is given so much leverage in an employer-employee contract. It oversees how we're treated as employees.

Until the public start to realize how poorly we are treated as police officers—that's the cause of a lot of problems happening on the road. You have officers who won't admit that they're suffering from PTSD because they're afraid to lose their job. So what are they doing when they're faced with a stressful situation on the road? They're doing the best they can, but it's not good enough.

Mr. Taras Natyshak: So as a province, as a government, we extended PTSD-presumptive legislation to first responders, yet are prohibiting or disincentivizing from actually utilizing those services.

Ms. Kelly Donovan: Yes.

Mr. Taras Natyshak: How is that any measure of progress at all?

Ms. Kelly Donovan: Right. It's not.

Mr. Taras Natyshak: Any other thoughts that you want to add to your testimony and your submission here?

Ms. Kelly Donovan: Just for those who weren't here last week: I did present last week, and my presentation was all around how I came forward to report internal corruption and I faced an investigation myself. The chief targeted me. I was facing eight Police Services Act charges. I was constructively dismissed. I reached out to the Human Rights Tribunal and everywhere I could, and no one would help me. I eventually resigned, and now I'm on a campaign to try to make positive changes.

Mr. Taras Natyshak: Are you involved in a class action suit?

Ms. Kelly Donovan: No.

Mr. Taras Natyshak: Are you going to?

Ms. Kelly Donovan: I chose not to, so that I could actually speak about my experiences. Otherwise, I would be pinned under the PSA and I would be silenced. I chose to leave so that I could share my experiences to make a positive change.

Mr. Taras Natyshak: So your whistleblowing, as it were, was never followed up on at all and you were just quashed?

Ms. Kelly Donovan: No, it cost me my job.

Mr. Taras Natyshak: It cost you your job.

Ms. Kelly Donovan: The way that the bill is written now, that would happen to the next person who tries to do the right thing. They're going to be targeted and they're going to be made to look like a criminal. They have the power to do a lot of things behind closed doors, and I'm trying to expose that. I'm happy to be here again to share my experiences and have people listen. I think that it's a matter of time before more people start to listen and then things start to change.

Mr. Taras Natyshak: Thank you so much for being here.

Ms. Kelly Donovan: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Natyshak. To the government side: Ms. Wong.

Ms. Soo Wong: Thank you very much, Ms. Donovan, for being here again. Please pass on our sadness at hearing that Ms. Rivers is not here today to do her presentation.

Ms. Kelly Donovan: I will, thank you.

Ms. Soo Wong: Is there any possibility for you to share what you just read to us from Ms. Rivers so that we could have it for—

Ms. Kelly Donovan: Yes, it will be in the transcript. I'll be sending that in.

Ms. Soo Wong: Okay. Just to go back to your concerns and comments: I hear your concerns about the powers of the chief of police and that you want the government not to pass Bill 175. We have consistently heard from other witnesses who do want this bill to be passed.

I want to hear from you in terms of—because I don't think that you mentioned too much about the whole issue of training and requirements for the officers—the police services board, the training for the members of the police services board, the issue of oversight, and how that would help woman officers, because I heard your concerns, not just in this week's presentation, but in your presentation last week, about woman officers not just in the Waterloo region, but across Ontario.

Ms. Kelly Donovan: Well, a perfect example of that is my experience. I reported the corruption to my board initially because I wanted them to know what was happening at the service. They're the oversight body. Instead of listening to my concerns, they allowed the service to come after me punitively. I brought it to their attention that that was happening, and they did nothing to stop it.

After my 14-month constructive dismissal and after I resigned, I went back to the board, I sat at the table and I told them, "I'm starting my own business. I know the training that you need to obtain as board members. I'm working on a curriculum to train you so that you are up to date on your authorities so you can enforce your authorities." I haven't heard anything from them.

There is absolutely no desire to move in the right direction. It has always been status quo in policing. You can ask any police officer that. They're going to tell you that, for 30 years, it has been the status quo. You have a good idea for positive change, and no one wants to hear about it.

Ms. Soo Wong: Okay, thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Wong, and thanks to you, Ms. Donovan, for your deputation and your presence.

Ms. Kelly Donovan: Thank you.

MR. ADE OLUMIDE

The Chair (Mr. Shafiq Qaadri): I now invite our next presenter to please come forward: Ade Olumide. Welcome, Mr. Olumide.

Mr. Ade Olumide: Thank you.

The Chair (Mr. Shafiq Qaadri): Please be seated. You'll have five minutes, as you've seen, for your opening remarks. Please begin now.

Mr. Ade Olumide: First, I would like to thank you for giving me these five minutes to speak to the committee. I'll be brief. If I don't get to finish, it's a one-page presentation; you all have a copy of it, so we'll see how that goes.

Without citing the Charter, the Canadian Victims Bill of Rights and United Nations treaty rights to receive a reason for arrest and assault of anyone, any time that police powers of such are engaged—we know from recent events that a simple arrest and assault could easily escalate to death. This is what led to the Black Lives Matter movement.

From my point of view, if the Legislative Assembly fails to create a mandatory procedure for charging any courts that engage police arrest and assault powers

without filing a reasonable justification report, then the committee or the Legislature could one day have blood on its hands, because as I said, any time you engage police powers, it could easily escalate to death.

1550

The employment of a judge cannot be terminated without involving a judicial council. What I'm addressing here are powers that are within the control of the Ontario Attorney General and the police. For example, section 81 of the Police Services Act charges for inducing a police officer to commit a crime. That's within the power of the government without a judicial council. Also, the judge could be charged for section 265, assault; section 140, public mischief; section 423, intimidation; and section 346, extortion.

The current status quo is that the judicial council says—without a court proceeding. Based on what they've told me, if a judge commits murder, rape, kidnapping, without a court proceeding, it's covered by judicial immunity. That's completely unacceptable in 2018 in a country like Canada.

They have no rebuttal to the fact that the Parliament of Canada has exclusive jurisdiction over criminal law. There is nothing like Criminal Code immunity for any judge, for anyone, so you can't make it up; it doesn't exist. Parliament has not given anyone Criminal Code immunity, so if a judge commits a crime, they should be charged.

Ontario committed an unprovoked reprisal by lying about jurisdiction in order to defraud my charter right to raise a constitutional question. The two grounds—well, I raised more than one ground, but one of the two grounds I bring to your attention is that I said you cannot bring a section 140 application because there is no existing proceeding against Ontario.

The second thing I said was that Ontario has already admitted to committing a crime. When you commit a crime, just because the courts let you off or refuse to adjudicate the fact that you've committed a crime does not now give you the right to use my taxpayer dollars that I pay to you—

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Ade Olumide: I don't know if you've had any chance to see the presentation I sent to the committee, but the bottom line is this: The majority of politicians in all three parties enter politics for the right reasons. Let me speak to those politicians who still remember why they came to this Legislature. In the end, I will succeed in changing police act section 138, and history will be very unkind to the Premier and any party leader who refuses my request. Please don't be offended, but let me be very clear: Anyone who is opposed to my request is unfit to sit in this Legislature.

Right now, as far as I'm concerned, the Ontario government, led by the Premier, is feeding the fear that black males are violent, and so a judge can arrest and assault a black male—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Olumide. We'll begin with the NDP: Mr. Natyshak.

Mr. Taras Natyshak: Mr. Olumide, thank you for your presentation. I'm not a lawyer. I'm not trained. You're throwing some Criminal Code stuff out there that I don't know by memory. So I'm going to afford you the opportunity to elaborate with the two and a half minutes we have left.

Put it in reference to the bill that we are currently analyzing. Tie it in to specific points here that I can understand. That would be very helpful, and I would appreciate it.

Mr. Ade Olumide: In my letter to the committee, what I complained about was section 138 of the police act, which says that if you're a security risk, a judge can ask a police person to arrest and assault you. Under the charter and under the Canadian Bill of Rights, any time you arrest or assault anyone, the person is entitled to have a reason. I have been arrested and assaulted. It has been almost a year, and I don't have a reason.

We've set up all these laws for the police and all of that, but the judges are excluded because they're saying, "Because we're judicially independent, we don't have to give you a reason." I'm saying that's incorrect, because the Attorney General also has a constitutional duty to enforce criminal law.

To take a step back: I was invited to the court for a meeting, okay? Another judge approaches me beside the entrance of the courts and stops me from entering that meeting. Now, I have a right to be in that meeting based on the Criminal Code and based on the Justices of the Peace Act. According to the law, I could actually have arrested the justice of the peace and the police person—a citizen's arrest—as section 35 of the Criminal Code says, when there's a crime in progress. What I was in court to do, invited to do, I had a right to do it. Taking away that right with the threat of injury is extortion. So I could have arrested them and then called the police and said, "They are committing a crime."

Setting that aside, the issue is this: Right now, judges have power to police, to arrest, without giving you a reason. In the act, it says that they have to comply with the charter and the Canadian Bill of Rights, but here is where I quibble: That's in the act right now, but I still don't have my reason for why I was arrested and assaulted. So it means nothing.

What I'm saying is this: If you engage powers of arrest and assault—it doesn't matter who it is—in a court, you must file a reasonable justification report with the Attorney General with the court. Then I can write to the Chief Justice or to the Attorney General of Ontario and say, "I want to receive the reason," and it would be an independent process. If you don't do that, then you should be charged.

Mr. Taras Natyshak: Would those changes not be more appropriate at the federal level within the charter rights?

Mr. Ade Olumide: Well, no, because the charter already says—and this is the funny thing: The charter already says—

Mr. Taras Natyshak: Or the Criminal Code, sections of the Criminal Code?

Mr. Ade Olumide: Well, the Criminal Code allows you to charge the justice of the peace, the judge or whoever, right now, as it is. The charter and the Canadian Bill of Rights—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Natyshak. To the government side: Ms. Wong.

Ms. Soo Wong: Thank you very much, sir, for your presentation and your written submission.

We're here today to deal with Bill 175, the Police Services Act, and the amendments being proposed as well. In your written submission, what I read is that there is an experience on the issue of racism. I'm going to call it the way it is, okay?

Mr. Ade Olumide: Yes.

Ms. Soo Wong: Have you spoken to the Attorney General's office about what you experienced here? Because right here, before our committee today, it's about Bill 175, so I'd like to focus on that particular bill. I will certainly share your written submission with the staff of the Attorney General. I just want you to know that piece.

Specifically dealing with Bill 175, sir, do you have any comments in terms of improved oversight, improved transparency of reporting and the whole issue of governance as it relates to police services boards? Can you share with us—because I saw your written submission about your experience in the judicial system, the courthouse and the racism you experienced. But in the short time that we have, can you share with the committee your views, your opinions dealing with Bill 175?

Mr. Ade Olumide: Permit me, if—Bill 175: I understand that's what the committee is here for. When I wrote to the committee, I wrote about the Police Services Act, section 138, and that is what gives the judge power to engage the police. If you look at it from your government's point of view, I have, right now, been arrested and assaulted by a police officer. I have asked the police for a reason why that arrest and assault happened, and I can't receive a reason. What the OIPRD has said is, "Go to the justices of the peace council," and the justices of the peace council has said, "We can't give you a reason because it's covered by judicial immunity."

If police power was not involved, then your committee would not have a say. But because it engages the use of police power, and you're looking here at a real-life example of someone who has a right to receive the reason—I have a charter right to receive the reason for arrest and assault. I have spent—it has been one year. I've written to the Premier; I've written to the Attorney General. Everyone who I should have written to, I have written to them. In fact, the Ontario government is the one preventing me from getting an answer.

That's why my wording was very strong, because right now I'm before the Ontario Human Rights Tribunal. What the government is arguing is that the Ontario Human Rights Tribunal should not hear the case. From where I sit right now, I can't get a reason from the police because they say, "We can't ask the judge why he arrested you." The justices of the peace council says, "We can't ask the justice of the peace why he arrested you." Then all the other organizations, OIPRD, justices of the peace council—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Wong. We now pass to the PC side: Mr. Yakabuski.

1600

Mr. John Yakabuski: Thank you very much for joining us today. Are you a lawyer?

Mr. Ade Olumide: No, I'm not.

Mr. John Yakabuski: And neither am I. I didn't say that with any degree of pride or anything. Just, by way of disclosure, I am not.

You're touching on so many issues here. First of all we, as a committee, have no power to refer what your concern or complaint is to another body. You've already said that the government has argued against the Human Rights Commission here in your complaint. Is that correct?

Mr. Ade Olumide: For the Human Rights Tribunal to hear—

Mr. John Yakabuski: Tribunal.

Mr. Ade Olumide: Yes. For them to hear my complaint, they would have to hear from the police and the judge to say, "Why did you arrest Mr. Olumide?" The Ontario government has said they should not call them, for judicial immunity or whatever case—

Mr. John Yakabuski: Were you charged when you were arrested?

Mr. Ade Olumide: No, I wasn't. But the point is that in terms of the role of your committee, we're talking about a legislative change. Right now, it just says, "If you're a security risk," right? The letter I have from the justices of the peace council says, "He identified you as a security risk," but they don't say why he identified me as a security risk. I know some people are afraid of black people, because he could have said, "You can't attend the meeting" and left it at that. But for some reason, he was afraid.

Mr. John Yakabuski: Who was afraid?

Mr. Ade Olumide: The justice of the peace. So my issue now is this: He has arrested and assaulted me and I don't have a reason—

Mr. John Yakabuski: The police officer?

Mr. Ade Olumide: Well, the police person and the judge. The judge told the police person to arrest me.

Mr. John Yakabuski: Who assaulted you?

Mr. Ade Olumide: The police officer.

Mr. John Yakabuski: Did you register a complaint?

Mr. Ade Olumide: Yes, absolutely.

Mr. John Yakabuski: Was it dealt with?

Mr. Ade Olumide: No, because they said, "The judge told us to do it so we have to do it." So then I said to them, "Well, if a judge tells you to commit murder, if a judge tells you to shoot me, would you shoot me?" I still don't have an answer today. That's why I'm saying that within the legislation—

Mr. John Yakabuski: Ms. Wong is right. You really need to take this and write or whatever to the Attorney

General. We, as a legislative committee, have no power to investigate these kinds of things at all.

Mr. Ade Olumide: But the issue here is the Police Services Act, section 138.

Mr. John Yakabuski: We're only here to talk about Bill 175. We can't reopen the police act.

Mr. Ade Olumide: I wrote to the committee about section 138 of the Police Services Act, about that power that gives a judge power to deem me a security risk without giving me a reason. That's what I wrote to the committee about. After that, I was invited to attend.

I'm just here to say that within section 138 of the Police Services Act—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski, and thanks to you, Mr. Olumide, for your deputation today.

ONTARIO HUMAN RIGHTS COMMISSION

The Chair (Mr. Shafiq Qaadri): I now invite our next presenters to please come forward: Ms. Mandhane and Mr. Horner of the Ontario Human Rights Commission. Welcome. Please be seated, and please begin now.

Ms. Renu Mandhane: My time is running already. Okay. On behalf of the Ontario Human Rights Commission, I am pleased to join you today to support Bill 175, the Safer Ontario Act. I'm here with my colleague Matthew Horner, who is counsel at the OHRC.

With this bill, the government is putting forward a modern vision of policing. Diverse stakeholders, including human rights groups, the Ombudsman, police chiefs and boards, and the Ontario Federation of Indigenous Friendship Centres have communicated their support for reforms to policing in Ontario. And while Ontario police associations have an important perspective on some of these workplace issues, oversight cannot be one of them.

Trust in police is essentially fractured amongst groups who are protected under Ontario's Human Rights Code, mainly because they bear the brunt of the criminal justice system's negative consequences. The prison population provides a snapshot: Indigenous and black people are grossly overrepresented, and the number of prisoners with addictions and mental health or intellectual disabilities has grown dramatically in recent years.

The impact of the criminal justice system is felt at an individual, familial and community level, and can have intergenerational impacts on well-being. We have long called for bold steps to promote accountability and build trust with historically marginalized communities. While this legislation won't remedy injustices of the past, it does mark a significant step towards making our communities safer.

The bill is an opportunity to build trust because it recognizes and enshrines the charter and the Human Rights Code as essential to adequate and effective policing; clearly outlines the responsibilities of police services, boards and oversight agencies; and enhances accountability by creating strong oversight entities.

The bill also reflects recommendations from Justice Michael Tulloch's review, along with lessons learned from recent high-profile incidents involving serious injury and death. For example, it provides clear rules for what incidents fall within the jurisdiction of the SIU and when they must be reported; creates greater transparency in reporting from oversight agencies; provides for arm's-length investigation of police misconduct complaints; and allows an independent tribunal to oversee and impose meaningful disciplinary measures.

This bill provides a pathway to sustainable culture change through mandated training, demographic representation on boards, and the creation of community safety and well-being plans that address systemic discrimination.

Policing must reflect and respond to the unique issues that communities face. To do that, we need much more information than is available on what is happening on the ground. Bill 175 provides many avenues for collecting and acting on qualitative data, but quantitative data is required to compel meaningful change.

That's why the commission strongly urges the government to make the collection of human rights-based data mandatory for all police services and all police oversight agencies. Data will help identify where the problems lie to create targeted solutions.

Our current inquiry into racial profiling and racial discrimination by the Toronto Police Service shows how challenging collecting this data can be without government leadership. It is eight months into our inquiry, and we still lack clarity over whether the data we are requesting exists and whether it can be produced.

We call on the government, through this legislation, to require three main things:

First, that police services establish permanent data collection and retention systems to record human rights-based data on things like stops, use-of-force incidents, and interactions related to immigration status, and that the data be standardized, disaggregated, tabulated and publicly reported by each police service;

Second, that the government require police oversight agencies to collect human rights-based data as a foundation for public accountability; and

Third, to adopt the Ombudsman's recommendation that any use-of-force model and police training emphasize de-escalation.

In closing, Bill 175 is a once-in-a-generation moment to fundamentally shift the culture of policing in Ontario and create greater community trust in law enforcement.

The Chair (Mr. Shafiq Qaadri): Thank you for your opening remarks. We'll begin with the government side: Ms. Wong.

Ms. Soo Wong: Thank you very much for your presentation. I'm not sure; are you going to be submitting anything in writing to the committee?

Ms. Renu Mandhane: We have not submitted anything in writing. We were hoping that this could count as our submission. We have, in the past, publicly submitted submissions throughout.

Ms. Soo Wong: In terms of the commission's view on Bill 175, I just heard that in general you do support going forward on this piece of legislation in terms of police oversight and the whole issue of governance. I heard that you want us to strengthen, with amendment, the whole issue of data collection, if I heard that right. Am I correct?

Ms. Renu Mandhane: Yes. We are supportive of the legislation as it currently is before us, but we do think it could be strengthened through data collection. I know that the Anti-Racism Directorate is leading on that file, but, historically, what we've found with the Police Services Act is that it acts as an entire act. Often, if it's not in the Police Services Act, it's very hard to have it actually compiled and created.

Ms. Soo Wong: I think my colleague has a question.

The Chair (Mr. Shafiq Qaadri): Mr. Potts.

Mr. Arthur Potts: Thank you very much for your presentation. I wanted to follow up on the Anti-Racism Directorate. I've been working with Minister Coteau, and it's very clear that they intend to do a lot of data collection so that we can do qualitative and quantitative analysis and come back with policies across government. Do you think he is empowered within the Anti-Racism Directorate to get this information, or are you saying it has to be in the act?

Ms. Renu Mandhane: I'm saying that it would be great to do it through that, but those are regulations. Right now, under the Anti-Racism Act, the data collection provisions are regulatory.

What we're hoping to see is that they find themselves in the act because this isn't an act that's easily opened, whereas regulations, as we know, can be changed more easily. We want to see it in the act so that we don't have to come to this again in 10 years when the regs haven't been as effective.

1610

Mr. Arthur Potts: But you do see that there's an opportunity with the regulations within Bill 175 that we could get to data collection and share that information with the director?

Ms. Renu Mandhane: Yes.

Mr. Arthur Potts: Excellent. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Potts.

Mrs. Amrit Mangat: Chair, do you have time?

The Chair (Mr. Shafiq Qaadri): Ms. Mangat.

Mrs. Amrit Mangat: Thank you, Ms. Mandhane. As you said, you're supportive of the legislation; right? If this proposed legislation is passed, how are the changes going to affect the workings of the Ontario Human Rights Commission? Can you shine some light on that?

Ms. Renu Mandhane: Yes. I think what we're really interested in is three main elements. First, that the Human Rights Code and the charter are woven throughout the legislation so it is very clear that those are constitutional and quasi-constitutional obligations. I think that's really important.

Secondly, the enhancement of accountability and oversight: This role for the inspector general is really important in terms of addressing systemic discrimination. That's always been something that has been a bit of a—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Mangat. To the PC side: Ms. Scott.

Ms. Laurie Scott: Thank you very much for appearing here. There are a lot of questions that could be asked here. When you said "systemic discrimination," whether black or indigenous—we just heard about the fact that there are no numbers for female officers. Can you expand a little bit on why there is not any data? Are you confident that Bill 175—I heard you say you're not as confident that it's going be in regulations. Can you just comment?

Ms. Renu Mandhane: Yes. Maybe I'll give you an idea of what we believe data can do. You've probably heard, from the black community, concerns about over-policing. I think what we want to see is data collected on the different kinds of interactions civilians have with police that may not result in charges; things like carding, traffic stops. But things like possession-of-drugs charges—we think that if you actually collected data and disaggregated that we'd have a better sense of what kinds of specific interactions are at issue so that you could start to go beyond training and actually talk about what kind of discretion may need to be limited in those very specific instances.

Ms. Laurie Scott: Okay. Do you believe that, in general, police forces are fair?

Ms. Renu Mandhane: Yes. I think that we don't have a crisis in policing, but at the same time the communities the commission is in touch with are deeply concerned about over-policing of certain communities—indigenous and black—and also about the impact that mental health illness is having on contact with law enforcement.

Ms. Laurie Scott: Switching to the other side of human rights, in the sense that police officers—there have been many deputations about the fact that they are going to feel discrimination when there's more power given to police chiefs, that they can actually fire police officers for acquiring, say, PTSD—I'll use that as an example—or some type of disability on the job. Can you comment on that?

Ms. Renu Mandhane: Yes, I can, and I will ask my colleague if he wants to add to that. I guess all I'd say is that within the act it does reference the requirements of the Human Rights Code. The Human Rights Code is quasi-constitutional, but there are defences within the act. The code requires reasonable accommodation to the point of undue hardship. What we think is that this looks like it recognizes that limit of undue hardship, but it really depends on how it's applied.

I did also hear about reprisal for bringing complaints forward. These are all things that are meant to be illegal under the Human Rights Code, but at the same time they're very difficult to enforce. I think that the bill does reference the code and the code having primacy, which is really what the mandate of the commission is: to ensure that the code has primacy.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Scott. To the NDP side: Mr. Natyshak.

Mr. Taras Natyshak: Thanks so much for being here. I'll move closer to the mike so you can hear me. The collection of data for future reference in determining whether we are applying policing powers adequately and fairly: Does that requirement exist in any other jurisdictions? If so, what have been the effects of that data and segregating the data as you've suggested?

Ms. Renu Mandhane: My understanding is, it does exist in many US jurisdictions. Obviously it's not federal, but at a local policing level, different police forces have been collecting this data for some period of time, so there is precedent for it. There's also precedent in the UK. It has been used to isolate the types of interactions where there has been disparity.

Mr. Taras Natyshak: But nothing in Canada?

Ms. Renu Mandhane: Not yet. There have been small data collection projects that the commission undertook with the Ottawa Police Service, but nothing that's mandatory.

Mr. Taras Natyshak: It would seem to me that we see pieces of that data quite often in—

Ms. Renu Mandhane: The Toronto Star and others have analyzed it.

Mr. Taras Natyshak: Yes, but just not in a comprehensive, cumulative type of format that would allow us to find patterns.

Ms. Renu Mandhane: Yes. That's not currently possible.

Mr. Taras Natyshak: Who would be responsible for that collection?

Ms. Renu Mandhane: We believe that the police services and the oversight agencies should be responsible for collection and public distribution, consistent with open government. Of course, it would require organizations like the commission and community organizations to actually analyze that data to understand what it means in social context.

Mr. Taras Natyshak: Is it fair to say that they are already collecting that data?

Ms. Renu Mandhane: No—

Mr. Taras Natyshak: No? I mean, I'm just thinking simple arrest/charge, and there is a file.

Ms. Renu Mandhane: They collect that data. What they don't often collect is race and other markers of the identity of the individual. So when you're trying to do disparity analysis, it's difficult sometimes to piece together how it impacts code-protected groups.

Mr. Taras Natyshak: And you'd like to see that reflected through regulation in this bill?

Ms. Renu Mandhane: Through the legislation.

Mr. Taras Natyshak: Through the legislation.

Ms. Renu Mandhane: Yes.

Mr. Taras Natyshak: Have you pitched that idea to the appropriate ministry?

Ms. Renu Mandhane: We have consistently made that recommendation, both for this act but also through the Anti-Racism Act.

Mr. Taras Natyshak: And the response has been no?

Ms. Renu Mandhane: I don't think the response has been no. I think the response has been, "We're going to do it through the Anti-Racism Act and the regulations that come through that." It's just that policing tends to really—it needs to be in the Police Services Act for it to really get life. That's why I think it's really important to put it in this legislation.

Mr. Taras Natyshak: Thank you so much for being here.

Ms. Renu Mandhane: Thanks.

The Chair (Mr. Shafiq Qaadri): Thanks, Mr. Natyshak, and to you, Ms. Mandhane and Mr. Horner, for your deputation on behalf of the Ontario Human Rights Commission.

MR. TIM TROW

The Chair (Mr. Shafiq Qaadri): I'd now invite our next presenter to please come forward: Mr. Tim Trow. Please be seated. You've seen the drill. You have five minutes to make your opening address. Please begin now.

Mr. Tim Trow: Good afternoon and thank you very much for being here. My name is Tim Trow. I am retired from the Ministry of the Attorney General and I am a life-long volunteer with animals. I am here to ask you to recommend including the Ontario SPCA under the Safer Ontario Act.

The OSPCA employs inspectors and agents, each of whom, within the OSPCA mandate, "has and may exercise any of the powers of a police officer." The OSPCA does not merely inspect or monitor; it investigates and lays charges, including charges for Criminal Code indictable offences that can lead to prison. The OSPCA is a police service in all but name, and it belongs under the Safer Ontario Act.

In their independent review of the OSPCA, the Honourable Patrick LeSage and former veterinary college dean Dr. Alan Meek observed: "Although the OSPCA Act gave the OSPCA powers, some of which are akin to those of a police officer, no provision was included in the legislation to identify an agency responsible for overseeing the OSPCA in its execution of the legislative mandate. This has created the problematic situation of the OSPCA essentially being responsible to police itself."

The Honourable Michael Tulloch favoured impartial and independent operation of the policing oversight system. Please recommend including the OSPCA law enforcement within the system established by the Safer Ontario Act so that the same checks and balances will benefit us all.

Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Trow. We'll begin with the PC side: Mr. Yakabuski.

Mr. John Yakabuski: Thank you very much, Chair, and thank you, Mr. Trow.

It's a pretty singular issue there, and not one that we've been asked to this point. I guess my question is

this: They're not considered to be sworn police officers, agents of the OSPCA, correct?

Mr. Tim Trow: I don't know. They certainly have all the indicia that I know of, of being a police officer. Their activities are as highly difficult and important as any police officer's. I think that the Meek LeSage report pretty well felt that there's a serious lack of oversight for this organization.

1620

Mr. John Yakabuski: I'm not questioning that.

Mr. Tim Trow: Yes, I understand.

Mr. John Yakabuski: When we start calling them, do they carry sidearms? I'm not aware that they do.

Mr. Tim Trow: They do if, say, there are animals hurt on the side of the road. They do have firearms.

I think the issue is that the OSPCA act is about 125 years old. I think that the terminology is simply archaic terminology. The reality is that they're a modern police force, and they should have oversight.

It's not niche, either. You're talking about an awful lot of people whose livelihood involves animals and whose recreation involves animals. They have no oversight availability.

Mr. John Yakabuski: There's not oversight on them themselves, you mean?

Mr. Tim Trow: No.

Mr. John Yakabuski: Okay. I just presumed that they're answerable to somebody. They don't work without a rule book.

Mr. Tim Trow: They do.

Mr. John Yakabuski: They do?

Mr. Tim Trow: Justice LeSage said it: They police themselves.

Mr. John Yakabuski: It's not something that I'm overly familiar with; I have to be honest with you. You're throwing something out there that we haven't had a chance to digest.

Mr. Tim Trow: Well, I apologize for that. I just thought it was important—

Mr. John Yakabuski: And because it's not in the bill as it is, we haven't had a chance to even consider it. But I don't think it's an issue to bring this into the bill. I think that this may be something that needs to be looked at separately, if there's a concern that there is not enough oversight on officials of the OSPCA, within their mandate of enforcing laws regarding animal protection. Those are the only laws that they can enforce; correct? They can't pull me over for speeding or anything like that. They're only dealing with the protection of animals; correct?

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski. To Mr. Natyshak of the NDP.

Mr. Taras Natyshak: Thank you, Mr. Trow. Your presentation is quite specific and concise and doesn't leave too much for me to consider. It's either put this in the auspices of the bill, or don't.

Mr. Tim Trow: Exactly.

Mr. Taras Natyshak: With that, I will take this back to people smarter than I, which is a lot more people, and have them consider what the implications would be and how that would happen.

I tend to agree with my colleague Mr. Yakabuski that this might require its own stand-alone legislative initiative. If that's something that is required down the road, then I'm happy to take a look at it.

Mr. Tim Trow: Thank you.

The Chair (Mr. Shafiq Qaadri): To the government side: Mrs. Sandals.

Mrs. Liz Sandals: Thank you very much. It's very clear, what you're asking for. In most cases that we've been talking about, we've been talking about the conditions under which some of the oversight would click in, in terms of police officers—should we explicitly include sexual assault; or there's the death of a person when they're interacting with the police—things like this.

I'm trying to figure out how the OSPCA officers and investigators would fit into that sort of a description of when you attract the oversight.

Mr. Tim Trow: Perhaps I could just give an example. Both a police services person and an OSPCA person can actually be investigating the exact same thing. There's even a provision in the OSPCA act where they can switch responsibilities back and forth. So you could be a citizen of Ontario, and if you are fortunate enough to run into an officer who is a police services officer, you would have this amazing new oversight. If you happen to run into an OSPCA agent, you wouldn't have anything.

Mrs. Liz Sandals: But Bill 175, in terms of the oversight body—if something is going to be investigated by the SIU, it's pretty explicit in terms of what the police officer would do to attract an investigation by the SIU. I'm trying to imagine what an SPCA officer could do that would be parallel or that would fall into that same category of serious crime that would attract investigation by the SIU.

Mr. Tim Trow: Which is sort of the same thing Mr. Yakabuski said. I think it's really the civilian oversight that is needed, because you're right: There aren't a lot of firearms in use. But there's no civilian oversight.

Mrs. Liz Sandals: So it's not the SIU accountability part of it that you're suggesting. Are you suggesting there should be some sort of provincial civilian board that looks over the SPCA?

Mr. Tim Trow: The compliance agency and the compliance director: I think that would solve the issue. A proper civilian oversight—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Sandals, and thanks to you, Mr. Trow, for your deputation and presence.

Mr. Tim Trow: Thank you very much.

The Chair (Mr. Shafiq Qaadri): I just want—

Interruption.

Ms. Soo Wong: Just before we do, Mr. Chair, the bell is ringing. I think we're ahead of schedule. This is triggered by—

The Chair (Mr. Shafiq Qaadri): Thank you. Just give me a moment. Is Ms. Wong of Chinese and Southeast Asian Legal Clinic available—

Interjection.

The Chair (Mr. Shafiq Qaadri): —Mr. Wong, Vince Wong, and/or Jo-Ellen Worden? Okay. They are both scheduled at 5 p.m.

I think Ms. Wong is well advised. We will recess till 5 p.m.

Ms. Laurie Scott: Wait, wait. What about Queen's University?

The Chair (Mr. Shafiq Qaadri): Pardon me?

Ms. Laurie Scott: At 5:15 is Queen's University.

The Chair (Mr. Shafiq Qaadri): Are they here?

Mr. John Yakabuski: Is Queen's University here?

The Chair (Mr. Shafiq Qaadri): No, it's Mr. Worden. I just asked.

Ms. Soo Wong: Ms. Worden.

The Chair (Mr. Shafiq Qaadri): Okay, there are two people. One is Mr. Wong at 5 p.m. The second person is Ms. Worden at 5:15. Neither is here.

Ms. Soo Wong: How about the other witness who didn't show up, the one at 3:30, the one from Ryerson University?

The Chair (Mr. Shafiq Qaadri): As the Chair—

Mr. John Yakabuski: Excuse me, Chair, but I don't think we should recess till 5 o'clock. There's a good chance they're going to show up earlier than that. Nobody is going to come here at the last—

Mrs. Liz Sandals: Yes, but we have to recess.

The Chair (Mr. Shafiq Qaadri): Actually, no, he's correct. We could come back at, let's say, 5:40, execute for 15 minutes and then still make that vote.

Mrs. Amrit Mangat: At 5:40?

The Chair (Mr. Shafiq Qaadri): Sorry, 4:40.

Mr. John Yakabuski: Ten minutes, sure. Because if they show up, why don't we keep going? We still have time to deal with one deputant and then go for the vote.

Mrs. Liz Sandals: Hey, if you're going to ring bells again, we're going to be here until 6.

Mr. John Yakabuski: I don't know. I'm not there.

The Chair (Mr. Shafiq Qaadri): We will.

Interjections.

The Chair (Mr. Shafiq Qaadri): All right. Colleagues, a 10-minute recess. Please fight it out in the hallways.

The committee recessed from 1628 to 1640.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. In the interest of time, we reconvened at 4:40 on the dot.

CHINESE AND SOUTHEAST ASIAN LEGAL CLINIC

The Chair (Mr. Shafiq Qaadri): We'll have Mr. Wong of the Chinese and Southeast Asian Legal Clinic present his opening remarks for five minutes, at which point we'll break for the vote. Mr. Wong, your five minutes begins now.

Mr. Vince Wong: Thank you very much to the committee for having me here. I understand you have a vote very quickly, so I'll be brief and jump right to it.

My name is Vince Wong. I'm a staff lawyer at the Chinese and Southeast Asian legal clinic. Our clinic is a not-for-profit community legal clinic that represents low-income, non-English-speaking Ontarians in the Chinese, Vietnamese, Laotian and Cambodian communities.

In general, our clinic welcomes the introduction of Bill 175. It has got a lot of really helpful reforms, and it's a bill that is much needed in terms of reforming police oversight and adopting many of the recommendations of Justice Tulloch in his report.

We have eight recommendations. They're all spelled out in the materials that I've given you, and they're all summarized at the very last page in an appendix. Six of the eight recommendations deal with the SIU, the seventh deals with the previous OIPRD, now the complaints agency, and the final one deals with the discipline tribunal.

The first, and probably the most important—and I understand you've heard this from some others—is section 18 of the Policing Oversight Act, which is basically an investigation of related persons. The way it's framed as currently spoken to, it basically says that any other person can be wrapped up in that investigation, which includes, of course, civilian witnesses. Now, to be an effective body, the SIU relies on the co-operation of civilian witnesses, and a confidentiality assurance cannot be given with the way that section 18 is written right now. It would cripple SIU investigations and create a chilling effect on witness co-operation.

A second recommendation that's related is the access to SIU files, which can be found in subsection 19(5) of the act. It requires the SIU to hand over its files to police services if the SIU director refers a potential criminal offence to police services for investigation. Again, it has a chilling effect of discouraging civilian witnesses from co-operating with the SIU if they suspect that their statements and information could be passed on to the police without consent. I urge you to revisit the wording of subsection 19(5).

The third recommendation is the duty to comply. The duty to comply is obviously absolutely critical to the function of the SIU. If officers don't comply with its orders, then there is really nothing that it can do. It's legislated in section 33, but Bill 175 ends up diluting this duty by adding a qualifier: "unless it is impracticable to do so." The term is not defined anywhere in the legislation, "impracticable." It's a vague and broad qualifier that is neither necessary nor desirable. We think that it should be removed.

The fourth is with respect to discretion to conduct investigations. Previously, the SIU retained the discretion to conduct investigations except when ordered to do so by the Attorney General. Now, section 17 of the Policing Oversight Act unduly fetters that discretion by allowing police chiefs, their designated authorities and others to mandate that SIU conduct and investigation. This effectively gives police powers of direction over the body that is supposed to oversee it, which would be fatal to maintaining public trust in the SIU. We recommend that that be amended.

The fifth one that, again, you've heard from several other parties is—

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Vince Wong: Sorry, what was that?

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Vince Wong: —sexual assault as a stand-alone ground in section 16. We also recommend that it be added.

Number six is off-duty officers, which is a critical one. Before, the SIU jurisdiction did not differentiate between on-duty and off-duty officers. Off-duty officers, in certain cases where there were, for instance, sexual assault allegations, were under the SIU's jurisdiction. With the current limiting of the SIU power to investigate off-duty officers in section 16, that may not be able to be done.

The final recommendation I'll point out before I'm out of time is with respect to the Ontario Policing Complaints Agency. Right now, because of budgetary constraints, this agency has the power to refer complaints to—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Wong, for your introductory remarks.

We will be recessed until we return from the vote. I cannot tell you which way to vote, but I can invite you to vote. Then we'll reconvene, with Mr. Natyshak beginning the questioning. The committee is in recess.

The committee recessed from 1645 to 1657.

The Chair (Mr. Shafiq Qaadri): Mr. Natyshak: three minutes.

Mr. Taras Natyshak: Thank you so much, Mr. Wong, for being here. I'm giving you the rest of my three minutes because I know you have lots more to say. If you can elaborate on your fifth point, on sexual assault—was it number five or six? I'd just like to know a little bit more about that. But continue on with your train of thought and your presentation.

Mr. Vince Wong: I appreciate it very much. If I can elaborate a little bit more on recommendation 5, which is adding sexual assault as a stand-alone ground: Again, this is something that was specifically recommended by Justice Tulloch in his policing overview report. It's in recommendation 5.7(d). It's specifically there to target and specifically say that it is within the ambit of the SIU's review jurisdiction to review cases of sexual assault. I really feel that this is a non-partisan issue. I think all three parties can agree that, especially in cases where there is potential for a large imbalance of power, this is something that is set out in the legislation. People can be accountable to it. They know it's there, and they know that the police forces and the police oversight bodies are all taking that very, very seriously. So that's recommendation 5.

I left off a little bit on recommendation 7, which is with respect to the complaint agency. I think it's very, very important and I don't think it has been brought up yet. In Justice Tulloch's recommendations, from 7.20 to 7.22, it contemplates that the complaints agency should be properly resourced, and eventually, within five years, investigate and take on all public police complaints because that's really the best place institutionally for it.

However, the bill still contemplates, in section 81 of the oversight act, that the complaints director will refer complaints back to chiefs of police for investigation, or it has that power. It's understandable, pragmatically, why this might be so, because it's not properly resourced right now. But Tulloch has said five years; that's the interim period we're looking for. The bill should therefore reflect that recommendation by implementing a sunset clause on section 81. Section 81 is the power of the complaints director to refer to the chief of police to investigate this public complaint. I think a sunset clause of five years would be reasonable. After that five years, that's when the government can take a look at it again and see whether we're at the institutional capacity to take on those things.

The final one, a recommendation—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Natyshak. To the government side: Ms. Wong.

Ms. Soo Wong: Thank you very much for your presentation to the committee and these eight recommendations.

Specifically dealing with the investigation, I want to go through one of your recommendations: the concerns about the witness coming forward before the investigation. Can you elaborate a little bit more about that, and about giving more discretionary authority to the SIU in certain cases? Can you elaborate to the committee about those two pieces?

Mr. Vince Wong: Sure. I think the civilian witness issue was something that was not fully contemplated by the drafters of the legislation; that was kind of an unintended consequence. For section 18, on an investigation-related person, the section applies to any other person the SIU may cause the investigation—so basically, may have also resulted from the conduct of any other person.

We know that civilian witnesses are an absolutely crucial part of the functioning of the SIU's mandate. Either that has got to be specifically spelled out, that they're not captured within this ambit so that assurances can be properly provided to people who are willing to come forward in a very scary situation—a lot has to be done to look at that—or consider removing that. That's what I would say on civilian witnesses.

Your second question is with respect to—

Ms. Soo Wong: The discretionary authority of the SIU.

Mr. Vince Wong: That is section 17 of the Policing Oversight Act. I think section 17 is one of those parts of the bill that needs to be completely rewritten. What it does right now is that it's saying that the SIU has the duty to start an investigation if it is notified by certain authorities, including chiefs of police and their designated authorities. That power was never in the pre-Bill-175 statutory regime.

What it should be amended to is to reflect recommendation 5.3 in Tulloch's report. Specifically, the SIU should retain the discretion to start an investigation when it is in the public interest. When you're thinking about what is in the public-interest test, that's when being

notified by a chief of police, being referred it, is a very relevant factor, and it should be spelled out in the legislation. Luckily, Justice Tulloch has done all of the legwork on that, so I really feel like that should be reflected.

Ms. Soo Wong: Thank you very much.

The Chair (Mr. Shafiq Qaadri): To the PC side: Mr. Yakabuski.

Mr. John Yakabuski: Thank you, Mr. Wong, for joining us today. I've got a couple of questions because I want to be clear. Your recommendation number 5, with respect to sexual assault and misconduct as a stand-alone ground: It's not in the bill. How would that be dealt with within the bill today? How would accusations or allegations of sexual assault be dealt with in the bill today, if passed?

Mr. Vince Wong: Basically, what we're asking for is a specific amendment. Right now, there are three grounds; it's A, B, C—

Mr. John Yakabuski: How would they be dealt with if that's not changed?

Mr. Vince Wong: Currently, sexual assault is kind of fitted into the current legislative regime, which is very similar right now in the Police Services Act. It's similar in terms of the grounds that can start an investigation.

But going back to our community, and going back especially to the ethno-linguistic legal clinics that we work with in coalition, we found that it comes up very frequently, situations of at least alleged sexual assaults, that it really deserves its own provision.

Mr. John Yakabuski: But they are being dealt with; correct?

Mr. Vince Wong: There are current cases where the SIU is investigating with respect to alleged sexual assaults allegedly committed by police officers, yes. This is true.

Mr. John Yakabuski: We are not ignoring them, are we, under the bill the way it exists?

Mr. Vince Wong: No, I don't think it's fair to say that the way that the phrasing currently exists, the SIU is ignoring them. But I do feel—

Mr. John Yakabuski: Because of the prevalence, you want a stand-alone.

Mr. Vince Wong: Absolutely. Yes.

Mr. John Yakabuski: I understand that.

I have one question on witnesses. You're saying that civilian witnesses in an SIU case should not be identified, or they should have confidentiality. If an officer is involved, he or she will have a lawyer representing them. Would that be taking away their right to know who is testifying against them?

Mr. Vince Wong: There are witness protection provisions in the current way that the SIU is doing it. What I'm specifically spelling out is that the way it's currently written, a civilian witness may be subject to prosecution by the SIU or by related—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski, and thanks to you, Mr. Wong, for your deputation on behalf of the Chinese and Southeast Asian Legal Clinic.

Mr. Vince Wong: Thank you.

QUEEN'S UNIVERSITY FACULTY OF LAW

The Chair (Mr. Shafiq Qaadri): I now invite our final presenter of the day, Ms. Worden of Queen's University Faculty of Law, to please come forward. Please be seated. Your five minutes begin now.

Dr. Jo-Ellen Worden: Thank you. Ladies and gentlemen of the Standing Committee on Justice Policy, honourable ministers, members of the opposition, third-party members and other honoured guests and speakers, I wish to take a moment to stand and acknowledge Canada's indigenous people upon whose traditional lands this Legislature stands.

I wish to thank Minister Marie-France Lalonde, the Minister of Community Safety and Correctional Services, for undertaking the sometimes daunting tasks associated with her portfolio and for introducing this vital bill with a view toward enhancing the safety of all Ontarians.

I also wish to acknowledge and thank Dean William Flanagan, Associate Dean Joshua Karton and a very special note of thanks to Professor Nicholas Bala, my thesis supervisor in the faculty of law at Queen's University, for their incredible support and encouragement as I have been engaged in conducting one of this province's first public empirical studies that examines systemic responses to law-enforcement-officer-involved domestic violence in the province of Ontario.

I would be remiss if I did not also acknowledge the countless unheard voices of the spouses, intimate partners, children and colleague-victims of law-enforcement-officer-involved domestic and sexual violence, also known as police-perpetrated domestic and sexual violence, in this country.

For those of you members of the Standing Committee on Justice Policy who may be unfamiliar with the term "police-perpetrated domestic violence," it is a syndrome referred to in a document sent to me by the Ministry of the Attorney General's office in 2006 that describes the domestic and sexual violence that occurs at the hands of men and women who have been trained in the tactical maneuvers of intimidation, interrogation, manipulation, deception, power and control. It is a category of violence that has now been expanded to include not only police officers as violent offenders but also those military officers who choose to engage in intimate partner and other forms of family violence.

Over a decade ago, on January 31, 2007, I sat in this very spot before another Standing Committee on Justice Policy and beseeched the committee, as it undertook to amend Ontario's Police Services Act following the LeSage report, to seriously consider including amendments to the Police Services Act which provided public acknowledgement of police family violence and a transparent, legislated legal instrument for safe and expeditious recourse for OIDV—which is officer-involved domestic violence—victims.

1710

Almost 12 years after my initial deputation, rather than being viewed as the vulnerable victims they are, often the children, spouses and partners of abusive law enforcement personnel who disclose acts of officer-involved domestic and sexual violence are seen through a negative lens; subjected to extreme forms of intimidation, stigmatization, torture, threats and violence; are deemed personae non gratae with the involved police service; and possess rights that are essentially disavowed.

Victims cannot disclose without risk of lethal outcomes, and in Ontario have been forced to form secret support groups and go into hiding. There is scant published Canadian research pertaining to the incidence prevalence and impact of officer-involved domestic violence in Canada. Canadian systemic responses to officer-involved domestic violence remain in their infancy.

Honourable members, improving the lives of OIDV victims requires addressing the continuum of constraints and systemic insufficiencies that obstruct effective incident management. Ladies and gentlemen, police family violence is not a new phenomenon.

Members of the Standing Committee on Justice Policy, although Bill 175 goes a long way in addressing the many inadequacies of the current acts that govern policing and police oversight in the province of Ontario, it does little to acknowledge, transparently and publicly, the harassment, discrimination, exclusion, alienation and gender-based violence countless female police officers and family members and children of violent police officers endure, voiceless, on a daily basis.

There are portions of this act that concern me greatly. One of the foremost portions of the act that concern me is the provision that members of police associations may not access the provisions under the act to file complaints—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Worden. We begin the questioning with the government side: Ms. Wong.

Ms. Soo Wong: Thank you very much for your presentation, Dr. Worden. I believe, in terms of your research, you raise some concerns about the whole issue of sexual violence and victims and what have you. Now, the previous witness before this committee, just before your presentation—and I want to get clarification from his organization; I believe it's the Chinese and Southeast Asian Legal Clinic—asked the committee to consider one of their recommendations, to add dealing with sexual assault misconduct as a stand-alone. Would you recommend that?

Dr. Jo-Ellen Worden: Absolutely, 100%.

Ms. Soo Wong: Okay. That will address some of your concerns that you just raised. Am I correct?

Dr. Jo-Ellen Worden: Yes, that will address concerns on behalf of sexual assault victims within the families of abusive police officers, but also there needs to be a mechanism where female officers—or male; I need to be gender-neutral—who are sexually assaulted by other officers, as well, to provide a mechanism by which they can access separate and very distinct, very specific provisions.

Ms. Soo Wong: You mentioned to us, in your role as a researcher, the whole issue of making sure that this bill—because the bill focuses specifically on dealing with oversight. Do you believe this proposed legislation will improve oversight and the whole issue about transparency? Because we heard not just about transparency but we also heard concerns raised about the whole issue of governance. In your research, do you focus on those, particularly dealing with governance and oversight?

Dr. Jo-Ellen Worden: I do. I'm happy to provide a written copy of my deputation, if that's possible. I do cover some of that. I think that this bill falls short in terms of transparency and a mechanism to address the sexual and domestic violence that occurs within law enforcement families. I feel that it falls short. I believe, also, that there needs to be a dedicated section and a specialized OIDV investigations unit within the new version, the new incarnation, of the OIPRD—

Ms. Soo Wong: Because I don't have a lot of time, I want to go back to the issue of sexual assault and the whole OIDV piece. Would it strengthen the legislation if we make sure that those officers deal with the criminal activity off-duty? We hear serious concerns raised when officers do illegal activities or domestic violence. If we add this piece of legislation that's being recommended by the previous witness, you want to make sure this also covers off-duty officers, right?

Dr. Jo-Ellen Worden: That is correct, because my current understanding of the SIU—and I've spoken with individuals from the SIU—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Wong. We'll move to the PC side: Ms. Scott—Mr. Yakabuski, as you like.

Ms. Laurie Scott: Okay. I'll let you finish that, if you want.

Dr. Jo-Ellen Worden: Their hands are tied in investigating police officers who commit acts of sexual violence out of uniform, as it were, so in their personal and private lives. I have been advised that they have no jurisdiction or they have discretion, and they hesitate to not investigate the personal activities of police officers.

Ms. Laurie Scott: Because that's where my original thought—

Mr. John Yakabuski: They hesitate to investigate.

Dr. Jo-Ellen Worden: They don't want to; that is correct.

Mr. John Yakabuski: That's what you mean? You said they hesitate to not investigate.

Dr. Jo-Ellen Worden: They do not investigate; that's right.

Mr. John Yakabuski: I just wanted to clarify that.

Ms. Laurie Scott: But they do not investigate because they don't want to investigate. They're still bound by the laws also.

Dr. Jo-Ellen Worden: They have discretion, and my understanding from conversations with members of the

SIU is that I would be hard-pressed to find an SIU investigator who would investigate the personal sexual misconduct of a police officer in the province of Ontario.

Ms. Laurie Scott: That's a pretty startling statement. You have the stats, you've done the research, and that's what you're saying, that they—

Dr. Jo-Ellen Worden: That is correct, yes. I've interviewed members of the SIU, yes.

Ms. Laurie Scott: And they say that, the SIU themselves?

Dr. Jo-Ellen Worden: The individual that I interviewed, absolutely.

Ms. Laurie Scott: Wow. So there have been no cases to your knowledge? You've done the research. I'm just kind of trying to clarify what you're saying. In your research, you've never found where a police officer has been charged for sexual assault on a family member?

Dr. Jo-Ellen Worden: Oh, no, I wouldn't say that, no. In my conversations with a member of the SIU, he was explicit in advising that the SIU avoids—cannot investigate matters of sexual assault and sexual misconduct of officers in their personal lives, so officers not in uniform.

This was a particular case. If the officer had sexually assaulted the individual in uniform, the SIU would be fine and open to investigate. But they have discretion not to, and they do not want to touch the personal lives of police officers with a 10-foot pole, to be—

Mrs. Liz Sandals: When it's the wife.

Dr. Jo-Ellen Worden: Pardon me?

Mrs. Liz Sandals: When it's the wife or their partner.

Dr. Jo-Ellen Worden: Yes, a partner or a child even.

Ms. Laurie Scott: Okay.

Yes, go ahead.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. John Yakabuski: Yes, that astounds me. So the SIU would only investigate if it happened while on duty?

Dr. Jo-Ellen Worden: Well, again—

Mr. John Yakabuski: So—if it was a partner assault while the officer was on duty, they would investigate it, but not if they're off-duty?

Dr. Jo-Ellen Worden: Yes. It was a very disturbing conversation. My conversation with the individual from the SIU was that if the officer had sexually assaulted the victim while in uniform, they had an open door to investigate. But because—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski. To the NDP side: Mr. Natyshak.

Mr. Taras Natyshak: Continue on your train of thought. "Because"—

Dr. Jo-Ellen Worden: But because the sexual assault occurred while the officer was "off duty" and not in uniform—and by the way, this particular officer was a detective, so he was never in uniform at that point in his career. But because the particular sexual assault occurred—and it was multiple sexual assaults, and Dr. Qaadri as well has been aware of this disclosure—the SIU would not investigate. They exercised their discretion to leave it alone.

Mr. Taras Natyshak: Okay.

Dr. Jo-Ellen Worden: Oh, sorry.

Mr. Taras Natyshak: Yes, it's up to me now. You have a news clipping that I think you want to reference.

Dr. Jo-Ellen Worden: Oh. You know what? Yes, I do. Basically, it's an article written by Elizabeth Renzetti, who made the comment, "Women killed by their spouses are not casualties in someone else's story."

I wanted to mention this, that the victims of officer-involved domestic violence—the colleague officers, the intimate partners, the spouses—are no longer willing to be the collateral damage and the casualties in some police officer's tragic story of PTSD. That's not their responsibility. I wanted to assert that I'm of the view that the province of Ontario has failed police officer families.

I absolutely believe in undergirding and supporting officers who suffer from post-traumatic stress disorder. I have seen the best of humanity in many officers I've served with on Canada's DART teams during disaster situations—I'm a member of one of Canada's medical DART teams—but I've also seen the worst of humanity in police officers beating their spouses, their children and sexually assaulting their colleague officers.

That was just my comment, that their stories of post-traumatic stress disorder are terribly unfortunate. I believe that we need to have resources to support them, but the victims are no longer willing to be casualties in those tragic stories.

Mr. Taras Natyshak: Through your study, how prevalent is OIDV?

Dr. Jo-Ellen Worden: In the research that I have thus far—and the study is not complete, so the research that I have engaged in to this point—initial findings have indicated that the prevalence of domestic violence in law enforcement families is two to three times the national average. So it's two to three times more likely that domestic violence occurs in police families than it does in non-police families.

Mr. Taras Natyshak: Police associations have expressed concern about the use of or accessing PTSD treatment, given the potential risks to their employment under the clauses within Bill 175. They're saying that because—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Natyshak, and thanks to you, Ms. Worden, for your deputation on behalf of Queen's University.

The written submission deadline is in 39 minutes. Monday, March 5, at 12 noon, is the deadline for amendments.

This committee will reconvene in committee room 1 on Tuesday, March 6, at 9 a.m. for clause-by-clause consideration.

I commend all members of the committee for their endurance and patience.

The committee is now adjourned.

The committee adjourned at 1721.

STANDING COMMITTEE ON JUSTICE POLICY

Chair / Président
Mr. Shafiq Qaadri (Etobicoke North / Etobicoke-Nord L)

Vice-Chair / Vice-Président
Mr. Lorenzo Berardinetti (Scarborough Southwest / Scarborough-Sud-Ouest L)

Mr. Lorenzo Berardinetti (Scarborough Southwest / Scarborough-Sud-Ouest L)
Mrs. Amrit Mangat (Mississauga–Brampton South / Mississauga–Brampton-Sud L)
Mr. Jim McDonell (Stormont–Dundas–South Glengarry PC)
Mr. Arthur Potts (Beaches–East York L)
Mr. Shafiq Qaadri (Etobicoke North / Etobicoke-Nord L)
Mr. Ross Romano (Sault Ste. Marie PC)
Mrs. Liz Sandals (Guelph L)
Miss Monique Taylor (Hamilton Mountain ND)
Ms. Soo Wong (Scarborough–Agincourt L)

Substitutions / Membres remplaçants
Mr. Taras Natyshak (Essex ND)
Mr. Lou Rinaldi (Northumberland–Quinte West L)
Ms. Laurie Scott (Haliburton–Kawartha Lakes–Brock PC)
Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

Clerk / Greffier
Mr. Christopher Tyrell

Staff / Personnel
Mr. Andrew McNaught, research officer,
Research Services

TAB 12

From: Fit4Duty [mailto:Kelly@fit4duty.ca]
Sent: Monday, March 05, 2018 11:49 AM
To: Fit4Duty
Cc: STRAND, JAMES; GOETZ, DARYL; LAMPORT, GREGORY
Subject: Re: Overtime

Good morning members of the WRPS,

I have asked several times to be removed from the overtime email list, and yet I still receive these emails almost daily.

So, I thought I would say hello to you all and let you know what I've been up to.

Last week I made my second presentation to the Standing Committee on Justice Policy regarding the changes to the Police Services Act which would now allow a police services board to decide on their own that an officer is too sick to return to work.

Please have a watch and share as you see fit: https://youtu.be/bRVv1q2CHaU. (My Youtube channel has a video of my first presentation, if you are interested to watch).

Maybe now I will be taken off this list.

Have a great day,
Kelly

On Mar 5, 2018, at 6:21 AM, STRAND, JAMES <James.Strand@wrps.on.ca> wrote:

I need two officers to work overtime covering a zone on Tuesday March 6th, 2018 from 0700 to 1330 hours. E-mail me directly with your response if interested.

Jim Strand
Staff Sergeant
North Division, Platoon B
Waterloo Regional Police Service
519-570-9777 (WRPS) ext.6310

james.strand@wrps.on.ca
www.wrps.on.ca

<image001.png>

Kelly Donovan
Fit4Duty - The Ethical Standard
kelly@fit4duty.ca
+1.519.209.5721
www.fit4duty.ca

These are the links to her 2 presentations to the legislative committee with respect to Bill 175:

https://www.youtube.com/watch?v=FQ0_umT8tb4

https://www.youtube.com/watch?v=bRVv1q2CHaU

This is a link to the Hansard transcript of her February 22, 2018 appearance. You can see the constructive dismissal reference in the 5th paragraph on the first page. She repeats it later on in response to a question. The Hansard for March 1,2018 is not yet available. In her March 1,2018, presentation she states that her whistleblowing cost her her job as well as making reference to the constructive dismissal.

http://www.ontla.on.ca/web/committee-proceedings/committee_transcripts_details.do?Date=2018-02-22&ParlCommID=9000&BillID=5295&Business=&locale=en&DocumentID=34573#P984_219667

Please let me know if you have any questions.

Virginia

Virginia Torrance
Solicitor
Legal Services Branch
Waterloo Regional Police Service
519-650-8552

virginia.torrance@wrps.on.ca
www.wrps.on.ca

Please note: This email **may** contain confidential and/or privileged information. This email or any part of it cannot be shown or distributed in any way (including being referenced in correspondence) to any person not employed by the Waterloo Regional Police Services ("WRPS") except where privilege has been explicitly waived in advance. If this email is sent by me to a person who is not a WRPS employee or contains matters **only** of fact, please disregard.

TAB 13

Subscribe to our mailing list

* indicates required

Email Address *

Subscribe

Her Blog

← ALL POSTS

Perceived Bias? Or Blatant, Advertised Bias?

March 10, 2018

If you follow my material, you'll know that in 2016 I reported to my police services board that corruption existed during internal investigations. As a result of that report, I faced constructive dismissal. In 2017, I resigned and published a research paper to bring those systemic issues to light. I met with senior policy advisor to the Minister who wrote bill 175 prior to the release of the bill, to ensure that we did not pass laws that would allow internal corruption to persist. I provided Brendan Tate with a 200-page document outlining the recommendations made to change police legislation over the past 25-years, and yet another copy of my 93-page report on misfeasance.

The Safer Ontario Act was subsequently presented to the Legislative Assembly. Despite the bill addressing a very small portion of Justice Michael Tulloch's recent Independent Police Oversight Review recommendations, the bill did not correct any problems identified in policing over the past 25 years by the Ontario Civilian Police Commission, the Ombudsman, Justice Morden, Justice Lewis, Justice Iacobucci, countless coroners' inquests, I could go on, and on.

As the bill made its way through our democratic processes, there were two days set aside to hear from the public. Before the second day had even concluded, it was announced that the bill had been amended and would be presented for third reading the following week. This is not the way for the government to show the

public it cares about its input. There were 282 amendments handed out on March 5th.

It is unclear if ANY of the issues that were addressed by members of the public were considered in the amendments to bill 175. In fact, the Liberals tabled a motion that former police officers cannot hold the position of Inspector General (which is investigating the conduct of Chiefs and board members). Was that a slap in *my* face? I believe I was the only former police officer who presented to the Standing Committee and stated that internal corrupt practices were interfering with the proper administration of justice and public confidence. Yet, the government wants to prohibit people like me from ever being considered for such an important oversight role?

Liberal MPP Arthur Potts said this was to eliminate the "perception of bias" yet the Liberals still believe that allowing a chief of police to investigate another chief of police for criminal offences, allowing current police officers to be Inspectors, and allowing police to investigate police for internal misconduct or criminal allegations is all ok. Is there no perception of bias there? The public have said loud and clear that police should not investigate police. Not only does bill 175 allow for this to continue, it also ensures there will be no internal oversight as even when a police officer makes a "Disclosure of Professional Misconduct" (Part VIII of Sched. I), the chief will ultimately control the investigation.

The government is selling this bill to its MPPs and the public as "improving oversight" when in fact it gives more power to police chiefs. Those powers include:

- conduct unmonitored internal investigations of its own members, including fellow chiefs (Sched. I, s. 95 & 143(1)) - *the only oversight of this process is civil litigation which is already costing the taxpayer millions in settlements*;
- issue discipline to an officer without a hearing (Sched. I, s. 145(5)) which is unconstitutional - *and will cost the taxpayer millions when these challenges are brought before the courts*;
- refuse to produce information to the Inspector General (Sched. I, s. 81(4));
- release personal information to the police services board (Sched. I, s. 40(4.1) & (4.2)) - *not sure what the Information & Privacy Commissioner will think of this*;

The police services board used to be the conduit between the public and the police to ensure local accountability and engagement. Now, under subsection 38(5) of

Sched. I: the police service board cannot establish policies on the deployment of officers, this is at the sole discretion of the chief.

Before Bill 175, members of the public could make complaints about police to the OIPRD, and complaints about board members and chiefs to the OCPC. Now, members of the public can **still** make complaints about police misconduct to a new body called the Complaints Director and to the Inspector General, if it is about a board member or chief. The names have changed, and the hearing process for officers has improved, but this is only for complaints that originate with the public.

So, how has Bill 175 improved transparency and accountability?

If the Inspector General suspects misconduct by a police officer, again, it is sent back to the chief to conduct an internal investigation. The Inspector General is only looking for violations of the Act by chiefs or board members. As soon as an allegation becomes criminal, both the Complaints Director and the Inspector General send it right back to the police (unless it meets the narrow SIU mandate). From what I heard of public debate, the issue the public have with trusting the police is what is done internally, and in secret. These internal investigations are not transparent and allow for favouritism, patronage and cronyism. But, I suppose a former police officer would not be able to identify those corruption risks [*tongue in cheek*].

There is a reason the Hon. Yasir Naqvi, Attorney General, has ignored every single request I have made to contact him, (mailed him my report in May, 2017, emailed him the report July, 2017, emailed a letter January, 2018). That reason is that I do not have the political influence, the power or the status as those individuals posing with him in the photo above. I am simply an informed, educated, experienced and ethical individual in this province who has already fallen victim to ineffective police legislation. And, I still stand by my original point; until you provide internal oversight and transparency, it doesn't matter what you do to help the public; you are facilitating corruption. Police chiefs already use mechanisms such as chiefs complaints and criminal charges to rid the service of an unfavourable officer (this was pointed out in the OCPC's 1992 report of the Metropolitan Toronto Police Force's Internal Affairs division). Now, police chiefs can use internal discipline, criminal charges AND the officer's disability as a means to dismiss them. I know this; because it happened to me.

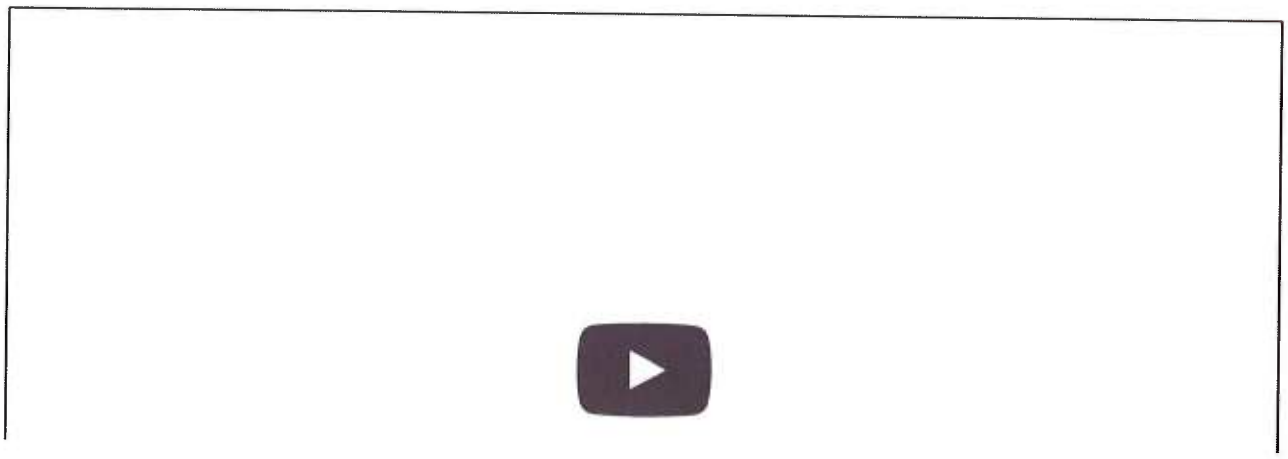
Generations to come will have to live with the Safer Ontario Act; sadly politicians come and go.

Media Appearances

LINKS PAGE

Kelly Donovan at Queen's Park

February 22, 2018, addressing the Standing Committee on Justice Policy regarding Bill 175 (Safer Ontario Act).



TAB 14

Home Moments Notifications Messages Search Twitter Tweet

ASmall2 @Auntie_gcsc · Jul 30

July 30 commemorates the day our Founding Fathers recognized the need to protect the courageous who step forward to report corruption when they see it. #NationalWhistleblowerDay reminds us to honor and support those who speak up when they witness fraud, abuse or waste.

1 10 14

Fit4Duty™
@Fit4Duty_Ethics

Follow

Replying to @Auntie_gcsc

In Canada we allow government entities to go after whistleblowers. #sadstateofaffairs #nonationalwhistleblowerday #governementdoesntlisten

Kelly Donovan presenting to the Standing Committee on Ju…
February 22, 2018 www.kellydonovan.ca
youtube.com

5:00 AM - 31 Jul 2018

Tweet your reply

Fit4Duty™
@Fit4Duty_Ethics

Kelly Donovan is a whistleblowing former police officer and published author continuing the good fight to improve workplace culture everywhere.

and their families....it is certainly not insignificant.

Follow

Who to follow · Refresh · View all

Angie Rivers @boysclubis... Follow

Valarie Findlay @JaneMon... Follow

TAB 15

Home | Moments | Notifications | Messages | Search Twitter | Tweet

Fit4Duty™ @Fit4Duty_Ethics · 19h
@MatthijsseAmy @gmmack29 @tntnorm @mobinfiltrator @JaneMoneypenny @jopolini I am being silenced and accused of a human rights violation for presenting at #QueensPark about internal corruption. This is why the culture of #fear exists. We allow it

Kelly Donovan presenting to the Standing Committ...
February 22, 2018 www.kellydonovan.ca
youtube.com

4 | 6 | 8

Paul Manning @mobinfiltrator · 19h
Whats this about? Something new?
2 | 3

Valarie Findlay @JaneMoneypenny · 18h
Old but bad ...
1 | 2

Adam Sculthorpe @asculthorpe · 18h
This is crazy, how many other Kelly's and Paul's are out there suffering in silence?
3 | 3 | 4

Amy Matthijsse @MatthijsseAmy · 18h
More than anyone will ever know....
2 | 2 | 5

Adam Sculthorpe @asculthorpe · 17h
This makes my blood boil, is there an anonymous forum where these 'silenced and fearful' people are organizing themselves online?
1 | 1 | 1

Paul Manning @mobinfiltrator · 17h
Why anon?
1 | 1

Adam Sculthorpe @asculthorpe · 16h
Perhaps people in fear of losing their jobs or worse need a safe place to express themselves and share information.
2

Fit4Duty™ @Fit4Duty_Ethics · 16h
Our government does not want to know what lies beneath, anon or otherwise. Giving impunity to those reporting wrongdoing for even 1 day would expose a lot. We'd rather be blissfully ignorant. #Canada
2 | 4 | 7

Amy Matthijsse @MatthijsseAmy · 4h
The sad part it, until it happens to them, it's not their problem. Same goes for the #thinblue line. It's a brotherhood/sisterhood until you stand up for yourself against a "brother or sister". Then sides are taken. Alliances are made and it becomes a David vs Goliath.
1 | 3 | 3

POLICE PEOPLE @RealCanadianCop · 4h
The system, of which policing is a part, will protect itself at all costs.

A few sacrificial lambs may be required from time to time, but those lambs are almost always insignificant players.

See gas plant scandal...a bunch of nobodies were held to account.
1 | 1 | 2

Angella
@Angelwith_anA
Follow

Replying to @RealCanadianCop @MatthijsseAmy and 6 others

I know firsthand of the terror and trauma that is caused to those sacrificial lambs and their families....it is certainly not insignificant.

10:02 AM - 1 Aug 2018

1 Retweet **2** Likes

1 | 1 | 2

Tweet your reply

Amy Matthijsse @MatthijsseAmy · 53m
Replying to @Angelwith_anA @RealCanadianCop and 6 others
"I'm sorry this is happening. I wish I could help. I just don't want to get involved" #excusesfortheweak Yet those same people are more than happy to have the

Fit4Duty™
@Fit4Duty_Ethics
Kelly Donovan is a whistleblowing former police officer and published author continuing the good fight to improve workplace culture everywhere.

Who to follow · Refresh · View all
Angie Rivers @boysclubis... Follow
Valarie Findlay @JaneMon... Follow

Fit4Duty™
@Fit4Duty_Ethics

Kelly Donovan is a whistleblowing former police officer and published author continuing the good fight to improve workplace culture everywhere.

targeted ones pave the way for a better life. Just as long as they can watch from safety 🙄

1 4 3

and their families....it is certainly not insignificant.

Who to follow · Refresh · View all

Angie Rivers @boysclubis...
Follow

Valarie Findlay @JaneMon...
Follow

Home Moments Notifications Messages Search Twitter Tweet

Fit4Duty™ @Fit4Duty_Ethics · 19h
@MatthijsseAmy @gmmack29 @tntnorm @mobinfiltrator @JaneMoneypenny @jopolini I am being silenced and accused of a human rights violation for presenting at #QueensPark about internal corruption. This is why the culture of #fear exists. We allow it

Kelly Donovan presenting to the Standing Committ...
February 22, 2018 www.kellydonovan.ca
youtube.com

4 6 8

Norm @tntnorm · 18h
Totally agree, there should be a Chinese wall within all PSB/PS/PA's, also, and independent ombudsman/whistleblower office, formal policies-processes. If PS are to big to fail, then PA's need expanded structure to represent the majority, and access for outliers.

2 1

gmack @gmmack29 · 18h
Recent legislation (re: bill 175) could have addressed this. But the government didn't seem to find the need to hold police management accountable.

1

Norm @tntnorm · 18h
The Ont. PC's are big proponents of police unions. If ever there was a time, it is with this Premier, and I know meetings took place in Ottawa last week already. PA's are put in a very difficult position, as was witnessed in these recordings.

1 1

gmack @gmmack29 · 18h
I think that the politicians are more concerned about having the police cover up their misdeeds than exposing them. It's a giant game where everyone uses dirty little secrets to get what they want.

1 2

Fit4Duty™
@Fit4Duty_Ethics
Follow

Replying to @gmmack29 @tntnorm and 4 others

Gather as much dirt as you can on the others and then you can call the shots.

7:52 PM - 31 Jul 2018

2 Retweets **2** Likes

2 2

Tweet your reply

Fit4Duty™
@Fit4Duty_Ethics
Kelly Donovan is a whistleblowing former police officer and published author continuing the good fight to improve workplace culture everywhere.

and their families....it is certainly not insignificant.

Follow

Who to follow · Refresh · View all
Angie Rivers @boysclubis... Follow
Valarie Findlay @JaneMon... Follow

Home Moments Notifications Messages Search Twitter Tweet

Fit4Duty™ @Fit4Duty_Ethics · 19h
@MatthijsseAmy @gmmack29 @tntnorm @mobinfiltrator @JaneMoneypenny @jopolini I am being silenced and accused of a human rights violation for presenting at #QueensPark about internal corruption. This is why the culture of #fear exists. We allow it

Kelly Donovan presenting to the Standing Committ...
February 22, 2018 www.kellydonovan.ca
youtube.com

4 6 8

Paul Manning @mobinfiltrator · 19h
Whats this about? Something new?

2 3

Valarie Findlay @JaneMoneypenny · 18h
Old but bad ...

1 2

Adam Sculthorpe @asculthorpe · 18h
This is crazy, how many other Kelly's and Paul's are out there suffering in silence?

3 3 4

Fit4Duty™
@Fit4Duty_Ethics
Follow

Replying to @asculthorpe @JaneMoneypenny and 5 others

I wrote a book about it... they're all in there...

Fit4Duty - The Ethical Standard
Is Your Workforce Fit4Duty?
fit4duty.ca

7:50 PM - 31 Jul 2018

3 Retweets **4** Likes

3 4

Tweet your reply

Fit4Duty™
@Fit4Duty_Ethics
Kelly Donovan is a whistleblowing former police officer and published author continuing the good fight to improve workplace culture everywhere.

Follow

and their families....it is certainly not insignificant.

Follow

Who to follow · Refresh · View all
Angie Rivers @boysclubis... Follow
Valarie Findlay @JaneMon... Follow

Home Moments Notifications Messages Search Twitter Tweet

Fit4Duty™ @Fit4Duty_Ethics · 19h
@MatthijsseAmy @gmmack29 @tntnorm @mobinfiltrator @JaneMoneypenny @jopolini I am being silenced and accused of a human rights violation for presenting at #QueensPark about internal corruption. This is why the culture of #fear exists. We allow it

Kelly Donovan presenting to the Standing Committ...
February 22, 2018 www.kellydonovan.ca
youtube.com

4 6 8

Paul Manning @mobinfiltrator · 19h
Whats this about? Something new?

2 3

Valarie Findlay @JaneMoneypenny · 18h
Old but bad ...

1 2

Adam Sculthorpe @asculthorpe · 18h
This is crazy, how many other Kelly's and Paul's are out there suffering in silence?

3 3 4

Norm @tntnorm · 18h
Exactly. Consolidate the efforts, the brainpower is not only out there, but on this string, proof of concept beautifully defined within Kelly's presentation, tech savvy/brilliant mind of Moneypenny, and dogged determination of Paul. Reach out to Ottawa OPA, its better than OPP.

1 2

Fit4Duty™
@Fit4Duty_Ethics
Follow

Replying to @tntnorm @asculthorpe and 5 others

I have been reaching out to all associations. Sadly, (and telling), no one has engaged. I strive for truth, accountability and transparency. Those are not necessarily synonymous with policing, unfortunately.

7:48 PM - 31 Jul 2018

1 Retweet **4** Likes

1 1 4

Tweet your reply

Norm @tntnorm · 16h
Replying to @Fit4Duty_Ethics @asculthorpe and 5 others
Seemingly every other form of business model requires a meeting of industry standards, similar but not limited to ISO models, a compliance office. Its high time that an association adopts your ideas, could be the harmonized solution to the recordings, substance, parties.

Fit4Duty™
@Fit4Duty_Ethics
Kelly Donovan is a whistleblowing former police officer and published author continuing the good fight to improve workplace culture everywhere.

Follow

Who to follow · Refresh · View all
Angie Rivers @boysclubis... Follow
Valarie Findlay @JaneMon... Follow

and their families....it is certainly not insignificant.

TAB 16

One Woman *Can Be a Leader*

INSPIRATIONAL ***WOMEN***

KELLY ***DONOVAN***

I have always taken pride in being a person with strong ethics and morals. That doesn't mean I always followed every rule, but with maturity came a very clear understanding of ethical conduct versus unethical conduct.

I got into the policing profession believing it to be the highest ethical standard I could achieve in life. I knew I could set a good example for other citizens and my children. Four years into my career I became very aware

of unethical decisions that were being made within the police service, and even worse, those in positions to oversee the conduct and stop the corruption were all connected through political and social relationships.

In 2016, I blew the whistle and exposed the internal corruption to the oversight board. The board never investigated my claims. I was disciplined and constructively dismissed. I conducted extensive research into police corruption and published a book on the systemic abuses of power and silencing of whistleblowers citing actual cases across Canada.

The conduct of the police service management for disciplining me for speaking up, and the oversight agencies for failing to intervene and allowing the reprisal shows how systemic this problem is. None of the issues I exposed were ever impartially investigated.

I have spoken to provincial politicians about the corruption that exists within our police services, and to date status quo and blissful ignorance have prevailed.

I stand by my decision to stand up for what is right, and I encourage others to do the same no matter what repercussion they face. When we start to ignore our moral compass, or excuse our own unethical conduct we are eroding the ethical fibres of society. We must demand more of ourselves and others. Ethical accountability should be the expectation, not the exception.

About Us (https://onewoman.ca/about-us/)

Membership (https://onewoman.ca/membership/)

Business Directory (https://onewoman.ca/members/)

Projects (https://onewoman.ca/projects/)

Inspire (https://onewoman.ca/inspiration/)

Empower (https://onewoman.ca/empowerment/)

Disclaimer (https://onewoman.ca/disclaimer/)

TAB 17

Home Moments 26 Notifications Messages Search Twitter Tweet

Fit4Duty™
@Fit4Duty_Ethics

Follow

A Chief's complaint "a form of inappropriate reprisal"??? Where have I heard that one before? Good for @MatthijsseAmy and the #OCPC Should be an investigation, not review #reprisal #misfeasance #wroteabookaboutit

> **Pete Fisher** @NT_pfisher
> Police Services Act Hearing For Cobourg Constable On Hold Indefinitely
> todaysnorthumberland.ca/2018/09/09/pol...

4:42 AM - 11 Sep 2018

6 Retweets **11** Likes

1 6 11

Tweet your reply

Amy Matthijsse @MatthijsseAmy · Sep 14
Replying to @Fit4Duty_Ethics
Apparently Durham Police signed off on it... by just reading a biased report by the service paid investigator

2

Follow

Fit4Duty™
@Fit4Duty_Ethics

Kelly Donovan is a police officer and continuing the go workplace culture

Ontario, Canad
fit4duty.ca/boo
Joined June 20

Tweet

207 Photos an

aughters in a hammer too!

TAB 18

Facebook is showing information to help you better understand the purpose of a Page. See actions taken by the people who manage and post content.

Page created - August 14, 2015

Related Pages

Police Accountability : ...
Interest
Like

National Women in Law...
Nonprofit Organization
Like

Cop Watch Waterloo Re...
Community Organization
Like

Add Your Business to Facebook

Showcase your work, create ads and connect with customers or supporters.

Create Page

Privacy · Terms · Advertising · Ad Choices · Cookies ·
More · Facebook © 2020

Fit4Duty
March 9, 2019 ·

I exposed corrupt practices going on at WRPS in 2016, I was disciplined. Shortly after, the women of the service launch a $167M class action lawsuit.

Things that make you go hmmmm....

#wakeupWaterlooRegion #misfeasance #corruption #silence #awards #poorgovernance

KITCHENER.CTVNEWS.CA
Region ranks least safe, healthy place for women

4 3 Shares

TAB 19

Kelly Donovan

Police whistleblower, Investigator, Consultant, Author. From whom are you getting your ethics advice?

Followers 1,743

+ Follow

Fit4Duty The Ethical Standard

fit4duty.ca

17 • 9 Comments

Like Comment Share Top Comments

Kelly Donovan • 3rd+

Police whistleblower, Investigator, Consultant, Author. From whom are you gett...

3mo • Anyone

And in some cases, even if you do NOT agree to an NDA (such as in my case) the police service still tries to gag you using such avenues as the **Ontario Human Rights Commission**, which are exempt from Ontario's Anti-SLAPP laws.

As explained in Justice Favreau's decision earlier this year: **http://canlii.ca/t/hxbvk**

Kim Prodaniuk • 3rd+

Proud feminist. Ethics in police workplaces driven. Bullying is bad for business. Co...

3mo • Edited • Anyone

Well said **Janet Merlo**. The loss of income, pension, (and cost of having an injury that affects your brain) is not compensable ever, or by the 'pittance' you describe. NDAs and a culture of silence do keep people from talking about wha ...see more

TAB 20

Kelly Donovan

Police whistleblower, Investigator, Consultant, Author. From whom are you getting your ethics advice?

Followers 1,743

+ Follow

Thank you Sveta!

1 Like

Load more comments

Kelly Donovan • 3rd+

Police whistleblower, Investigator, Consultant, Author. From whom are you gett...

3mo • Anyone

I've been asked a lot lately "What is happening with your stuff?"

I updated my site with a breakdown of what I endured speaking out about internal police corruption, and just how hard the police service is trying to gag me, and how much they are willing to spend to do it.

Please read and share: #corruption #police #freespeech #canada #metoo #ptsd #waterloo #dysfunctional #policingculture

Fit4Duty The Ethical Standard

fit4duty.ca

17 • 9 Comments

TAB 21

Be the first to comment on this

Kelly Donovan

Police whistleblower, Investigator, Consultant, Author. From whom are you getting your ethics advice?

Followers 1,740

+ Follow

Kelly Donovan • 3rd+
Police whistleblower, Investigator, Consultant, Author. From whom are you gett...
2mo • Anyone

So proud of my friend and fellow advocate for justice Amy Matthijsse.

If the OCPC had done its job when I faced retaliatory discipline, I may still be a #police officer.

Luckily, I know find myself in an even more advantageous role of helping organizations across Canada meet The Ethical Standard.

Here is what unethical police management looks like:

Suspended Cobourg cop speaks out about allegations against soon-to-be ...
globalnews.ca

17 • 1 Comment

Like Comment Share

TAB 22

Fit4Duty™
@Fit4Duty_Ethics

Follow

Fit4Duty™
@Fit4Duty_Ethics

Follow

Hey @douglasdowney this email was intended for you. Apparently @WillBoumaBrant thinks @SylviaJonesMPP does your job. #needethicsingovernment #antiSLAPP @BSkylstad @MatthijsseAmy @JaneMoneypenny #Whistleblower img1.wsimg.com/blobby/go/fa7e ...

8:19 AM - 19 Aug 2019

4 Retweets **7** Likes

2 4 7

Fit4Duty™ @Fit4Duty_Ethics · Aug 19

I received this response, not addressing my concerns AT ALL, and from the wrong person. img1.wsimg.com/blobby/go/fa7e...

4 1 3

Valarie Findlay @JaneMoneypenny · Aug 19

Replying to @Fit4Duty_Ethics @douglasdowney and 4 others

Yah. Wrong website URL 😂😂😂 ... Try to keep up with the governmental changes. Its sort of, you know, your JOB.

From: **Fit4Duty** Kelly@fit4duty.ca
Subject: The Constitutionality of our Anti-SLAPP laws - Donovan vs. Waterloo Police
Date: July 30, 2019 at 4:09 PM
To: milan.novakovic@pc.ola.org

Good day Milan,

As a follow-up to our conversation today, please find details regarding what happens to police whistleblowers who do not have any protections under current Ontario laws:

- 11 months after I resigned from the Waterloo Regional Police Service (WRPS), they filed a contravention of settlement application against me at the Human Rights Tribunal of Ontario (HRTO). In it, they allege I breached my resignation agreement (there was NO non-disclosure clause) and are asking that I no longer be permitted to speak about them and I pay them significant damages.
- I challenged our current anti-SLAPP laws by filing an application in Superior Court to have the tribunal proceeding filed by the police service against me dismissed. Justice Favreau decided the issue, her decision can be read here: http://canlii.ca/t/hxbvk
- Justice Favreau decided that Courts of Justice Act s. 137.1 does not provide relief to someone facing a gag proceeding at an administrative tribunal.
- Considering we are using administrative tribunals more and more to alleviate pressures on our court system, how can we not provide relief to a person facing a gag proceeding at a tribunal?
- May 6, 2019 - Mailed Notice of Constitutional Question to AG's of Ontario (Mulroney) and Canada (Lametti) - See attached for document
- July 3, 2019 - Email from Ravi Amarnath: "Attorney General of Ontario's decision to not intervene in the gag proceeding at the HRTO."
- From May, 2018, to April, 2019, the WRPS spent **$192,344.70** of taxpayer funds on their lawyer to silence me, approved by the Board, (request pending to obtain funds spent since April, 2019).
- With NO whistleblower protection for municipal police officers, the ONLY relief police whistleblowers have is CJA s. 137.1 - which currently only covers civil lawsuits filed in court.

Failure by the Ontario Attorney General to intervene in my matter says to large public institutions (such as police services) that if there is a way for them to file a proceeding at a tribunal, they are able to ask that a critic be gagged - preventing them from speaking about the institution - What happens to freedom of expression?

These gag proceedings are done at the expense of the taxpayer using public funds.

This is a constitutional matter affecting all citizens of Ontario, especially those who advocate for more accountability and transparency on matters of public interest.

* Courts of Justice Act s. 109(6) already provides wording to address proceedings brought both before court and a tribunal - This wording **NEEDS** to be added to s.137.5.

Thank you for your time,

Kelly Donovan
Fit4Duty - The Ethical Standard
kelly@fit4duty.ca
+1.519.209.5721
www.fit4duty.ca
www.kellydonovan.ca

This e-mail and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to whom they are addressed. This communication may contain material protected by contract law. If you are not the intended recipient or the person responsible for delivery of the e-mail to the intended recipient, be advised that you have received this e-mail in error and that any use, dissemination, forwarding, printing or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please immediately notify Fit4Duty - The Ethical Standard(TM) by telephone at 519-209-5721.

PDF

Notice to Attorne...ral.pdf

TAB 23

Home Moments Search Twitter Have an account? Log in

Fit4Duty™
@Fit4Duty_Ethics

Follow

Fit4Duty™
@Fit4Duty_Ethics

Follow

This kind of passion and insight into what needs to improve, and how to improve it, within our police services should be #Welcome and #Heard. Hopefully Teresa does not face retaliation as I did for sharing my thoughts with the board. #wroteabookaboutit #police #dysfunction

Teresa Skelton @teresa612011
Daily Echo published my letter regarding Hampshire Constabulary

12:37 PM - 6 Sep 2019

2 Likes

2

Fit4Duty™ @Fit4Duty_Ethics · Sep 5
"...rather than carrying out properly impartial investigations, is what leads Officers... to behave with such apparent impunity and flagrant disregard for the very laws they are supposed to be upholding." #wroteabookaboutit #CanadaToo

TAB 24

Kelly Donovan

Police whistleblower, Investigator, Consultant, Author. From whom are you getting your ethics advice?

Followers 1,740

+ Follow

Former OPP deputy commissioner to break silence after firing

toronto.citynews.ca

22 • 20 Comments

Like Comment Share Top Comments

Add a comment...

Rubin Coward, CD
Advocate at Independently since 1993
1mo ...

Where was Blair's ethical compass prior to being fired? Anyone can holler, "this fire is burning me up" once you've been thrown in... The same people you meet on the way up, you'll see them again on the way back down... (edited)

4 Likes · 1 Reply

Kelly Donovan
Police whistleblower, Investigator, Consultant, Author. From who...
3w ...

I agree. And, this is exactly why I spoke up about all of the very same things only 5 years into my career, no blemishes, no vendettas. I was still burned at the stake. No disgruntled employee here - doesn't seem to matter.

3 Likes

Load more comments

TAB 25

Her Blog

< All Posts

Who is the HRTO working for?

October 15, 2019 | Freedom of Speech, Legal, Policing, Rights, Workplace

In May, 2018, I filed a lawsuit against my former police service for breaching my resignation agreement. One of the breaches included them appealing my WSIB claim for PTSD benefits (psychology care and medication), despite the signed release stating they would not file any "appeals" against me. The police service did not file a counter-claim against me, alleging I had breached the agreement in any way. The police service has never sued me for defamation or slander.

One month after I filed my claim, the police service launched a case against me at the Human Rights Tribunal of Ontario (HRTO) alleging that virtually everything I had done since resigning was a breach of my resignation agreement and they wanted me to stop talking

court case I had filed and I alleged that the police service had just filed their case against me out of retaliation, to force me to fight a two-front war. I also pointed out that the timing of the filing of this case of "repeated and flagrant breaches" indicates retaliation for having filed my suit. The Tribunal did not address any of the points I raised in this submission.

I filed an application in Ontario Superior Court to dismiss the HRTO application, calling it a "gag proceeding" because the police service was trying to limit public debate on matters of public interest. I had the luxury of enjoying freedom of expression, and the police service cannot take that away from me, (even if they use allegations of breach of settlement to try to achieve that - there is nothing stopping me from speaking). In the end, Justice Favreau ruled that Ontario's Anti-SLAPP laws ("strategic lawsuits against public participation") do not apply to Tribunal matters. (A-HA! That is why they did not sue me in Court - instead went the route of the HRTO).

So, I was back dealing with two proceedings, mine in Court that I filed first, and the other at the HRTO filed by the police service. But, the HRTO has it right in their policies that adjudicators must respect natural justice and procedural fairness. In a February teleconference call, I raised the issue of violations of their Code of Conduct by not respecting procedural fairness, (an example, I was order to decide by February 8, 2019, if I was going to proceed with allegations against the police service at the HRTO, but they knew that my court case was scheduled for February 13, 2019, so I would have the same allegations proceeding in two venues?). I had also asked for the Registrar to recuse himself from my case, since prior to his posting at the HRTO he was the Head Instructor at the Ontario Police College, and this violated their Conflict of Interest Rules. Anyway, I asked the adjudicator during this teleconference call how I am to raise allegations of breach of Code of Conduct and Conflict of Interest, and she said she could not tell me that.

On July 4, 2019, I sent the Tribunal some interesting information (thank goodness for Freedom of Information legislation). I had obtained legal invoices paid to the law firm representing the police service and I now knew that they had not been preparing their case against me since my resignation. In fact, the legal invoices show that the law firm did the bulk of their work from May, 2018, onward, (which is when I filed my lawsuit), which proves that it is probable their case was filed out of retaliation only after I filed my lawsuit. These legal invoices are detailed in my recent article Succeeding as a Whistleblower. The Tribunal also did not address any of the points I raised in this submission.

So, here we are today.

civil court, (obviously she didn't read the decision of Justice Favreau I sent her in February). She also threatens to dismiss my allegations and not allow me to defend myself against the police service if I continue to make statements that they are "violating codes of conduct; or that this is discrimination or favouritism." (word... for... word). The full decision can be read here. Remember that date, July 10, 2018? Have a look at how the adjudicator described that submission I made at paragraph 2 of her decision. And, once again, I am denied a public hearing, the adjudicator wants to schedule a full-day teleconference hearing.

I know I am not alone when I ask... Who is the HRTO working for? Is it working for those who have been abused, discriminated against, or harassed? Or, is it working for the abusers, the large public bodies and corporations who have an endless supply of blank cheques to do what it takes to beat those who complain into submission one way or another?

I have asked Renu Mandhane this question, and now I ask the Ontario Ombudsman. In my experience, there is no relief at the Human Rights Tribunal of Ontario.

Share this post:

Categories

All Posts

Corruption

Freedom of Speech

Harassment

IWD

Investigations

Legal

Military

TAB 26

Cambridge Advocate

A true voice for you the public

- Home
- Make your VOTE count in 2018 – Sign Petition Here!
- Comment Policy
- Subscribe! It's FREE!
- Have Your Say!

Search...

Ontario Court of Appeal Decision

By Kelly Donovan | November 8, 2019 | 2 Comments | Filed under: Community

Donovan vs. Waterloo Regional Police Services Board, 2019 ONCA 845

The Ontario Court of Appeal allowed my appeal against both the Board and Chief Bryan Larkin, which means I will be continuing with my action in Ontario Superior Court against them,
(while they proceed against me at the Human Rights Tribunal of Ontario).

What does this mean?

Archives

Archives Select Month

Websites We Recommend

Choose Fairness at the Polls for 2018 Municipal Elections – Sign Petition Here
Local Community Editorial

This is the footer ad space (delete this code in the Layout Options)

Copyright © 2019 Cambridge Advocate. All Rights Reserved.

Magazine Flow created by Themes by bavotasan.com.

Archives

- November 2019
- September 2019
- August 2019
- July 2019
- June 2019
- April 2019
- March 2019
- February 2019
- December 2018
- August 2018
- December 2017
- January 2017
- April 2015
- December 2014
- November 2014
- April 2014
- March 2014
- January 2014
- July 2011
- March 2011
- February 2011
- January 2011
- November 2010
- July 2010
- June 2010
- May 2010
- February 2010
- October 2009
- July 2009
- April 2009
- February 2009

When I first filed this suit against them, (May, 2018), it was for breaching my resignation agreement. The Board filed to dismiss my suit in June, 2018, citing as their main argument that the matter belongs at the Human Rights Tribunal of Ontario, (both Justice Doi and now the Ontario Court of Appeal have disagreed with them).

One month after they filed to dismiss my claim against them, the Board took action against me at the Human Rights Tribunal, (that case has been allowed to proceed against me and is ongoing).

This recent decision reopens my ability to continue to fight for accountability in Court, which was my original intent.

Officer Wellness
You'll read in the ONCA decision, that my WSIB claim for PTSD benefits was appealed by the police service, (despite the contract prohibiting them from filing the appeal AND despite the fact that first responders have a presumptive allowance in the legislation). One has to ask, why would the police service appeal it?

On July 17, 2017, (ironically, the same day I released my report on misfeasance in Ontario policing), the CBC News published an article;

https://www.cbc.ca/news/canada/kitchener-waterloo/waterloo-regional-police-service-new-ptsd-prevention-plan-1.4208684

In the article, it states "The service's new PTSD prevention plan looks at ways of preventing and helping treat PTSD among officers."

So, which is it, Waterloo Regional Police? Or, once those officers move on, they are tossed out with the trash?

In the interests of first responders everywhere who are still stuck in this oppressive and two-faced system, I sincerely hope that these questions get answered.

Moment of Silence for Cpl. Nathan Cirillo
I was in the Nation's Capital this past week for a Conference Board of Canada Corporate Ethics Management Council meeting, and managed to get to the National War Memorial to remember Cpl. Nathan Cirillo.

Time for Fit4Duty to spread its wings

I have gotten a significant amount of experience these past 2 years speaking with business and government leaders.
It has become more and more evident to me that workplace programmes are not entirely meeting the needs of workers.

There are policies that aren't followed due to workplace cultures, and there are behaviours that are tolerated due to cultural reasoning. These are issues that cannot be concealed, because it means that unethical conduct, in most workplaces, is not being reported.

I welcome the opportunity to meet with any organization to discuss Fit4Duty – The Ethical Standard, and how we go beyond compliance.

About Kelly Donovan

2 Responses to *Ontario Court of Appeal Decision*

1. alan marshall November 9, 2019 at 8:31 am

   Good luck Kelly with your action against WRPS & Chief Larkin at the Ontario Superior Court. By the way that is an out of town court versus the Superior Court in Kitchener is it not? If so where would it be?

   Reply

2. Tom Vann November 9, 2019 at 5:34 pm

   I am pleased to hear you have been allowed to proceed Kelly. If this was a company having these kinds of problems I believe it would have been resolved long ago. You are an amazing lady and your book was shocking. So little media coverage for such a high level case. Best wishes for success and the truth.

   Reply

Leave a Reply

Your email address will not be published. Required fields are marked *

Comment *

Name *

Email *

Website

Post Comment

TAB 27

I am honoured to be this year's Ontario Civil Liberties Award recipient.

To have such an Organization recognize my efforts to expose the retaliation whistleblowers face and advocate for protections for whistleblowers in Ontario goes to show that status quo is no longer being accepted. I also want to thank my friend and fellow advocate for accountability and transparency Valarie Findlay for sharing this moment with me and for her support over these past few years. She knows just how trying they have been.

I could no longer tolerate the abuses of power I was witnessing around me, while working as a police officer, and I faced retaliation for speaking up.

I am no longer a police officer with the Waterloo Regional Police Service, but I am still working to improve the ethicality of workplaces by providing consulting services, workplace investigations and independently managed whistleblower programs.

The relevant parts of my story begin in 2015, when I witnessed the service's handling of four separate matters involving its police officers.

In one case, I reported criminal conduct by a member of the police service and there wasn't even an investigation.

I had witnessed that favouritism was afforded to some officers, while others were disproportionately disciplined or even charged criminally for conduct for which a member of the public would never be charged.

I knew that with checks and balances in place, consistency and fairness could be achieved, and taxpayer funds would not be abused to fund personally motivated large-scale investigations.

What led to my eventual resignation was a disclosure I made to the police services board in May of 2016. At that time and still to this date (as far as I know) there is no policy at the police service outlining how an internal investigation is to be conducted, there is no policy defining an investigative conflict of interest, or any policy on ethics whatsoever.

I knew this was a real problem for the board, since they were already facing a lawsuit by one of their members for a negligent investigation.

Ultimately, I chose to disclose this issue to the police services board because I felt it was my duty as a police officer having sworn an oath of office to her Majesty the Queen and to Canada.

After I made this disclosure in 2016 I faced allegations by the chief of police that I had committed misconduct contrary to the police services act, I was taken out of my job as a use of force instructor, and I was told I could not present to the board again without the permission of the chief.

That evening in May 2016 I sent an email to members of the police services board. Since the board is an independent oversight body of the police service I expected that they would be concerned to know I was facing this type of retaliation.

Instead, the board shared my email with the chief of police who made further allegations against me of misconduct and ordered me from that point on to have absolutely no contact with members of the board whatsoever.

In Ontario, our laws allow a chief of police to control what information is disclosed to the board. It is also the board who appoints the chief and renews their contract of employment. But, the chief of police also has full autonomy to issue discipline. I disclosed information to the board that the chief wanted to keep secret, and as a result, the chief disciplined me.

I made attempts at that time to have provincial oversight bodies intervene and examine this situation objectively. Neither the Office of the Independent Police Review Director nor the Ontario Civilian Police Commission got involved, it simply was not in the public interest, they said. I tried making a workplace harassment complaint and I even reached out to the Human Rights Tribunal of Ontario and the Ontario Ombudsman. There was nothing in place to protect to me at that time, and our government bodies did not believe it was in the public interest to find out if these problems genuinely existed within the police service. I knew they did, and I knew they existed at other police services as well.

But it became evident to me as I worked administrative duties and conducted research from home that this problem was prevalent in policing across Canada and that many police officers before me had spoken out about it, and had faced retaliation.

In May of 2017, a $167M class action lawsuit was filed against the police service for systemic gender discrimination, sexual harassment and sexual assault. It was becoming more and more obvious, that I wasn’t the only one witnessing abuses and poor decisions by leadership.

Yet, as long as I remained a police officer I was prohibited from speaking publicly without permission of the chief. In June 2017, I resigned from the Waterloo Regional Police Service and one month later released my research into the prevalence of police whistleblower suppression.

I believed then as I do today that police abuses of power are matters of public interest. I turned my research into my first book titled; “The Systemic Misfeasance in Ontario Policing and the Coordinated Suppression of Whistleblowers.”

When I resigned, I started a business called Fit4Duty to improve the ethicality of businesses and government agencies. Normally, we think of the term Fit4Duty we think of a person who is healthy and physically fit to do a job. Well, in my experience, you can be those things, and still not be suited for most work, if your moral compass is not properly aligned or if you have personal motivations.

I traveled across Canada sharing my story to highlight the need for not only policy, but cultural change to ensure that people feel safe coming forward. Most Canadians do not understand why someone who witnesses an illegal or unethical act would stay silent. When they hear my story, people understand exactly what someone stands to lose if they speak up.

As the class action against the police service progressed, it became more and more obvious that the issues I addressed in my book were in fact happening. There were several egregious allegations made by the plaintiffs in the ongoing class action lawsuit, however, for the most part, the response from the police service was that the allegations were false, exaggerated and misleading.

You may have seen the popular meme of a police officer saying; “We investigated ourselves and found no wrongdoing.”

I thought that maybe people were starting to understand that as long as we allow police to maintain carriage of investigations

against police, we are perpetuating corruption within Canadian police services, which is exactly what my book is about.

7 months after my resignation, the police service took 2 separate actions that I am now alleging in a Superior Court lawsuit are breaches of the contract they signed when I resigned.

Having recently won my appeal to proceed with my lawsuit, those allegations will be tested in court in the near future.

One month after I filed my 10-page lawsuit against the police service, they filed this contravention of settlement application against me at the Human Rights Tribunal of Ontario.

When a contract is signed that includes the settlement of an Ontario Human Rights complaint, someone alleging a breach of that contract may bring a contravention of settlement application to the Human Rights Tribunal.

The police service is asking the Tribunal to order me to stop talking about them, stop selling my book, and pay them significant damages for the harm I have done to their reputation.

The current Registrar of the Human Rights Tribunal is the former head instructor of the Ontario Police College, but no conflict of interest has been declared in this case.

Their care against me has continued for a year and a half, with no end in sight. If it is anything like Heather McWilliams' case to hold Toronto police accountable for the sexual harassment she endured, this could drag on for at least 6 years.

I tried to have the police service's case against me dismissed, in accordance with Ontario's Anti-SLAPP laws, "SLAPP" standing for strategic lawsuit against public participation. But in February

of this year, Justice Favreau ruled that Ontario's Anti-SLAPP law does not apply to matters at a Tribunal.

Although, Justice Favreau did state that had the police service brought their case against me in court, I would have been able to apply to have it dismissed.

When I made the constitutional challenge at the Tribunal, the adjudicator ruled that I should take the matter up with Court.

Essentially, our laws have written a playbook on how to gag a critic. If a tribunal has jurisdiction to hear a claim, and provide a broad range of remedies, and Ontario's Anti-SLAPP laws do not extend to tribunal matters, then government supported censorship still exists. As Justice Favreau said, had the case been brought in court, the Anti-SLAPP law would have applied.

So, the matter of the police service's case against me being an attempt to limit my freedom of expression remains in limbo, and our Attorney General has refused to intervene.

It is my opinion that our Anti-SLAPP laws need to protect anyone who is facing a lawsuit in Ontario equally, whether that is in court or at a tribunal, if that lawsuit is in fact an attempt to limit freedom of expression on matters of public interest.

I have made several attempts to speak with lawmakers over the past 2 and a half years. I spoke at the Ontario Legislature about proposed changes to policing legislation and how too much power was being entrusted to chiefs of police, and that police services boards were not effectively governing police services in Ontario.

I provided very concrete recommendations to Bill 175 to improve accountability and transparency. Bill 175 was passed, and later repealed by the Conservatives once they came into power.

This past spring, a new statute was created called the Comprehensive Ontario Police Services Act, which includes some measures I had recommended, yet still does not do enough to protect police whistleblowers, or ensure that police are not investigating police.

The new act still gives far too much power and autonomy to a chief of police to make decisions, and does not offer enough protection from reprisals to police officers who come forward.

During these past 2 and a half years, when I should have been working to further build my business, I have been entrenched in litigation.

I had no doubt when I left policing that there would be attempts to prevent my success as a business owner, and that's why I am so relieved to know there are organizations such as the Ontario Civil Liberties Association. If people like me did not have the support of organizations like this, we would be completely alone, disadvantaged and marginalized.

Without individuals willing to risk everything and speak out, the public would only ever hear what the chief and board want them to hear. Why should anyone care?

I still firmly believe that it is in the public interest to know when police powers are misused. I believe it is a matter of public interest that someone other than the police investigate all allegations against the police so that police resources can be dedicated to keeping our communities safe.

But, this is not only about interests. The fact that the taxpayers in the region of Waterloo are funding the police service's legal battle against me should upset everyone.

I have already publicly said that I believe far too many police resources are dedicated to internal, unfair and biased investigations, while police chiefs tell the public they simply don't have the resources they need to properly combat crime.

But, now we have a police service that is spending more than the cost of hiring a couple of new officers, just to keep me from telling you what they did to me.

Since resigning, the police has spent over $203,000 on a lawyer to try to silence me, and that is only up until April of this year. That figure would be much higher now. This is what $203,000 looks like; and none of the outstanding matters have been resolved. In January of this year, the Region of Waterloo paid an invoice to the law firm for over $14,900, followed by another in the same month for over $15,400. Then one month later, in February, paid a single invoice for over $37,000. There are people living in the Region of Waterloo who don't make that kind of money in an entire year.

And, this is all to keep me from telling my story.

If the police service was really worried about protecting their reputation, they would not stop me from telling my story, they would learn from it.

I have no choice but to protect my freedom of expression at all cost. Those in positions of authority should not have the ability to use public funds to maintain secrecy of unethical or illegal conduct.

I hope to file for judicial review shortly to force the Attorney General to intervene in the matter before the Human Rights Tribunal. It is my belief that Courts of Justice Act section 137.1

must apply to tribunal matters, as it does to lawsuits filed in court, if freedom of expression on matters of public interest is to be preserved.

I hope that after hearing my story, you agree with me and are willing to join me in my fight to have the legislation updated. Every other section of the Courts of Justice Act that pertains to a constitutional matter specifically refers to both court and tribunals. It is time to amend the act for better Anti-SLAPP protections.

I am living proof that whistleblowers face retaliation in Canada. THIS is what whistleblower retaliation looks like. With everything that has happened to me, no one would dare speak out about what goes on within the thin blue line.

We must work towards empowering those who have the courage to speak out about unethical conduct, and not tolerate the reasoning that takes place when we choose to turn a blind eye to unethical or illegal conduct.

We must step out of our comfort zone and learn to stand up for ourselves and for others.

Please stay connected with me through my website at kellydonovan.ca, where you can sign-up for my mailing list or connect through social media.

Thank you once again for this honour, thank you for providing a venue to celebrate those who make tremendous personal sacrifice to protect the rights of everyone in this province. Thank you.

TAB 28

DECEMBER 21, 2019

Brantford Whistleblower Wins Provincial Award

LOCAL NEWS by Colleen Toms

(Photo courtesy of Robin Cimitruk Photography)

BRANTFORD – Winning the 2019 Civil Liberties Award has "validated" Kelly Donovan's commitment to seeing changes made to the way Ontario police services are governed.

In 2016 the Brantford resident, who served as a police constable and use-of-force instructor with the Waterloo Regional Police for about six years, drew attention to what she saw as abuses of power in the way internal investigations were conducted.

Ophelia & Co. Villalvazo 4 Drawer...

$213.99

Ad wayfair.ca

Learn more

"People in my position, if anything, we're seen as dissidents," Donovan said in a recent interview with BRANT.one. "I know there are people out there that appreciate the value in what I'm doing but until this award, you feel like you're just living in the shadows."

"The OCLA (Ontario Civil Liberties Association) is recognizing that if I wasn't advocating for what's right, if it wasn't noble, why would (the police service) be fighting me. They would simply say 'she's crazy' and be done with it," Donovan adds.

Donovan brought issues of bias and arbitrariness to the Police Services Board governing the Waterloo Regional Police Service and was dismayed when they were not objectively or impartially investigated. Instead she was immediately disciplined by the chief and became the subject of an internal investigation herself.

"Ultimately I reported internal issues and I reported them on the basis of them being systemic because I knew in four separate cases the same things were happening," she said. "So I reported to the board that when there's an internal issue with one of the members, it's not handled properly, and I gave them very good examples."

"The way legislation is written helps pave the way for corruption in police services to go unchallenged," Donovan adds. "At the time there was no legislation in place to allow a police officer to make a complaint against another police officer; our laws prohibited it. I knew there was no other way to voice these issues other than going to the board because the board oversees the chief and appoints the chief. Ultimately, the chief can decide how internal complaints are handled and if repercussions are valid."

price drop price drop price drop price drop price drop pric

"I essentially blew the whistle on what was happening and what was happening there was no different than any other police service, and it was because of the law. The law made it so that nobody could speak out," Donovan said.

Donovan was placed on administrative duties and "muzzled." She was forbidden to address the board again. "They wrote in a chief's directive…it said you cannot make any more presentations in front of the board," Donovan said. "I wouldn't sign the directive because I said, 'the board meetings are open to the public, how can you tell me that I can't go and present to the board?'"

Over 14 months, during her constructive dismissal from her job, Donovan contacted government agencies responsible for police oversight. None of them were willing to intervene.

> "Nobody wants to publicly acknowledge what I'm doing and it's because of the culture; it's because of the fear that exists. With my story I've done everything by the book and every time I challenge government I get shut down."
>
> *Kelly Donovan, Ontario Civil Liberties Association Award Winner, 2019*

Donovan negotiated a settlement that lifted her "gag order" and left the police service. "I've made it very clear – you are never buying my silence," Donovan said.

She published her report and turned it into a book. She is currently working on her second book. "This all started because the chief was making arbitrary decisions and unlawful decisions but I was always told, 'the chief can do what he wants," Donovan said.

price drop price drop price drop price drop price drop pric

Her struggle with the police services continues. "They iled a huge claim against me at the Human Rights Tribunal," Donovan said. "They're alleging that every time I've spoken publicly, I've breached the agreement. Even though there is no non-disclosure agreement they're saying every time I talk about it, I'm complaining."

Donovan wants to see changes made to the system that enables whistleblowers to come forward without repercussion. Donovan also wants to see laws rewritten so police chiefs aren't given full autonomy and Police Services Board members, who ultimately oversee police services, are better educated.

Although it has taken a toll on Donovan mentally, emotionally and financially, she won't give up. "When I first came forward in 2016 I didn't think I would be sacrificing my career, I thought they were going to reward me," she said. "I thought the board was going to say 'you showed a lot of courage.'" But Donovan would do it all again if necessary.

> "I couldn't live with what I knew without having done something about it."
>
> *Kelly Donovan, Ontario Civil Liberties Association Award Winner, 2019*

Brantford Public Library Improves Customer Experience with New Website

Blast use Dunlops to rocket ahead into the holidays

BRANT•one

Providing 24 Hour news, weather, sports and information for Brantford, Brant County and Surrounding Areas.

@2019 BRANT.one All rights reserved.

Contact us

Email: info@BRANT.one

Phone: (226) 400-4611

Address: 210-1 Market St.
Brantford, ON N3T 6C8

Upload your content

UPLOAD

Follow us

TAB 29

in Search Home My Network Jobs Messaging Notifications Me Work Try Premium Free for 1 Month

Kelly Donovan
Police whistleblower, Investigator, Consultant, Author. From whom are you getting your ethics advice?

Followers 1,818

+ Follow

Be the first to comment on this

Kelly Donovan • 3rd+
Police whistleblower, Investigator, Consultant, Author. From whom are you gett...
1mo •

Excited to announce that my audiobook is ready for purchase!

This is a factual book about Canadian police services and what they do to an employee who goes against the grain. As a society, we continue to allow abuses of power to go unpunished, while those wishing to expose it succumb to discipline and sometimes even criminal charges. What the "good guys in blue" have gotten away with, right in front of our eyes, may blow your mind.

Get the early bird rate of $9 + 5% HST until #IWD when the price goes up to $11 + 5% HST.

Purchase here: https://lnkd.in/gKt3msU

#police #lawenforcement #whistleblower #TimesUP

TAB 30

Kelly Donovan

Her Story

FI4Duty Founder & President, Kelly Donovan, had been a police officer for 5 years when she witnessed abuses of power within her police service when conducting internal investigations. In May, 2016, Kelly addressed her Police Services Board since they are the oversight body responsible for the effective management of the police service.

The issues Kelly addressed were not objectively or impartially investigated and she became the subject of the very corrupt internal investigation process she had originally addressed.

Over the next 14 months, Kelly contacted every government agency responsible for police oversight to draw attention to the reprisal she was now facing and no agency was willing to intervene. Kelly resigned from policing, after facing a protracted and corrupt discipline proceeding that would have lasting effects on her career. She released a report to the media detailing the corruption in policing, and later published her first book.

Kelly's passion to do what's right resulted in the creation of FI4Duty - The Ethical Standard. Kelly's goal is to provide Canadian workplaces a safe reporting mechanism to detect workplace misconduct early, protect those making disclosures and ensure independence during the investigation process.

2019 Ontario Civil Liberties Award Recipient: Kelly Donovan

CLICK FOR DETAILS

Featured Products

Police Line: Do Not Cross

C$22.95

★★★★☆

View All Products >

Media Appearances

LINKS PAGE

The Public Cost to Gag a Critic? Over $340,000.00

The Board spent $44,250 to defend allegations made by Kelly prior to her resigning.

AFTER Kelly resigned from the police service, the Board has spent **$296,787.75**, up until Dec. 31, 2019, on the lawyer to try to silence her, after the fact.

The Politics of Police Corruption

Kelly is using her experience in policing as an example for legislators of why we need to change our laws to protect those who report wrongdoing.

Kelly sent her report to 201 individual politicians in Ontario, (all provincial and federal serving politicians in July 2017). Not one of those politicians proactively contacted Kelly to meet with her regarding the issues.

Kelly has met with Laurie Scott, PC MPP, Michael Harris, PC MPP, Hon. Marie-France Lalonde's Senior Policy Advisor, and Will Bouma, PC MPP.

Repeated requests to meet with Hon. Yasir Naqvi (previous Attorney General) have gone unanswered.
Dianne Verrilli, Liberal MPP, refused to meet with Kelly. Douglas Downey (current Attorney General) refused to meet with Kelly.

Kelly has made presentations to the following police services boards:

- Waterloo Regional Police Services Board
- Ottawa Police Services Board
- Durham Regional Police Services Board

London Police Service Board denied Kelly the opportunity to address them.

Kelly addressed the Standing Committee on Justice Policy about Bill 175, (to replace the Police Services Act), on February 22nd and again on March 1st. Those videos are on the FI4Duty YouTube page, and are at the bottom of this page.

MEDIA LINKS

FI4Duty Officers Around the World

There are several police officers around the world who have stood up to internal corruption. Their stories combine to show a very disturbing state of affairs in the policing profession. The world needs more FI4Duty Officers

READ THOSE STORIES

Her Speaking

Kelly has spoken to audiences about ethics, integrity, and accountability at the following conferences:

- Ethics in Administrative Law - Canadian Institute, Edmonton
- MoMondays, Guelph
- MoMondays, Kitchener
- Brantford-Brant Chamber of Commerce Women in Business, Brantford
- Transformational Social Change Symposium - Humber College, Toronto
- Corporate Ethics and Integrity Summit - Conference Board of Canada, Toronto
- Invictus Women's Summit - One Woman, St. Catharines
- Fearless Women's Summit - One Woman, Niagara Falls
- Corporate Management Ethics Council Meeting - Conference Board of Canada, Ottawa, ON
- Rotary Club of Brantford, Brantford, ON

Kelly can be booked for speaking engagements across Canada, and beyond.

CONTACT US

Subscribe to our mailing list

* indicates required

Email Address *

Subscribe

Her Blog

< All Posts

Why do we need an #IWD2020?

March 8, 2020 | IWD, Policing, Rights

It seems there are still people who don't understand why International Women's Day is so important. Sadly, even my own children asked me that very question this morning.

Let me share with you what my answer to them was...

1. *We need an #IWD because of fear.*

At every point in our history, when a demographic has been oppressed, it has been because of the fear of the majority losing the control it has become accustomed to having.

There is NO good reason why lynch counters in the South, prior to the civil rights movement in the 50's and 60's, had to be "all white." Not one. But people in power said they did, and everyone else was too scared to disagree with them.

We still have men in positions of power who do not want to give up their control over women. This is not to say they aren't promoting women, but they are strategically promoting women.

There are women, in this moment, fighting battles for the greater good of both men AND women, and they are being suppressed and oppressed by men who don't want them to succeed. You typically don't even hear about them in mainstream media, because these men insulate themselves. If you have studied the "dark triad" you'll know that those community connections are deliberate, and purposeful, to control the narrative.

Had it not been for The New Yorker, Harvey Weinstein would be a free man today. It took a man, Ronan Farrow, to give the women a voice that would be heard. Where is Canada's Ronan Farrow?

2. *We need an #IWD because men in positions of power keep empowering other lone men.*

At this very moment, we have a former police leader getting high-paying government contracts without the proper credentials, a disgraced former police leader working a prestigious government job and several others retiring after egregious allegations are made against them to avoid disciplinary hearings. **We need an #IWD to tell these men that "we are watching you."** There are women with exemplary pasts who are not being given these same opportunities, so gone is the belief that the opportunities are going to the "best person for the job".

3. *We need an #IWD to empower bystanders of both sexes.*

Every single decision that has been made over the past 5 years that has negatively affected my life has been made by a man in a position of authority, and never questioned by anyone other than me.

Not one single person (man or woman) has had the courage to stand up to these men and say, "what you're doing is wrong." Well, that's not entirely correct. The all-female Ontario Court of Appeal panel spoke loud and clear in their October, 2019, decision. But, bad it not been for my good fortune of having that particular same-sex panel, it may have been another failed opportunity to be heard.

If I made a list of all of the people who have been complicit in the abuses I have endured over the past 5 years, (I mean directly knew what was being done to me, colleagues, government oversight bodies, members of the judiciary, members of the legislature), I could easily get up over 50 names. 50 people, who at any point in time could have said "this abuse has to stop," and never have, - I'm not saying that those bystanders were all in positions to legally do anything about what was happening to me, (some were - and I do plan on naming them, at some point in time).

What I am saying is that, if we (as a society) already had equality between the sexes, and didn't need an IWD, when I first spoke out to my police services board in 2016, and then faced discipline, any ONE of those members of senior command would have said "I'm not letting you do this to her." But, no one did. Any ONE member of the police services board who heard my delegation would have said "I'm not letting you do this to her." And, no one did. The adjudicator at the Human Rights Tribunal of Ontario, the intake workers at the provincial police oversight bodies, any one of them could have said "I'm not letting you do this to her." But, they didn't. And, in the 5 years that have followed, when subsequent abuse was taken against me, any one of those same people would have said "I'm not letting you do this to her." But, no one has.

Instead? What we get is this:

Two of the people pictured above regularly make decisions affecting the mental and professional health of others, and in my case have instigated actions against me (and one of them is a woman).

We're only pre-IWD if it means we only have to take a selfie and post it to Twitter once a year. We won't stick our necks out to show that we respect and value the opinions of women if they differ from the majority. We don't punish men who exert mental over women in a professional setting, just because they feel threatened. We still scared of the big bad wolf.

Well, most of us are.

A very small few of us are fighting very lonely battles, so that our daughters will never know oppression. Educating our sons so that they will never oppress women, or anyone for that matter.

To the men in positions of power who are listening to women and who appreciate diversity of thought and will stand up to anyone who tries to shut it down, I say "Thank you." We need more like you.

To the rest, let me welcome you to IWD, and what this day is really all about. It's about our powerful women calling you out, holding you to task, making you take action (or stop taking action that is harmful to women), (whether you are consciously doing it, or not).

Less than 2 years ago, a class action lawsuit for institutional gender discrimination was dismissed against the Waterloo Regional Police Service by Justice Bellman for the sole reason that she determined the issues need to be addressed by the members' association. Justice Bellman said the case raises "serious, liable issues" and that "the allegations are very troubling," but did not permit the women to proceed in court. What has the police service done since then? What has Chief Larkin done since then?

For the women who came forward in 2017, and continue to suffer from ostracism and alienation in their workplaces, the image above only serves to cause them additional sanctuary trauma. Larkin's successful deflection of the class action lawsuit has left his career untarnished.

When interviewed for the recent CTV W5 episode, "The Tarnished Badge," Larkin would not commit to supporting his members who come forward to report harassment will be 100%, unexpectedly, protected and supported.

THIS, is why we need IWD. Oprah Winfrey said it best in her 2018 Golden Globe Lifetime Achievement acceptance speech, the time for men who cannot give a voice to powerful women is up.

It's not time to "put more women in positions of power". It's time to "put the RIGHT women in positions of power."

It's time for bystanders to stop being bystanders. It's time for men to stand up to other men and say "I'm not letting you do this to her."

It's time for women running businesses with ALL of the right credentials to get the high-paying government contracts.

It's time for women, whose careers were not disgraceful, to get the prestigious jobs in government.

It's time for women to take the place of men who suppress and oppress women.

It's time.

Share this post:

Categories

- All Posts
- Freedom of Speech
- IWD
- Investigations
- Legal
- Policing
- Rights
- Whistleblowing
- Workplace

Recent Posts

If it weren't for Whistleblowers

Mar 23, 2020

How to Spot Bias in Workplace...

Jun 23, 2020

The Pinching of Public Pennies

Mar 30, 2020

PM&A Podcasts

Apple Podcast

Spotify Podcast

TAB 31

KellyDonovan.ca
@Fit4Duty_Ethics

Replying to @bgredpeterbilt and @shades_dirty

They never expire. And, in my case, I didn't even sign an NDA, but the police service is arguing that the "spirit" of the document was to silence me. So, regardless of whether an NDA is signed, you don't cross the police line.

12:28 PM · Nov 26, 2020 · Twitter for iPhone

TAB 32

KellyDonovan.ca Retweeted

518..

Judy Trinh @judyatrinh · 1h

Kelly Donovan, is a former Waterloo police officer, who suffered reprisals after calling out abuse of power by her bosses. She now researches police culture. She says police women shouldn't be silenced with NDA's and perpetrators should be named

Researcher says officers found guilty of sexual misco...
Former Waterloo police officer Kelly Donovan says non-disclosure agreements shield police officers fro...
cbc.ca

3 2 10

Show this thread

TAB 33

Kelly Donovan

A Fearless Canadian Police Whistleblower

by **Jane Turner** — March 31, 2021 in **Whistleblower of the Week** Reading Time: 10 mins read

Share on Twitter Share on Facebook Share on LinkedIn Email

hero: Kelly Donovan, a former police officer who reported corruption within the ranks of municipal and provincial police.

Donovan's parents were blue collar, and divorced when she was five years old, and Donovan remembers conflict in the home. Her father was very traditional, and taught his daughter homebuilding skills. He did, however, embrace "fighting for something you believed in." Donovan's mother was a very strong woman, and she taught Donovan to stand up for herself. Donovan also had a strong grandmother. Donovan described herself as "mouthy" growing up, but declared that was just a label given to girls who spoke up.

In 2001 Donovan graduated from the University of Western Ontario (UWO) with a B.S. in Statistics. During her time at UWO, she was active in Varsity Rugby and found academic life to be easy for her. After graduation, she moved to Toronto and lived a carefree life; working, playing Provincial Rugby, and socializing.

In 2003 Donovan's life was turned upside down when her mother was diagnosed with cancer. It was, Donovan notes, "a pivotal point" in her life. She soon moved home to Brantford to take care of her. After her mother died in 2004, Donovan got into a relationship with a man whom she had grown close to during her mother's illness. Her common-law husband became a police officer and Donovan had three children.

The marriage became abusive, and Donovan reported her husband to her husband's police department twice for domestic abuse. His fellow officers discouraged Donovan from reporting him, even after physical assaults. Donovan divorced her husband, and became a single mother of three children under the age of 5. Donovan's negative experience with the police over her domestic abuse situation propelled her into entering law enforcement.

Donovan was hired by the Waterloo Regional Police Service (WRPS) in December of 2010 and entered the Police Academy in January, 2011. While attending a three-month police training, another recruit shot himself on the firing range. He was in the lane next to Donovan and was close enough that Donovan thought she had been shot. This was a contributing experience to the PTSD that Donovan developed from her service.

Donovan worked as a Police Constable at WRPS for six years and seven months, 2010 until 2017. Her responsibilities ranged from Police Constable to Training Officer. Her duties were as a C.O.P.S. Mentor, Divisional Fraud Officer, Firearms Trainer, Defensive Tactics Instructor, and Use of Force Analyst. Donovan was a smart, hard-charging police officer, involved in her community and well-liked by most people in and outside the police department. She also participated at bodybuilding competitions, promoting a natural, drug-free active lifestyle through fitness.

Shortly after becoming an officer, Donovan started noticing problematic leadership, abuses of power, malfeasance, harassment of women, and other distressing concerns at WRPS. “The Waterloo Police Department is a good old boy network. It is a very homogenous community,” Donovan stated. “They all have a stake in protecting the reputation of the profession. They all participate in concealing anything that would damage the reputation of the profession.”

Politicians told Donovan that if information got out regarding corruption or misuse of power by the police, it would be chaos and people would lose trust in policing. Donovan responded that the “continued cover ups and attempts to protect the reputation of the police is what is hurting their reputation.” Donovan noted “There are so many things being disclosed about police corruption through other means, like in social media or court cases, let us deal with the problem so we can protect the reputation.”

Donovan noted, “So much more was going on than people knew. After work I contacted officers and victims, asking them about details of their cases. For example there was a member [of WRPS] who was harassing a young woman, sending repeated text messages, and finally, breaking into her house. Donovan reported the issue to her supervisor, and discovered her department did not want to investigate the officer. “He was one of the popular officers,” Donovan noted. That incident pushed Donovan into taking action, going to the Police Board in 2016. The board is meant to oversee the effective management of the poli

Retaliation from WRPS was swift as Donovan was hit with six counts of misconduct right after speaking to the Police Board. Donovan's duties were taken away and she was told she could not appear in front of the board again. Donovan contacted the board and informed them of the retaliation. Two weeks later, Donovan was hit again with two more counts of misconduct in retaliation for contacting the board. She was forbidden to contact the Police Board again. For the next fourteen months, Donovan continued her fight against malfeasance and corruption at WRPS, contacting everyone in the hope of finding assistance in her role as a whistleblower.

Donovan was relegated to administrative duties, and in that role, she did the best job possible. Donovan said she "was being recognized as an asset with my administrative work, but was being treated like shit for being a whistleblower." She started having panic attacks, and found herself ostracized and given the silent treatment at work. Some of Donovan's superiors told her that she was speaking the truth, but they themselves would never go public. Donovan decided that officers were either participating in the corruption, or they knew about it and were just not saying anything, tolerating it in order to keep the salary and their pension.

A class action lawsuit was filed against WRPS in May of 2017 by a group of women for $167 million CAD. Donovan did not stake a claim in the class action lawsuit, noting that she "had additional issues that I wanted to address in gender discrimination." Women were still being assaulted, harassed and threatened by police officers. The presiding judge threw the class action suit out, but Donovan still had an active case, and she refused to sign a Non Disclosure Agreement.

Donovan stated that there is case law from 1994 that notes police officers have to go through a labor arbitrator because of a collective agreement clause. A whistleblower is forced to deal with their union, which Donovan claims has abandoned women because the union also represents the majority of men, and the officers who are named in the complaints are also members of the union. Even though the original case in 1994 had nothing to do with police service, all the police departments utilize the case to remove suits from court and remand them back to union arbitration.

In June of 2017, due to stress and PTSD, Donovan left WRPS. Donovan released a 93-page report in July of 2017 which was called "The Systemic Misfeasance in Police Management

Donovan stated that when she left in June of 2017, her Police Chief was promoted as President of the Ontario Association Chiefs of Police. This is a peer based job, elected by the other regional police chiefs. Donovan discovered that police chiefs were not worried about his abuse of power, or how women are treated in the police service. It appeared to Donovan that "if you are popular enough, you can make it to the highest levels in policing."

In May of 2018, Donovan filed a lawsuit for breach of contract, adding her Police Chief and his misuse of power. In her lawsuit, Donovan asked for reinstatement, but as time passed, and the more the police service fought her, Donovan realized that the service did not deserve someone like her. Donovan eventually left with a negotiated settlement noting that WRPS would pay for medical claims. They did not follow through with the contract. Donovan stated that WRPS has spent over 400,000 retaliating against her, while Donovan only asked for 200,000. Donovan stated that her Chief of Police "makes more in salary than the Chief of Defense for Canada. Policing is so lucrative, officers are not willing to sacrifice their salary and retirement for ethics or criminality by fellow officers."

Donovan has appeared in front of the Canadian Human Rights Tribunal, but has found that the police service simply offers money for women to "shut up." Donovan stated "Employment lawyers are getting rich off of these cases. They are brought in to intimidate and threaten. They ask what it will take for these allegations to go away? What is going to take for you to stop talking about them? I am not going to stop talking about the truth. There is no amount of money…the silence would kill me. I am looking at systematic abuse."

Donovan stated, "Once I released my report in 2017, I had hundreds of officers and victims that reached out to me. I started testimonials from officers, but I am still alone because officers will not publicly support me. Some officers wanted me to quit or kill myself. There is a high incidence of suicides with police in Canada because of this culture. I could not have kept my mouth shut, it is not in my nature."

Donovan continued, "Hundreds of officers have reached out, and lots of civilians. There have been officers who are part of the good old boy system and have tried to shame me. If I had stayed, they would have kept me in the basement and I would never have been an officer on the road ever again."

unconsciousness. I am going to do what you tell me to do, I am going to keep my head down, and make it to retirement."

When I asked what separates Donovan from all the other officers who cannot or will not speak truth to power, she responds that she has an ability to stand up to bullies. "It is just not in my nature to stand by and watch someone misuse their authority. I hear from people all the time that they have to stay (on the job) because they need the money, but money has never been that important to me. I have never been motivated by money. I knew there was a chance I could lose my livelihood but I decided that if I have to, I will work at McDonalds. Protect your salary at what cost?"

When Donovan noted how corrupt the system was to her superiors, their response was usually that the system has always been corrupt, and who does Donovan think she is that she believes she can change the system? Donovan has stayed in the fight, establishing a company, "Fit4Duty-the Ethical Standard," which she presently operates. Her company conducts ethical workplace investigations, and provides consulting around workplace conduct management. She has appeared on the speaking circuit, informing the public about ethics, integrity, and whistleblowing. Donovan has written two books, "Systemic Misfeasance in Ontario Policing and the Coordinated Suppression of Whistleblowers" and "Police Line: Do Not Cross, Silencing a Canadian Police Whistleblower."

Donovan notes that at some point in every police officer's career, they are going to have to decide between their $100,000 job and pension, or their integrity. Donovan fights a lonely battle, as very few in positions of power or authority are willing to address the corruption and malfeasance within Canadian policing. The Royal Canadian Mounted Police (Mounties) have suffered a culture of dysfunction and paid out 220 million over the conduct of its officers. The problems with the Mounties are the same as Donovan's regional office: fear of repercussions, promotions driven by who you know rather than what you do, and a presumption that officers in senior ranks are skilled and professional.

When, Donovan asks, are the police organizations going to run out of money to pay for their misconduct? Donovan's battle is David and Goliath, a lonely voice crying out in the wilderness of Canada.

Currently, Donovans' lawsuit filed in May of 2018 for breach of contract was dismissed in February of 2019, and Donovan appealed. In October of 2019 the case was reinstated and

It was simply an attempt to silence Donovan as she never signed an NDA. It also turned out that the Registrar of the Ontario Tribunal was previously the Head Instructor of the Ontario Police Academy. The Tribunal can dismiss a case at any time, and currently, there has been no action taken. The life of a whistleblower is extremely difficult, and Donovan has had to fight more than her share of corruption, experiencing obstacles every step of the way. Her courage and fearlessness is to be admired, for her path is not marked, and she walks alone, guided only by her moral compass and the light of truth.

Read more:

Read more about Donovan's case here.

Follow Donovan on Twitter here.

Visit Donovan's website here.

Tags: Top

Jane Turner

Jane Turner is a whistleblower and highly decorated 25-year veteran Special Agent within the Federal Bureau of Investigation (FBI). The first woman named the head of an FBI resident agency, Turner led the FBI's highly successful programs to combat crimes against women and child sex crime victims on North Dakota Indian Reservations. She won awards for successfully investigating significant crimes on the Fort Berthold Indian Reservation. Federal prosecutors described her as the leading FBI agent solving child crimes in the entire United States. In retaliation for her efforts, Turner was removed from her position by the FBI. Years later, Turner would win a historic decision for all FBI whistleblowers, when the court held that Ms. Turner set forth sufficient facts to justify a trial by a jury. Turner also successfully challenged her retaliation in federal court and obtained the largest compensatory damage award permitted under the law for federal employees. Since becoming a whistleblower advocate, Turner has served as the Chair of the Whistleblower Leadership Council at the National Whistleblower Center and is a member of its board of directors. Turner's weekly column, Whistleblower of the Week, highlights the stories of whistleblowers who have stood up to massive corruption, fraud, and

Write a Letter to The Editor.

Please compose your letter here or paste copy from a word document...

Name *

First

Last

Email *

Phone *

Enter Your Address *

Street Address

Address Line 2

City

ZIP / Postal Code

Select an Option

Country

Receive Email From Whistleblower Network News

☑ Yes, I'd like to subscribe to daily email and whistleblower alerts

Consent *

☐ I agree to the submission guidelines policy for writing a letter to the editor.

SUBMIT

Ohio-Based Medical Facilities To Pay $10.25 Million To Resolve FCA Whistleblower Lawsuit

by **Peter Briccetti** — March 30, 2021 in **Corporate**, **False Claims-Qui Tam**, **FCA Rewards**

Reading Time: 3 mins read

EXCLUSIVES QUI TAM FCPA SEC CFTC

Share on Twitter Share on Facebook Share on LinkedIn Email

Three Ohio-based psychiatric care and treatment facilities have agreed to pay $10.25 million to resolve a whistleblower lawsuit alleging multiple violations of the False Claims Act. Oglethorpe Inc. and its three facilities Ridgeview Behavioral Hospital, Cambridge Behavioral Hospital, and The Woods at Parkside (collectively Oglethorpe) allegedly offered free long-distance transport for patients and prospective patients as an incentive to receive treatment that would then be billed to the government. The company and the three facilities also allegedly billed the government for unnecessary inpatient psychiatric care for patients.

According to a U.S. Department of Justice (DOJ) press release, Darlene Baker, a former client advocate at one of the psychiatric hospitals, filed a *qui tam* lawsuit against Oglethorpe in October of 2016. The lawsuit alleged that Oglethorpe violated the False Claims Act by providing illegal incentives in the form of free transportation to and from its treatment centers.

The Special Agent in Charge of the case, Lamont Pugh for the Office of Inspector General of the U.S. Department of Health and Human Services, said that "kickbacks in the form of free van rides and the false claims subsequently submitted to federal health care programs come at a tremendous cost to patients and the taxpayers." The Anti-Kickback Statute of the False Claims Act "prohibits offering, paying, soliciting, or receiving remuneration to induce referrals of items or services covered by a federal health care program." The lawsuit views the allegedly free bussing of patients as an illegal incentive to bill the government health programs such

The government also alleged that Oglethorpe submitted false claims by ordering medically unnecessary inpatient psychiatric admissions and other services at their two psychiatric facilities. Billing a federal medical program for services that patients do not really need is a common form of federal medical fraud, which the False Claims Act clearly prohibits. Acting U.S. Attorney for the Southern District of Ohio Vipal J. Patel said:"Submitting false claims by billing for unnecessary inpatient psychiatric hospitalizations is not only inappropriate – it's illegal." In cases such as this, government officials often comment on the potential for alleged medical fraud schemes like this one to erode the public's trust in the U.S. medical system.

Darlene Baker, the whistleblower (or relator as they are legally known) will receive a portion of the total $10.25 million ranging from 15 to 30% of the total. This False Claims Act reward system has been shown to effectively increase the number of credible whistleblower disclosures, greatly expanding the DOJ's ability to prosecute fraud of all kinds. The False Claims Act whistleblower is so powerful that in 2020, over two-thirds of the total money recovered by the False Claims Act stemmed from whistleblower disclosures.

Read the DOJ's press release here.

Tags: False Claims / Qui Tam Medical Fraud

Peter Briccetti

, OFA whistleblowers, and tax fraud whistleblowers. Peter is a graduate of Hamilton College with a degree in History and an interest in politics and anti-corruption law. At Hamilton, he wrote for the Hamilton College Spectator as an editor and contributor.

Write a Letter to The Editor.

Please compose your letter here or paste copy from a word document...

Name *

First

Last

Email *

Phone *

Enter Your Address *

Street Address

Address Line 2

State / Province / Region

ZIP / Postal Code

Select an Option

Country

Receive Email From Whistleblower Network News

☑ Yes, I'd like to subscribe to daily email and whistleblower alerts

Consent *

☐ I agree to the submission guidelines policy for writing a letter to the editor.

SUBMIT

Most Popular

- Colorado State Employees Allege Misconduct Regarding Air Pollutants
- WNN, Advocacy Organizations Send Letter to Biden Calling for Stronger Whistleblower Protections
- U.S. Federal Court Vindicates Terminated Whistleblower In Landmark FCA Decision
- Biden Announces Nominee to Lead Widely Criticized VA Whistleblower Office
- Whistleblowers Allege Abuse at PA Juvenile Detention Center
- SEC Whistleblower Office Posts Nine New Notices of Covered Actions

Whistleblower Poll

EXCLUSIVES QUI TAM FCPA SEC CFTC

WHISTLEBLOWER POLL

Exclusive Marist Poll: Overwhelming Public Support Among Likely Voters For Increased Whistleblower Protections

BY **GEOFF SCHWELLER** OCTOBER 6, 2020

Receive Daily Alerts

Subscribe to receive daily breaking news and legislative developments sent to your inbox.

Your Email

SUBSCRIBE

ADVERTISEMENT

ADVERTISEMENT

Your Email

SUBSCRIBE

Whistleblower Network News is an independent online newspaper providing our readers with up-to-date information on whistleblowing. Our goal is to be the best source of information on important *qui tam,* anti-corruption, compliance, and whistleblower law developments.

Submit an Article

Copyright © 2021, Whistleblower Network News. All Rights Reserved.

This Newspaper/Web Site is made available by the publisher for educational purposes only as well as to give you general information and a general understanding of the law, not to provide specific legal advice. By using this website, you understand that there is no attorney-client relationship between you and the Newspaper/Web Site publisher. The Newspaper/Web Site should not be used as a substitute for competent legal advice from a licensed professional attorney in your state.

TAB 34

KellyDonovan.ca @Fit4Duty_Ethics · Apr 30

The irony is... I was also facing 8 counts of misconduct before I resigned. For what you ask? Reporting abuses of power to the Board. The entire system is flawed. Which is why it has taken this long for any charges to be laid at all.

5 13 39

TAB 35

KellyDonovan.ca (She/They) @Fit4Duty_Ethics · Feb 16

Missing a big piece of this case... but, if you know and have been paying attention; thank you. Second time attending the Court of Appeal...

> **CBC KW** @CBCKW891 · Feb 15
>
> Former Waterloo regional police officer seeks appeal to have case against police heard in court ift.tt/2jcYW1u

1 6 15

Laura Marie Fougere @LauraFougere · Feb 16

Talk about going in circles. So how would representation work. your union, who has a Duty of Fair Representation, literally stabbed you in the back and left you alone to fend for yourself.

1 1

KellyDonovan.ca (She/They) @Fit4Duty_Ethics · Feb 16

They signed a legal agreement that I was giving up all rights I had under the collective agreement, for any matter whatsoever related to my employment with or my resignation from the WRPS. Pretty clear to me.

1 1 4

TAB 36

Home
Explore
Notifications
Messages
Bookmarks
Lists
Profile
More
Tweet

Cavina Tsoi
@CavinaTsoi

Tweet

Police Association of Ontario (PAO) @PoliceAssocON · Jul 23, 2021
.@PoliceAssocON President Mark Baxter @PresidentPAO and @KingstonPAca President Cam Gough recently spoke with @StephattheWhig about the @OACPOfficial's WSIB resolutions and their potential to detrimentally impact the mental health of police personnel.

thewhig.com
Ontario police chiefs' call to change WSIB benefits called 'ludicrous'

1 15 28

This Tweet is unavailable. Learn more

KellyDonovan.ca (She/They)
@Fit4Duty_Ethics

Replying to @publicarepolice @PoliceAssocON and 5 others

@WRPSToday signed a contract saying they would leave me alone and not appeal my @WSIB claim. Then they do anyway because they want my care to end. Where was the @PoliceAssocON then? I personally spoke to them. They didn't care either. #backscratching #political

9:09 PM · May 19, 2022 · Twitter for iPhone

3 Retweets **1** Quote Tweet **7** Likes

Tweet your reply
Reply

Search Twitter

Relevant people

KellyDonovan.ca (
@Fit4Duty_Ethics
Kelly Donovan is a
former police office
litigant. Author of "
Cross"

MRB
@publicarepolice
One One /Hun
Rights/justice relief
truth/meditator/inv
ature/protector/sur
CourtofPublicAppe

Police Association
@PoliceAssocON
Unifying voice for 2
civilian police perso
police associations
President: @Preside
not monitored 24/7

What's happening

#TELUSStreamPlus
Save big with Stream+
Promoted by TELUS

Celebrities · Trending
#AmberTurd
58.5K Tweets

BuzzFeed · Last night
Halsey Called Out People W

Home
Explore
Notifications
Messages
Bookmarks
Lists
Profile
More
Tweet

Search Twitter
Trending in Canada
#onstorm
Show more

Terms of Service Privacy Policy
Accessibility Ads info More ···
© 2022 Twitter, Inc.

Cavina Tsoi
@CavinaTsoi

Home
Explore
Notifications
Messages
Bookmarks
Lists
Profile
More
Tweet

Tweet

KellyDonovan.ca (She/They)
@Fit4Duty_Ethics

Similarly, I'll be facing off with @WRPSToday in September at #HRTO. They signed a contract to not appeal my @WSIB claim, but did anyway. Suicides keep piling up, and we ask ourselves why? Spoiler alert; I know exactly why.

> **Ryan, the Lion** @publicarepolice · May 23
> A #Cop with #PTSD? #Police Service & #WSIB would prefer you RESIGN. WSIB Case Manager, Winsome Lewis, FORCING me to Return to Policing, while telling me she's not forcing me, after WSIB's #CAMH & all other medical says I can't without HOME ACCOMMODATION youtube.com/watch?v=EpEfTP...
> Show this thread

12:47 PM · May 25, 2022 · Twitter for iPhone

6 Retweets **1** Quote Tweet **11** Likes

Tweet your reply

Reply

The Purple Princess @princessinblue2 · May 25
Replying to @Fit4Duty_Ethics @WRPSToday and @WSIB
And those are the officers that implode.
Another course is to explode on others.
And here we are. A mess of hurting and hurtful people; Providing a safe haven for the cowards and corrupt to simply stay quiet bec. it's the only "sane"option.

Love all.
Trust few.
Do harm to none.

1

Search Twitter

Relevant people

KellyDonovan.ca (Sh... Follow
@Fit4Duty_Ethics
Kelly Donovan is a whistleblowing former police officer. Self-Represented litigant. Author of "Police Line: Do Not Cross"

Waterloo Regional... Follow
@WRPSToday
This account is not monitored 24/7. If you have an emergency, call 911. Non-emergency reports, call 519-570-9777

WSIB Follow
@WSIB
The Workplace Safety and Insurance Board. We help people every day by administering no-fault insurance for Ontario workplaces. WSIB - we're here to help.

What's happening

News · Last night
Johnny Depp and Amber Heard defamation trial reaches jury deliberation

#CokeStudio
Turn up the summer with the hottest tracks, experiences and prizes.
Promoted by Coca-Cola Canada

Trending in Canada
LifeLabs
3,118 Tweets

Scottish Express · 3 hours ago
Mona Lisa 'smeared' in cream by suspected climate change protester disguised as old woman

Politics · Trending
OHIP
12.3K Tweets

Show more

Terms of Service Privacy Policy Cookie Policy
Accessibility Ads info More ...
© 2022 Twitter, Inc.

Cavina Tsoi
@CavinaTsoi

TAB 37

Home
Explore
Notifications
Messages
Bookmarks
Lists
Profile
More
Tweet

Tweet

Graham T. Clark
@gTclaw

she had to arrest a popular officer from same division for impaired driving. Fallout was “nothing short of devastating...personally and professionally,” being ostracized and unsupported while arrested officer was supported and later moved to a prestigious position

> **Naomi Sayers, Ozaawaagiizis’okwe** @kwetoday · Jun 22
> Courageous story-telling (though these stories shouldn't have to be told if we didn't allow them to happen in the first place), lots of love and support to @Momma2914 thestar.com/news/gta/2022/...

9:52 AM · Jun 23, 2022 · Twitter Web App

8 Retweets **30** Likes

Tweet your reply
Reply

KellyDonovan.ca (She/They) @Fit4Duty_Ethics · Jun 23
Replying to @gTclaw
I reported my chief for selectively enforcing laws against his members. I was disciplined, he is now Deputy Commissioner of the RCMP. They’re all the same.

1 1

Search Twitter

Relevant people

Graham T. Clark @gTclaw Follow
Here, now. Also there, then - allegedly. Doing many things, a few very well. Often called "lawyer", "counsel" etc.

Naomi Sayers, Oza... @kwetoday Follow
Former Bay St. Energy Lawyer. Litigator (appeals/health/civil). Co-Counsel Charlie Sober Past Independent MPP-Candidate. tiny.meetnaomi.com/disclaimer

TwinMomHealing @Momma2914 Follow
Survived 31 years of policing. Retired since Feb 2020 Sober since Feb 28th 2021. Still working on my recovery One day at a time.

What’s happening

News · LIVE
R. Kelly sentenced to 30 years in prison
Trending with R. Kelly

#PlayFallGuysFree
Fall Guys: Free for All
Promoted by Fall Guys... FREE FOR ALL!

Los Angeles Ti... · June 28, 2022
Dakota Johnson says she signed up for a ‘very different’ ‘Fifty Shades of Grey’ movie

Entertainment · Trending
Captain Marvel
7,771 Tweets

CNBC · Yesterday
Is time up for TikTok? An FCC commissioner calls on Apple and Google to remove the platform from their app stores

Show more

Terms of Service Privacy Policy Cookie Policy
Accessibility Ads info More ...
© 2022 Twitter, Inc.

Cavina Tsoi
@CavinaTsoi

TAB 38

Explore

Settings

Tweet

Search Twitter

KellyDonovan.ca (She/They)
@Fit4Duty_Ethics

I'll say it again; "No public officer should ever be afforded the right to have their conduct concealed in a legal agreement." @cbmsilence #banNDAs #cantbuymysilence @ProfJulieMac @ZeldaZeldaluna

cbc.ca
Researcher says officers found guilty of sexual misconduct s...
Former Waterloo police officer Kelly Donovan says non-disclosure agreements shield police officers from ...

9:59 AM · Oct 4, 2022 · Twitter Web App

7 Retweets **1** Quote Tweet **8** Likes

More Tweets

Mary L Trump @MaryLTrump · 16h
October might have to be longer this year if we're going to get all of the surprises to fit.
547 3,290 26K

Robert Reich @RBReich · Oct 6
From 1989 to 2019, typical working families saw a negligible increase in their wealth.

During the same time period, the wealthiest one percent got $29 trillion richer.

When I say trickle-down economics is a hoax, this is what I mean.
1,593 6,350 15.7K

TruthBeTold @LehmkuhlRande · 9h
Home Depot has donated more than $1 million to Hershel Walker's campaign. RT if you will join me in boycotting HD.
923 5,499 9,673

Be A King @BerniceKing · 10h
Let's not forget #BrittneyGriner. #FreeBrittneyGriner

New to Twitter?

Sign up now to get your own pers

Sign up with G

Sign up with A

Sign up with phone

By signing up, you agree to the Te Privacy Policy, including Cookie U

Relevant people

KellyDonovan.ca (
@Fit4Duty_Ethics
Kelly Donovan is a v former police office litigant. Author of " Cross"

Can't Buy My Silen
@cbmsilence
We are a campaign building a global cc misuse of NDAs to silence. #cantbuym

Julie Macfarlane
@ProfJulieMac
Distinguished Prof I "Going Public". co-f My Silence campaig Besotted nana

What's happening

Television · Last night
Watch What Happens: Live on Bravo

HuffPost Latino Vo... · La
15 Latine Activists You Sho Know And Read About

The Washington Post · Ye
Exclusive: How police actio Indonesia led to a deadly c in the soccer stadium

Politics · Trending
Vladimir Putin
46K Tweets

NFL · Last night
Colts at Broncos
Trending with Broncos, Hackett

Don't miss what's happening
People on Twitter are the first to know.

Log in S

TAB 39

Kelly Donovan Testimony Before the Manitoba Legislative Assembly's Standing Committee on Legislative Affair on November 2, 2022

Link to testimony: https://youtu.be/ChcN4Jruosk?t=9600

Kelly Donovan (**KD**)

Committee Chair (**CC**)

Dougald Lamont (**DL**)

Lisa Naylor (**LN**)

Hon. Kelvin Goertzen (**KG**)

[**START**: 2:40:00]

KD: Thank you. Up until 2017 I was a police officer with the Waterloo Regional Police Service. Starting in 2015 I began to witness subjective enforcement of our laws when criminal allegations, domestic in nature, were brought against a member of the Police Service. At times they weren't even investigated. I do not believe that police have the right under common law discretion to choose when to, and when not to charge or investigate based on personal motive. It still did not sit well with me and I wanted to do something about it. My union president told me that is just the way policing was and that I would never be able to change it. Our laws in Ontario actually prohibited me from complaining formally about what I perceived to be corrupt practices and inadequate policies. The only thing I could lawfully do at the time, which was in 2016, was speak at a Police Services Board meeting, much like this hearing here today. I expressed to the Board what I had witnessed and why I believed that my chief of police, Mr. Brian Larkin, was abusing his authority when making decisions involving criminal allegations brought against our own members. Following this disclosure, the chief was allowed to put me under investigation for misconduct. I was removed from my position as a use-of-force instructor and ordered to cease communicating with members of the Board. I was gagged. After 14 months, and several failed attempts to have an oversight body intervene in the retaliation I was facing I chose to resign. While negotiating my resignation I made it clear that I would not agree to an NDA. I made it very clear that I would not sign a contract that prohibited me from speaking about my experiences. If they required the NDA, I would simply have remained employed collecting my $100,000 per year salary with full benefits and pension, but they did agree. I also required that a release be signed by them so that they could not harm me anymore.

At this point I had researched how prevalent whistleblower retaliation was in policing and I knew that they had access to many retaliation tools. Upon resignation I travelled across Canada sharing my story to encourage lawmakers to enact whistleblower protection laws, so that the next person who reports what they believed to be unethical leadership does not face reprisal at the hands of the very they are reporting.

In 2018 I spoke at the Ontario Legislature and because of my testimony police officers are now legally allowed to file complaints and are even afforded protection from reprisal. I have made a difference. Yet, I am not safe. Despite my refusal to sign an NDA, and despite the release that was signed by the Waterloo Regional Police, only six months after my resignation the retaliation began

again. Confidential details of my resignation agreement were exposed, and the Service filed an appeal of my workplace injury claim to have my benefits revoked. They wanted to take away whatever I had left, despite the legal contract they had signed. This started a litigation battle that is entering its fifth year. the Police Service went on to file a contravention of settlement application against me at the Ontario Human Rights Tribunal alleging all of my public speaking is in violation of my resignation agreement, yet they acknowledge that there is no NDA. As of August 2021, which is over a year ago, the Police Service have spent over half a million dollars on their lawyer to try to achieve my silence and they continue to spend.

We must stop the silencing of victims of harassment and discrimination; that is extremely important and it is a wonderful first step having all members of the Legislative Assembly agree on that priority. I hope that my story will provide insight into the misuse of NDAs and the abuse of individuals who refuse to sign them. If you believe that what happened to me was wrong, then it is imperative that Bill 225 be revised. Telling a victim of harassment or discrimination that they can't talk about what happened to them for the sole intent of protecting the offender is wrong. What I feel is most important at this stage is that NDAs are being used to cover up so much more: abuses of power, criminal acts, and all forms of corrupt behaviour. If the behaviour that is being buried in an NDA does not fit the definitions of harassment or discrimination, the Non-Disclosure Agreements Act does not protect the complainant.

To explain that further, in my case what I initially alleged was that the Police Service was choosing when to—and when not to—investigate and charge their members of domestic abuse depending on the officer. I was immediately disciplined, taken out of my job, and gagged. The Police Service hired a lawyer to say in her report that I was not harassed or discriminated against in the way I was treated following my disclosure. When I chose to resign, the Police Service did not want me to voice those allegations again, they wanted me to sign an NDA. But I was not a victim, I was a witness to what I believed was corrupt behaviour. But they didn't want me to be able to talk about it, and I knew this was wrong so I refused to sign the NDA. It's my belief that even if I had signed the NDA, the proposed act would not protect me since the best way to describe the way I was treated was retaliation, not harassment or discrimination, and the retaliation I faced was not reporting harassment or discrimination, it was for reporting what I perceived to be corrupt practices.

I firmly believe that section three sub one of the proposed act should read that if the provision of a non-disclosure agreement prohibits or restricts a complainant from disclosing information concerning a violation or alleged violation of any federal or provincial act the provision is invalid or unenforceable. If you knew the types of offences alleged to have been committed by high-ranking public officers who are now protected thanks to NDAs, you would support this recommendation. The *Human Rights Code* of Manitoba prohibits harassment, discrimination, as well as reprisal. I feel at the very least reprisal must be included in the act.

But if we look at similar Canadian laws, we already protect employees in section 425.1 of the *Criminal Code* of Canada. Under section 425.1, if an employee witnesses or believes they witnessed an offence being committed by the employer, or an officer, or employee of the employer, the employer cannot take any measure against the employee to try to stop them from providing information to a person whose duties include the enforcement of federal or provincial law, or with the intent to retaliate against the employee because they did provide information to law enforcement.

We understand the need to ensure employees feel safe to report alleged violations of law, but we currently do nothing to stop those employer from having those employees sign an NDA to conceal the very same conduct. So in a way, an NDA is already unlawful in Canada, but obviously this law isn't helping Canadians. Based on *Criminal Code* section 425.1, if an employer had an employee sign an NDA to conceal a violation of law, which would include the Human Rights Code, meaning harassment and discrimination, that could be seen as a criminal offence committed by the employer. My resignation states—sorry, my resignation agreement states, that I'm not able to file any complaints against the Police Service for what they did to me prior to my resignation. In my opinion, that violates the *Criminal Code*.

It's time that Canadian lawmakers understand that it's the abusers themselves who have been empowered to silence their own victims. This is why we need laws prohibiting NDAs, and this is why those laws must be robust. A person who witnesses someone in a powerful position of authority committing an egregious act is not really given a choice. They can either sign the NDA to protect the powerful person, or they can face a lifetime of retaliation. That's because without an NDA, the person can talk—and if they speak the truth, they can't be stopped. If their truth-telling threatens the powerful person, the powerful person will do just about anything to shut them up. That is the blunt reality. And if you don't believe me you can tune into my next Human Rights Tribunal of Ontario hearing to watch the retaliation in real-time. It's not only the silencing of victims of harassment and discrimination that must be stopped, there are men and women across Canada that witness egregious abuses of power and criminal acts committed by public officers whose only hope at escaping a lifetime of retaliation is signing an NDA. I'm living proof of that. I've now faced retaliation by them longer than I was even employed by them and they have spent over half a million dollars to try to achieve my silence.

To conclude, I applaud all members of the Legislative Assembly for their commitment to a higher ethical standard. You are leaps and bounds ahead of other provinces in the country. I thank you on behalf of those who don't feel safe being here to speak, and I thank you on behalf of the next generation who will be better protected as a result of this act. Understanding that many very well-educated and experience people worked on Bill 225 to get it to where it is today, I very humbly make my suggestion to you based on my experience only. And my suggestion is to revise section three sub one to read that if a provision of a non-disclosure agreement prohibits or restricts a complainant from disclosing information concerning a violation or alleged violation of any federal or provincial act, the provision is invalid and unenforceable. This change would protect victims of harassment and discrimination, but also so many other men and women across Manitoba. At the very least I would suggest including reprisal along with harassment and discrimination [Cut-off].

CC: Ms. Donovan, sorry the rules require that I tell you that time has ended. Leave has been requested—is there leave, yeah. Leave has been granted. Please, complete your presentation; I will give you two minutes to do so.

KD: Yeah, I will be very quick. All I would do is I would define reprisal to be very broad and include any conduct resulting from a person's attempts to follow any law. And all I wanted to do was thank you for providing me with the opportunity to speak and I welcome any questions or comments that you have.

CC: Thank you for your presentation, Ms. Donovan, we will now have some questions, I see three, we will start with Mr. Lamont. Mr. Lamont please go ahead.

DL: Yes, I thank you very much, both for your courage and for your integrity and exactly what you've done is absolute inspiring and I would be more than happy to strengthen the bill in any way we can and to protect people against reprisals, whether we review it or however that will proceed, I want to thank you very, very much, both for the public stand you've taken and the work you've done, I hope we can honour your work.

CC: Ms. Donovan, if you wish to respond you may do so.

KD: No, just to say thank you Mr., or Minister Lamont, very much.

CC: Just to clarify it is Mr. Lamont, but uh…Ms. Naylor please go ahead with your question.

LN: Thank you so much Ms. Donovan. You have again presented us, like so many speakers have tonight, with another way in which NDAs have been used to silence people who need to be able to speak, so thank you for that, thank you for your recommendations and for drawing our attention to where there may be a gap, or other gaps in this bill and the way it is written so far I think that is really important, crucial for this committee process that allows us to hear that feedback and thank you so much for taking the time to tell your story here tonight.

CC: Ms. Donovan, if you wish to respond you may do so.

KD: Yes, if I may because she reminded me of something. I think what's important to keep in mind is that our system of laws have deterrents by way of punishment, but when it comes to a lot of the acts that are suppressed in an NDA, just having a law prohibiting NDAs will create an entirely new culture of accountability. So it's not about us needing the laws to punish people committing these harms, just knowing that this information cannot be suppressed forever in a legal agreement might be just enough to change behaviours within workplaces, within corporations, whatever it is, so I think it's important. You reminded me of that when you were talking about the purpose of it, you know you're taking a huge step by implementing this legislation but in doing so you change the culture and everyone talks about how difficult it is to change workplace cultures, but just knowing that is not a possibility anymore is huge and protects people just with the mere risk of not being able to do that anymore, people's behaviours will change, and that's why it's so important that this act pass.

CC: Minister Goertzen

KG: Thank you Ms. Donovan for your presentation, sharing your experience, and most of importantly for sharing your suggestions. And I would ask, and I know you're busy, and I can tell you're busy, but I can tell you're an advocate and…well you probably get tired but you probably never cease and there is going to be an opportunity to make some presentations and make some suggestions to the Manitoba Law Reform Commission, their website is manitobalawreform.ca, and they're undertaking an investigation on non-disclosure agreements and they're going to be putting out a consultation paper in the next few weeks and I think that your advice in a consultation paper, or maybe as a designated stakeholder or expert would be very valuable for them to hear. And so I wanted to leave that with you and if you're able to reach out to them, I know that they would appreciate it.

CC: Ms. Donovan, if you would like to respond you may.

KD: Thank you very much I will definitely look into that.

CC: Are there any other questions? Hearing none, Ms. Donovan we thank you for your presentation and your time this evening.

[**END**: 2:55:04]

TAB 40

Court File No.:
CV-18-00001928-0000

Ontario

SUPERIOR COURT OF JUSTICE

BETWEEN:

KELLY LYNN DONOVAN

Plaintiff

- and -

WATERLOO REGIONAL POLICE SERVICES BOARD, and

BRYAN LARKIN

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 1 8B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFFS' CLAIM, and $1,000.00 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding

dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiffs' claim and $400 for costs and have the costs assessed by the court.

Date: 09 May 2018 Issued by: _____

Name: _____

Local Registrar

Address of Court Office:

7755 Hurontario Street

Brampton, Ontario

L6W 4T6

TO: WATERLOO REGIONAL POLICE SERVICES BOARD

200 Maple Grove Road

Cambridge, Ontario

N0B 1M0

AND TO: BRYAN LARKIN

378 Golf Course Road

Conestogo, Ontario

N0B 1N0

CLAIM

I. Relief Claimed

1. The plaintiff Kelly Lynn Donovan, claims against the defendants, jointly and severally, the following relief:

    a. Damages for breach of contract, in the amount of Two Hundred Thousand Dollars ($200,000.00);

    b. Punitive, exemplary and/or aggravated damages in the amount of Ten Thousand Dollars ($10,000.00);

    c. To be reinstated as a sworn member of the Waterloo Regional Police Service at full pay of a first-class constable with all the rights, privileges and prerogatives she formerly enjoyed, on terms mutually agreed upon by both the defendants and plaintiff.

    d. Pre-judgment and post-judgment interest in accordance with the Courts of Justice Act, R.S.O. 1990, c. C.43, as amended;

    e. Costs of this proceeding on a solicitor and his own client scale, together with applicable HST; and

    f. Such further and other relief as counsel may advise and this Honourable Court deems just.

II. Parties

2. The plaintiff, Kelly Lynn Donovan, is a former police officer who resides in the City of Brantford in the Province of Ontario. Prior to June 26, 2017, the Plaintiff

was employed by the defendant Waterloo Regional Police Services Board ("defendant board").

3. The defendant Bryan Larkin is chief of Waterloo Regional Police Service and is employed by the defendant board.

III. Facts

Class action lawsuit

4. On May 30, 2017, a class action lawsuit was filed against the defendants in the Ontario Superior Court of Justice in Brampton; Court File Number CV-17-2346-00, (furthermore referred to as "the class action lawsuit"). The plaintiff is not a party to the class action lawsuit. The class action lawsuit alleges systemic and institutional gender-based discrimination and harassment and seeks total damages of One Hundred and Sixty-Seven Million Dollars ($167,000,000.00).

Plaintiff's resignation

5. On June 8, 2017, the plaintiff and defendant board entered into a Resignation Agreement, written by counsel for the defendant board, containing the following clause:

    a. *"Except where disclosure is required by law, or where disclosure is to Donovan's immediate family members or to persons providing*

professional financial/legal advice (all of whom agree to be bound by this non-disclosure and confidentiality clause), the parties undertake and agree that they will keep the terms and existence of this Resignation Agreement in absolute and strict confidence at all times, without time limitation, and not disclose its contents to any third party, person or entity. For added certainty, and without limiting the generality of the foregoing, the parties undertake and agree that they will not publicize, discuss, disclose or communicate in any way with any person, entity or organization, in any form whatsoever, the contents or terms of all or any part of this Resignation Agreement. If asked, the parties (and anyone subject to the terms of this non-disclosure and confidentiality clause) will indicate only that all outstanding matters between the parties were settled to their mutual satisfaction, the terms of which settlement are strictly confidential."

6. The Resignation Agreement was signed by the defendant Bryan Larkin on behalf of the defendant board.

Plaintiff's health

7. Prior to February, 2011, the plaintiff did not have any health issues. The plaintiff was healthy, educated and highly employable. She was hired by the defendant board on her first attempt in December, 2010.
8. Starting in February, 2017, the plaintiff could not attend work due to the severity

of her post-traumatic stress disorder (PTSD) symptoms. The plaintiff's medical condition was caused by her employment with the defendant board; both from a training accident and the moral injury she suffered in 2015 pertaining to alleged internal corrupt practices she had witnessed.

9. The plaintiff was frequently triggered by her ongoing human rights case and disciplinary proceeding. The plaintiff's symptoms briefly improved when she resigned from the police service in June, 2017.

IV. Overview

10. On December 21, 2017, defendant Bryan Larkin swore an affidavit in defense of the class action lawsuit and the document was submitted to record.
11. In the affidavit, the defendant Bryan Larkin states, at para. 13:
    a. *"Attached hereto and marked as "Exhibit F" to this my Affidavit, is an additional chart that I had requested the Human Resources Division of WRPS prepare, showing where the Human Rights Tribunal complaints that had been commenced by female employees in the last five years, and their status or resolution. Again, this chart has non-identifying information, with the exception of the Plaintiff, [name removed], who's Complaint is to the Human Rights Tribunal as it is still outstanding, and the status of which is referred to in detail below."*
12. The attachment to the defendant Bryan Larkin's affidavit is a chart titled "Police Officer Initiated Ontario Human Rights Complaints" and lists four female officers.

Those officers are identified in the following ways:

a. One female officer is named and the three remaining female officers are not.

b. Of the three-unnamed female officers, two are listed as "Constables" and one as "Sergeant."

13. Of the two-unnamed female "Constables" in the chart, one shows as having been resolved in the following manner:

i. "SETTLED: - monetary settlement, - withdrawal of OHRT application, - voluntary resignation."

14. There is only one female officer showing on this chart as having "voluntarily" resigned.

15. The plaintiff is the only female constable who was employed by the defendant board over the past five years, had filed a human rights complaint and who voluntarily resigned.

16. The public disclosure made by defendant Bryan Larkin was not required by law, contained sufficient information for the plaintiff to be identified and violates the terms of the Resignation Agreement.

17. The actions of defendant Bryan Larkin have caused the plaintiff a great deal of stress, anxiety and re-lived trauma. From December, 2017, to March, 2018, the plaintiff's PTSD symptoms worsened.

18. Defendant Bryan Larkin is aware that the plaintiff was on medical leave from February, 2017, until her resignation in June, 2017.

19. The plaintiff therefore claims the relief as set out in paragraph 1 of the Statement

of Claim.

20. The defendants are jointly and severally liable for the damages caused to the plaintiff. Further, the defendant board is vicariously liable for the conduct, representations, omissions and/or negligence of the police service's employees, agents, servants and contractors, which includes the defendant Bryan Larkin.

FORM 4C

Courts of Justice Act

BACKSHEET

Kelly Lynn Donovan vs. Waterloo Regional Police Services Board et al.

Court file no. CV-18-00001938-0000

Rec'd May 10/18
M. Mayford
Legal Services

Ontario Superior Court of Justice

PROCEEDING COMMENCED AT Brampton

STATEMENT OF CLAIM

KELLY DONOVAN
11 Daniel Place
Brantford, Ontario
N3R1K6
Phone: 519-209-5721
Email: kelly@fit4duty.ca

RCP-E 4C (May 1, 2016)

TAB 41

COURT OF APPEAL FOR ONTARIO

CITATION: Donovan v. Waterloo (Police Services Board), 2022 ONCA 199
DATE: 20220310
DOCKET: C69467

2022 ONCA 199 (CanLII)

Strathy C.J.O., Roberts and Sossin JJ.A.

BETWEEN

Kelly Lynn Donovan

Plaintiff/Responding Party (Appellant)

and

Waterloo Regional Police Services Board and Bryan Larkin

Defendants/Moving Parties (Respondents)

Kelly Lynn Donovan, acting in person

Donald B. Jarvis and Clifton Yiu, for the respondents

Heard: February 14, 2022 by video conference

On appeal from the order of Justice Thomas A. Bielby of the Superior Court of Justice, dated April 19, 2021, with reasons reported at 2021 ONSC 2885, and from the costs order, dated May 28, 2021.

REASONS FOR DECISION

[1] This is an appeal from the motion judge's order pursuant to r. 21.01(3)(a) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, dismissing this action for lack of jurisdiction.

Background to the Appellant's Resignation and this Action

[2] The appellant is a former police officer, employed by the respondent Waterloo Regional Police Services Board (the "Board"). Her employment was subject to the terms of a collective agreement. The respondent Bryan Larkin ("Larkin") was the Chief of Police.

[3] The following is a brief summary of the events giving rise to these proceedings.

[4] In May 2016, the Board gave the appellant notice of an investigation under the *Police Services Act*, R.S.O. 1990, c. P.15 (the "*PSA*") related to her alleged disclosure of confidential information to the Board. On June 2, 2016, the appellant filed an application with the Human Rights Tribunal of Ontario (the "HRTO"), alleging that that Board had discriminated against her on the basis of sex and marital status.

[5] In February 2017, the appellant took medical leave for post-traumatic stress disorder as a result of observing an accidental shooting while studying to become a police constable at the Ontario Police College in February 2011.

[6] On June 8, 2017, the appellant entered into an agreement (the "Resignation Agreement") with the Board. The appellant's bargaining agent, the Waterloo Regional Police Association, was a party to the Resignation Agreement. That agreement expressly recognized that the appellant and the Board had an

2022 ONCA 199 (CanLII)

employee-employer relationship and that the appellant had notified the Board that she would be resigning her employment effective June 25, 2017.

[7] The Resignation Agreement recited the parties' desire to "fully resolve and settle" the outstanding matters between them, namely the appellant's HRTO application and the Board's investigation into the appellant and the potential charges she faced under the *PSA*. It stated that the parties agreed upon "full and final settlement of all matters related to [the appellant's] employment with or cessation of employment with the Board, and all other outstanding matters between them". It was a term of the Resignation Agreement that the terms and existence of the agreement would be kept confidential except as required by law, disclosure to immediate family, or disclosure to professional persons providing advice. The parties also agreed to exchange releases and the appellant signed a full and final release that was appended to the Resignation Agreement.

[8] Although the Resignation Agreement is redacted, it is apparent that the appellant was paid some compensation in respect of her legal expenses incurred in connection with the HRTO proceedings and the potential *PSA* charges. She was also paid a lump sum payment, net of applicable deductions and remittances required by law, presumably as compensation for the termination of her employment.

2022 ONCA 199 (CanLII)

[9] In May 2018, the appellant commenced this action, alleging a breach of the Resignation Agreement, seeking monetary damages and reinstatement to employment. She pleaded that Larkin had breached the Resignation Agreement because he had sworn an affidavit in defence of a class action against the Board, in which he allegedly disclosed information capable of identifying her as having resigned from the police force. The affidavit was allegedly posted on a website maintained by plaintiffs' counsel in the class action.

[10] In June 2018, the Board filed an application for contravention of settlement with the HRTO, alleging that the appellant had repeatedly contravened the terms of the Resignation Agreement by stating that she had been constructively dismissed by the Board. The appellant filed a response and her own application for contravention of settlement in July 2018, alleging that Larkin breached the Resignation Agreement by swearing the affidavit in the class action.

[11] On February 1, 2019, Favreau J., as she then was, dismissed a motion brought by the appellant to dismiss the Board's application to the HRTO, finding that the Superior Court had no jurisdiction to do so: *Donovan v. (Waterloo) Police Services Board*, 2019 ONSC 818, 49 C.P.C. (8th) 141. At para. 56 of her reasons, Favreau J. observed that it would be open to the appellant to raise before the HRTO the issue of jurisdiction over the enforcement of the Resignation Agreement and to respond to the Board's position concerning the effect of that agreement:

2022 ONCA 199 (CanLII)

> … during the hearing of this motion, I sought assurances from the Board that it would not impede Ms. Donovan's ability to make substantive arguments before the Human Rights Tribunal despite the fact that she may have missed some deadlines. In response, the Board's counsel gave an undertaking in court not to take the position before the Tribunal that Ms. Donovan is out of time to raise substantive arguments in response to the application. Therefore, subject to the Tribunal's ability to control its own process, at the Tribunal hearing Ms. Donovan should be allowed to raise issues she may wish to address about the Tribunal's jurisdiction over enforcement of the Resignation Agreement and to fully respond to the Board's position that the Resignation Agreement precludes her from speaking publicly about the matters the Board claims are captured by the confidentiality provision of the agreement.

2022 ONCA 199 (CanLII)

The Motions in the Superior Court of Justice

[12] The respondents originally brought a motion to strike this action on three grounds: (i) r. 21.01(1)(b) (no reasonable cause of action); (ii) r. 21.01(3)(a) (no jurisdiction over the subject matter); and (iii) r. 21.01(3)(d) (frivolous or vexatious or an abuse of process). Doi J. (the "original motion judge") dismissed the action under r. 21.01(1)(b), without leave to amend. While the other two grounds were fully argued before the original motion judge, he did not rule on them.

[13] On October 25, 2019, this court allowed the appellant's appeal from the order of the original motion judge, set aside the order dismissing the action and granted the appellant leave to amend her statement of claim as against Larkin: *Donovan v. Waterloo Regional Police Services Board*, 2019 ONCA 845. No issues had been raised before this court with respect to the grounds that were not

addressed by the original motion judge and this court did not address those grounds.

[14] The statement of claim has gone through four iterations, the current being a Fresh as Amended Statement of Claim, discussed below. Pursuant to this court's order, the appellant filed an Amended Amended Statement of Claim on January 29, 2020.

[15] Shortly thereafter, counsel for the respondents sought directions from the original motion judge concerning the two issues that had not been addressed by his order. He determined that a fresh motion should be brought before another judge, pursuant to r. 59.06(1) of the *Rules of Civil Procedure* (sometimes referred to as the "slip rule").

[16] The appellant subsequently filed a Fresh as Amended Statement of Claim on November 23, 2020. The motion to dismiss the action for want of jurisdiction was heard by a different judge (the "second motion judge") on February 23 and March 1, 2021. In reasons released April 19, 2021, the second motion judge dismissed the action on the ground that the essential character of the dispute involved the appellant's employment, which had been covered by a collective agreement and was subject to the dispute resolution and arbitration provisions of that agreement: referring to *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929; and *Desgrosseillers v. North Bay General Hospital*, 2010 ONSC 142.

2022 ONCA 199 (CanLII)

This Appeal

[17] The matter now comes to us on appeal.

[18] The issue of jurisdiction calls for us to consider the pleading in the Fresh as Amended Statement of Claim. In her claim for relief, the appellant claims against both respondents, jointly and severally, for breach of contract, misfeasance in public office and negligence. She also claims separately against Larkin for damages for misfeasance in public office.

[19] The appellant pleads that:

- she entered into a Resignation Agreement on June 8, 2017, which contained a non-disclosure and confidentiality clause, requiring the parties to keep the existence and terms of the agreement confidential;
- Larkin took retaliatory action against her as a result of her complaints to the respondent Board concerning his conduct;
- Larkin swore an affidavit in defence of a class action lawsuit against the respondents that claimed damages for systemic and institutional gender-based discrimination and harassment;
- attached to Larkin's affidavit was a chart listing HRTO complaints commenced by female employees of the Board within the preceding five years, including their status or resolution;
- the affidavit was published on the public website of the law firm advancing the class action lawsuit;
- although the affidavit did not identify the claimants, the chart contained sufficient information to enable the appellant to be identified as someone who had filed a human rights complaint and had voluntarily resigned from the Board;
- by swearing and delivering the affidavit, Larkin "used" her, "to attempt to stop the efforts of the [appellant's] female colleagues in their fight for justice";

2022 ONCA 199 (CanLII)

- the class action was dismissed as a result of a motion that relied on Larkin's affidavit;
- Larkin was aware of the terms of the Resignation Agreement, including that it was confidential;
- by swearing the affidavit, Larkin deliberately involved her in the class action lawsuit and violated the terms of the Resignation Agreement, knowing that it would impede her recovery from post-traumatic stress disorder;
- in January 2018, the Board appealed a WSIB claim she had made. Although she does not explicitly plead it, she is presumably asserting that the Board breached the Resignation Agreement by engaging in further legal proceedings against her; and
- she "claims the relief as set out in paragraph 1 of the Statement of Claim for two distinct and separate breaches of the resignation agreement by the defendant Board and the individual defendant."

[20] The appellant raises five grounds of appeal, which we address in order.

(1) Improper Procedure

[21] The appellant submits that the motion was not properly before the second motion judge because it could have been addressed by way of a r. 59.06 motion brought before the original motion judge and prior to the appeal, by filing a cross-appeal to this court, or filing a r. 59.06 motion to this court.

[22] We do not accept this submission.

[23] As the issue of jurisdiction was not addressed by the original motion judge or by either party on the previous appeal to this court, there is no impediment to raising it on this appeal.

2022 ONCA 199 (CanLII)

[24] The matter was properly before the second motion judge, although not pursuant to the “slip rule”. Rather, a remedy was available under r. 59.06(1) of the *Rules of Civil Procedure*, “to ... obtain other relief than that originally awarded”. Alternatively, it was open to the respondents to bring a free-standing motion to raise the issue of the court’s jurisdiction, given the delivery of the Fresh as Amended Statement of Claim.

2022 ONCA 199 (CanLII)

(2) Jurisdiction

[25] The appellant submits the Superior Court of Justice has jurisdiction over her claims and that jurisdiction has not been removed by arbitral agreement. She relies on *Skof v. Bordeleau*, 2020 ONCA 729, 456 D.L.R. (4th) 236, leave to appeal refused, [2021] S.C.C.A. No. 17. She argues that there is nothing in the applicable collective agreement to oust the court’s jurisdiction and that as a former member of the police force and no longer a member of the bargaining unit, she has no standing before the Ontario Police Arbitration Commission. She submits that, as in *Skof*, she is seeking a remedy for misfeasance in public office, which does not fall within the jurisdiction of an arbitrator. She submits that the principles in *Weber* and *St. Anne Nackawic Pulp & Paper v. CPU*, [1986] 1 S.C.R. 704, have no application.

[26] *Skof* is plainly distinguishable because this court found, at para. 17, the dispute related to disciplinary proceedings in a regulatory context and did not fall

within the collective agreement. This basis alone justified the second motion judge in distinguishing *Skof*.

[27] The second motion judge did precisely what the authorities require. He searched for the “essential character” of the dispute and found, at para. 80, that the Resignation Agreement was executed in the ambit of the collective agreement and took its essential character from the collective agreement. It was the product of a negotiated agreement of all outstanding employment matters between the parties. We see no error in this characterization.

[28] However, the motion judge did not grapple with the question of whether the appellant will be permitted, under the collective agreement or the Resignation Agreement, to invoke the grievance procedure now that she is no longer employed by the respondent. This affects the outcome.

[29] In *Skof*, explicit provisions of the memorandum of agreement unequivocably provided that the collective agreement did not apply to the appellant in that case, other than with respect to his salary and benefits, while he was on a leave of absence as the president of the Ottawa Police Association. As a result, there was no question that the grievance procedure under the collective agreement was not available to him.

[30] Here, there is no evidence that the appellant will be permitted to invoke the grievance procedure now that she is no longer an employee. The collective

2022 ONCA 199 (CanLII)

agreement is silent with respect to this issue. Moreover, the Resignation Agreement provides in para. 1 that upon her resignation, she ceases “to be an employee of the Board for any and all purposes at law whatsoever”.

[31] The record does not permit us to decide this issue. An arbitrator is best placed to interpret the collective agreement and the Resignation Agreement and determine whether the appellant is precluded from invoking the grievance procedure to pursue her remedies.

(3) Bad Faith

[32] The appellant submits that in pursuing this matter, the respondents are acting in bad faith by failing to raise the issue of jurisdiction in a timely way and that they are using the court process for an improper purpose. As we find the respondents were entitled to have the issue of jurisdiction determined, this submission fails.

(4) Apprehension of Bias

[33] In her factum, the appellant makes an allegation of reasonable apprehension of bias against the second motion judge.

[34] The motion occupied two days, February 23 and March 1, 2021. Due to the pandemic, the hearings were heard remotely. There was a “Zoom bombing” during the first hearing, when unknown persons viewing the hearing remotely displayed

2022 ONCA 199 (CanLII)

what has been described as sexually explicit and racist imagery on the screens of all viewers.

[35] The appellant states that following the hearing, CBC news published an article that insinuated that she was to blame for the disruption, because she had shared the public Zoom link with her “followers”, presumably referring to her followers on social media. In her factum, she states that she had distributed the Zoom link and the court’s “Zoom User Guide for Remote Hearings” to her followers and pointed out to them the section that explains that court permission was required to share screens. She states that she believed her followers would only be able to observe the proceeding.

[36] Subsequently, prior to the March 1, 2021 hearing, the Regional Senior Judge gave directions that the Zoom details of the March 1, 2021 hearing were not to be published or distributed without the prior written order of the presiding judge or the Regional Senior Judge.

[37] On the basis of the foregoing, the appellant states that she “believes that she was wrongfully blamed for the ‘Zoom bombing’ incident”, and that this resulted in an apprehension of bias against her because the second motion judge decided in favour of the respondents, which was a “marked departure from established legal principles.”

2022 ONCA 199 (CanLII)

[38] The appellant did not pursue this issue in oral submissions, possibly because she had reached the end of her time allocation. However, she did not expressly withdraw the submission. Asserting that a judge has departed from the law because of bias against a litigant is a very serious allegation. Although the appellant is self-represented, her written materials and oral submissions demonstrated a high level of sophistication. She clearly appreciates the meaning and consequences of her words. In this case, there was no evidentiary basis for the allegation, and it can be described as “spurious”. Her submission therefore fails.

(5) Litigation Efficiency

[39] The appellant submits that the second motion judge erred in failing to convert the motion before him to a motion for judgment “as the best way to achieve the most just, most expeditious, and least expensive result”, in accordance with r. 37.13(2)(a) of the *Rules of Civil Procedure*.

[40] The short answer to this submission is that this was not fully argued before the second motion judge, and it would not have been appropriate for him to grant it in these circumstances, nor would it be appropriate to grant on this appeal: see *McCracken v. Canadian National Railway Company*, 2012 ONCA 445, 111 O.R. (3d) 745, at para. 141.

2022 ONCA 199 (CanLII)

Conclusion

[41] For these reasons, we agree with the respondents' submission that the appellant's claims are subject to determination pursuant to the procedures set out in the collective agreement and the *PSA*. To the extent that the claim seeks relief that is not available under the collective agreement or the *PSA*, it is subject to the jurisdiction of the HRTO, in which both parties have asserted claims that are currently outstanding.

[42] We therefore dismiss the appeal. In the particular circumstances of this case, however, we vary the order of the Superior Court by staying this action until such time as the appellant's remedies under the collective agreement and in the HRTO have been exhausted.

[43] Only at that point will this court determine whether it should exercise any residual discretion it may have to grant relief that is not available under the statutory labour arbitration regime or in the HRTO.

[44] In her supplementary notice of appeal, the appellant indicates that she also wishes to appeal from the costs award below. In light of our disposition of the appeal and given that the appellant made no arguments to support this position separately, we see no basis to overturn the costs award below.

[45] We did not hear submissions on costs of the appeal. Costs may be addressed by written submissions. The respondents shall have 15 days within

2022 ONCA 199 (CanLII)

which to deliver their submissions. The appellant shall have 15 days after receipt of the respondents' submissions to reply. The costs submissions shall be limited to five pages in length, excluding costs outlines.

"G.R. Strathy C.J.O."
"L.B. Roberts J.A."
"L. Sossin J.A."

2022 ONCA 199 (CanLII)