

**Roundtable on Bill 103 with Mr. Gerry McNeilly and additional members
of the Office of the Independent Police Review Director
Scadding Court Community Centre - April 29, 2009**

Please see attached list for Roundtable participants

Introductions

Kevin Lee (Scadding Court Community Centre)

It is important that a strong foundation be established for this new office. The people in the room today reflect the three pillars of community, police and government, all of which are important for the development and operation of an effective and sustainable complaints system

Gerry McNeilly (Independent Police Review Director)

The Office of the Independent Police Review Director (OIPRD) is trying to be as inclusive as possible by meeting with different groups and stakeholders and working to build the OIPRD with confidence, transparency and accountability. They have received much feedback; some on topics that they already had in mind and some that is food for thought. The office is due to open in the fall, with a specific date to be determined by the Minister (Attorney General).

OIPRD Consultation Questions

Complaints Process

Currently, complaint updates are done through correspondence, and the new system will “fit” into the old system where possible. It is hoped, that with respect to intake, people will continue to make use of community groups to support that. The OPIRD is not a funding agency and has no funds for community efforts but hopes to provide assistance through education and support. It is hope that this can include joint education, workshops and outreach.

Participants commented that investigators should be included in updates/communication between the IPRO and the complainant and that complainants should have the option of going to the investigator or the OIPRD. It was responded that respondent officers will be kept informed and that updates will go from the police services to the complainant with a copy to the OIPRD. The OIPRD wants to bring the police & public together rather than come between them. With respect to update formats, as much as possible they plan to go with what’s already being done by police services and cc the OIPRD. The initial communication will come from the OIPRD; if it is sent back to police, then that force deals with it and keeps the OIPRD in the loop. There will be many ways to bring in complaints.

It was suggested that follow-up or post-survey could be done through community agencies, especially for vulnerable populations such as the homeless. It is critical that plain language must be used and language barriers must be addressed. The OIPRD indicated that that office will use English and French, and that it is establishing connections with community groups, especially those that serve newcomers, as well as existing translation services to assist with translation.

Demographic information gathered should recognize race, ethnicity, as well as how long people have lived in Canada. It was pointed out that immigration status can impact on whether or not people choose to file a complaint. The OIPRD stated that there is a very clear, distinct separation between the OIPRD and Canada’s Immigration system. Collecting statistics raises questions regarding controls and access. The OPIRD will identify and monitor officers that have a lot of complaints (this is already done by police services) and also complainants that submit many complaints.

Third Party Complaints

An issue in this area is the definition of a “personal relationship”. Courts have already defined “close personal relationship” but “personal relationship” is new. For example could an employer

whose employee missed days of work due to a negative interaction with a police officer lodge a third party complaint?

In response to a question regarding any existing criteria for 'personal interest', the OIPRD responded that it is looking at public interest rather than personal interest. This has implications, for example is an affected person does not want to file a complaint.

It was discussed that "personal relationship" suggests a member of household, family, caregiver, not employee or business relationship, however that community/social workers can have personal and/or business relationship with clients (in community work, the line is sometime blurred). At present no definition for "personal relationship" has been defined, but there will be one in place once the new system is operational.

At this point, there is no mechanism through which someone can provide information without filing a formal complaint. However, there is a process/provision through which witnesses can lodge a complaint, which will trigger an internal investigation. A witness therefore does not constitute a 'third party'. It was pointed out that such complaints will be investigated if they are "alarming in nature". However, there is a big difference between an internal investigation and an IPRO investigation. The existence of this process/provision is also not well known and community experience has been that witness complaints are dismissed and not investigated.

Six Month Limitation

The legislation does give OIPRD discretion to extend this. It was commented that six months is a short period of time and that in situations where an individual is physically unable to make a complaint (for a period of time) due to injuries sustained in an incident, as well as when court proceedings are underway, there should be allowances for some delay. It was pointed out that if someone sustained such injuries that they were incapacitated, the SIU should be involved in any case. It is possible for OIPRD and the SIU to be involved simultaneously.

IPRO Investigations

A high percentage of complaints will go back to the police service that they came from. Some may go to another service, based on defined criteria. There will also be clear criteria in place for those which stay within the OIPRD. The OPIRD may, in some cases, do joint investigations with a police service. With respect to community input as to where complaints are assigned (from among these options), comments/requests from community members will be a considering, not an influencing factor. It was commented that setting up OIPRD was in part due to community concerns regarding the fairness of investigations of the police by the police and, that there is little interest/relevance in having a new office of everything will be done the same way as it currently is. Concerns were raised that some people are not aware or empowered to express demands about who will investigate their case.

The OIPRD budget will not be public until the Bill's Proclamation. The office hopes to have 10-12 full time investigators across the province, composed of ex-police and non-police investigators supplemented by part time investigators.

With respect to the level of oversight provided by the OIPRD to investigations referred back to police services, it was explained that there will be a 30-day mandatory update from the service in question and that at any time, the OIPRD can make an inquiry as to progress on a complaint. There will be a 60-day time limit for resolution of complaints, unless an extension is requested and granted. If concerns are raised or the OIPRD is not satisfied by the investigation, it can pull the investigation back or reassign it. Draft rules on this issue (and others) are expected to be shared in the near future for comment/feedback - this will include timelines.

It was commented that this system needs to avoid repeating the problems that plagued the formation of the SIU (e.g. not enough resources, officers were retired Metro Toronto police officers) and that OIPRD investigator positions should be structured and resourced so as to attract people from around Ontario and Canada (and investigators therefore come from different

jurisdictions). The OIPRD responded that it has considered the SIU process and is trying to avoid making some of these mistakes and that there will be a variety of investigators, as both police and non-police investigators bring relevant skills and expertise.

Transparency with respect to investigations is important - people need to understand why their complaint is being treated the way it is. Words like 'frivolous' and 'vexatious' are not helpful and may be insulting (e.g. vexatious implies negative intentions). In response to a question regarding withdrawal of complaints, the OIPRD stated that it is creating a procedure for withdrawal and for soliciting feedback on the reasons for withdrawal so as to identify potential underlying issues. It is acknowledged that language is an issue, and that though required to use existing terms, the OIPRD will use user-friendly language to provide explanations for what terms like frivolous, vexatious and 'not in the public interest' mean. It was mentioned that at least one police force (Hamilton) does not use 'frivolous', vexatious or not in the public interest but rather refers to the section in the law that discusses it.

Local Resolution

This is a new option which the OIPRD hopes to have included as a regulation. It provides an alternative to using the formal complaints process. Use of local resolution is a choice (no one should be forced into local resolution), however it is not to be used for resolution of serious matters and guidelines are to be established regarding this. Its objective is to negotiate and settle to a resolution as soon as possible.

When local resolution is chosen as an option, a form will be sent to the OIPRD to preclude the filing of a formal complaint on the same matter. Should local resolution not be successful in resolving an issue, there is a fall back to filing a formal complaint.

Support for this approach was expressed. This will contribute to police-community dialogue and understanding. The perception and reality of neutrality of the OIPRD is critical to its success and community agencies can help with this. Community mediation services can assist with issues of language, culture, etc.. There is a need for a larger discussion on how this can be supported at the local level. The OIPRD agreed and added that it will have mediators on staff and will be able to provide training to police services. It hopes to engage community groups to help also, for example to offer sites for local resolution to take place. No funds are available to support this in the community, however they can provide training.

It was commented and generally agreed that the onus for mediation should not be put on police, as this requires an impartial 3rd party. Given that this element of the new system must be done well in order to gain public trust, concern was expressed that perhaps the system is not yet at a stage in its development at which it is ready to deliver on this and that rather than aim to have it in place at the start, it should strive to reach a point at which the trust is in place (for the system) and this aspect can be appropriately resourced. Discussion also identified that the concept of mediation presumes that both sides have to "give", and that the word facilitation may be a better term in this case.

The OIPRD sees resolution to exist along a spectrum, of which mediation is one part and may develop a working group to address this. The outcome to the officer is not punitive, but meant to correct behaviour. It was commented that there is also a need to identify the benefit to a complainant to choosing informal mediation (is no financial or other incentive) and that the impact of the choice that people make with respect to resolution options is clear.. The OIPRD sees the benefit in being a contribution to the community-police relations with/within which everyone has to live. Public confidence is paramount to policing and this part of the legislation is important. There is a need for restorative resolution, and informal resolution allows for these kinds of interactions and relationships. There was consensus among the group to continue to develop this feature.

Informal Resolution

The new system aims to enhance that which is already in place. Addressing the power imbalance between police and complainants is critical. Mediation must address power imbalance and factor

it in - this needs to be on the table and explicitly addressed so that questions can be asked about how to make informal resolution safe for everyone involved. With respect to mediation, community services provide excellent value on the dollar and should be considered. A trusted informal resolution (and local resolution) system could be what makes this new system truly different. The OIPRD emphasized that it does not report to either the police or the public. Its legislative requirement to report to the Attorney General does not extend to day to day issues or to the decisions it makes.

It was commented that officers can have concerns that their involvement in a situation can be raised elsewhere later on in time and that this is a consideration for them as they decide whether to engage in informal resolution. The OIPRD will have a system in place to identify officers who repeatedly use local resolution.

Regional Outreach and Education

The OIPRD considers this aspect of the system to be a priority and has adopted the six regions currently used for court processes in Ontario. Each area will have a Regional Coordinator and Working Groups with police and community membership (rotating). These groups will inform outreach, education and training.

Mechanisms will include kiosks, libraries, local media, Service Ontario and community groups (as vehicles to reach populations). According to current government policy, the OIPRD is not allowed to use television or mainstream media outlets to disseminate information. A string referral component will be built into the system, with OIPRD staff receiving training in how/where to direct people who are in need of other “systems” or assistance.

General Discussion

The protection of complainants was raised as an issue that requires attention. The legislation provides some protection around confidentiality, and the OIPRD is concerned about protecting both complainants and officers and will be careful to build this in as much as possible. There are concerns with respect to complainants regarding how adversarial the process can be, which means that for some (vulnerable) groups it is important to have advocates. There are situations in which groups face particular challenges in seeing themselves as part of the complaints process, particularly those who lack a sense of their rights or experience problems in different settings such as in schools or in public transit. The OIPRD intends to reach out to youth as much as possible. There was discussion about the reality that some communities experience much fear and feel powerless with respect to police interactions, so that despite trying to motivate people to use the system they will not see the point in doing so. An related comment was that along with geography, these and related factors can make it difficult to reach people (isolation).

In response to a question about transparency and publication of decisions (how this will be given to the public), the OIPRD indicated that they are still working through that & have not made firm decisions yet.

Concerns were raised about providing police services with enough time to transition from the current to the new system. These timelines are important for police planning and capacity. The Minister, and not the OIPRD, will be announcing timelines for the new system and it is hoped that enough notice will be given for police services to prepare themselves.

Conclusion

Kevin Lee

Following today’s meeting, there is a better sense of where the community might fit into this new system - this is a critical element. It is hoped that the system will make use of past lessons learned, for example with respect to education and outreach (past approaches have been ineffective), which can be done in a cost-effective way if communities are engaged. There is a network of partners “out there” that needs to be tapped in to and work that the community has

done should be used. More discussion is needed on how communities can support the new system. There is a public expectation to see the third pillar (community) and this needs to be further developed.

Scadding Court and the Community Education and Access to Police Complaints Partnership are continuing their longstanding collaboration with the Toronto Police Services to continue to make the system accessible and available to the diverse residents of Toronto.

Gerry McNeilly

Thank you for today's session. There is a need to continue to build up the community aspect of this system and the OPIRD intends to continue to carry out its job in a highly consultative manner; it considers Ontarians to be its 'constituents'. The OPIRD believes that it can be both independent and consultative and encourages everyone to participate in this ongoing process. It strives to apply best practices, needs this group's support in doing so and encourages people to keep the Office "on their radar" and to give feedback. This mixed group makes an excellent transitional resource group for the OPIRD and it is hoped that we can continue this dialogue. Everyone is encouraged to provide feedback on rules when they are posted - timelines for this may be tight as fall (and the launch of the new system) is coming quickly. Future amendments can and will be made to the rules as necessary, however it is the hope of the OPIRD to publish a set that is as solid as possible.