

BILL 103 - SUMMIT

Regulations that Promote Transparency, Accessibility,
Accountability, Public Support and Education within
Ontario's New Police Complaints System



*Prepared By: Phil Klassen & Christopher Bourke, MA
Supervised & Edited by: Dr. Linda Joy Epp*

A brief introduction to Bill 103 through the lenses of transparency, accessibility, accountability and public support and education

Bill 103, 2007: An Act to establish an Independent Police Review Director and create a new public complaints process by amending the Police Services Act is an amendment to the Police Services Act, 1990 and is designed to establish an independent system for administration of complaints against the police. It represents an attempt by the Ontario government to ensure police are both accountable and responsive to the public they serve. The Bill calls for the Attorney General to appoint an Independent Police Review Director and establish his or her corresponding office. Broadly speaking, the Independent Police Review Director's role is to "make the act work" and deal with complaints made by members of the public across Ontario.

One criterion, for assessing the success of Bill 103 and the "new" police complaints system set to emerge in Ontario, is the four principles underlying the Bill 103-Summit: Transparency, Accessibility, Accountability and Public Support and Education. These principles contribute to making sure that the new complaints process meets the needs of police, community and government while also ensuring an effective justice system overall.

Transparency

A transparent system is one that allows members of the public to see how complaints are taken-in, processed, registered and resolved. Transparency also allows police, government and community members to understand *who* is involved in investigating complaints and *who* is responsible for disciplining misconduct. Accountability follows from transparency, since visible actors and clear procedures make it easier to hold individuals responsible.

Examples of how Bill 103 addresses transparency...

A key way that Bill 103 deals with transparency is that it requires written reasons to be given for each decision and that decisions made after a hearing are to be publicly available.¹ Additionally, complainants may appeal decisions.²

Accessibility

Accessibility refers to the ability of members of society—regardless of race, ethnicity, sexual orientation, socio-economic status and other factors, to file a complaint against the police. Accessibility includes things like *how* people make their complaint, *where* people make their complaint, *where* review bodies are located, *which* language of submission *and what* kind of environment complaints are made in. There are several aspects of accessibility to consider:

- 1) Geography: This involves providing members of the public the opportunity to make a complaint without having to travel great distances.
- 2) Language: Some complainants may not feel comfortable going through the system using Ontario’s official languages. To better-access “the system” English-/French-as-second-language residents therefore require support and assistance in making their complaints, filling out forms and communicating with the appropriate bodies. Low levels of literacy may also act as a barrier for many individuals who cannot read documents or write complaints. Efforts are needed to make “bureaucratic forms” clear and to support individuals in pursuing their complaints.
- 3) Context: A police complaints system that is intimidating and that prevents people from making complaints, because they fear backlash or simply don’t know what to expect, is another barrier to access. For example, police could threaten criminal charges against individuals who make complaints that turn out to be unsubstantiated. For the system to be accessible it should allow for people making complaints to feel at ease and be treated well by those receiving their complaints. Filing complaints under the scrutiny of the IPRD (which this Bill 103 allows) may help ease anxieties and feelings of intimidation.
- 4) Resources: Many complainants may lack the necessary resources to file a complaint. To ensure a fair and equitable access to the system they should be provided with the appropriate support. There may be financial implications, but third-party guidance and “moral” and other support from community-groups are likely also required.

¹ Section 63(4), Section 64(4), Section 66(1), Section 67(1), Section 68(1), Section 69(2)

² Section 63(5), Section 64(5), Section 71(1)

Examples of how Bill 103 addresses accessibility...

Overall, Bill 103 does have some provisions that deal with accessibility. For example, the Independent Police Review Director is given the power to create regional offices.³ These would provide more points-of-access for members of the public to make complaints and to better utilize the police complaints system. People can also make complaints directly to the Independent Police Review Director (circumventing the police), which may help to reduce feelings of intimidation.⁴ A person wishing to make a complaint is also allowed to have another do so on their behalf. Those that have difficulty navigating systemic language barriers, whether due to literacy or language comprehension, can rely upon the assistance of a third-party (or translators) to understand the exact process of filing a complaint, thus addressing resource and language barriers.⁵

The Independent Police Review Director is given the power to establish rules that guide the procedure of how complaints are made.⁶ This could potentially enhance accessibility if the public finds them clear and user-friendly.

Bill 103 does not clearly provide for accessibility in other ways. For instance, there are no provisions that allow for people who are not comfortable with one of Ontario's official languages to make a complaint in another language. While the ability to establish regional offices exists, there is *no requirement* that regional offices be created. There is, therefore, *no guarantee* that a person wishing to make a complaint will have the ability to reach an office to make the complaint.

Accountability

Accountability is tied to the notion that those who hold public roles should be held responsible for their conduct in exercising their duties. This applies to both police and complaint review bodies such as the office of the Independent Police Review Director. A fair system is one that is accountable and open to scrutiny. Citizens should be able to question or appeal disciplinary decisions when dissatisfied with outcomes.

Examples of how Bill 103 addresses accountability...

One aspect of accountability often raised relates to whether supervising officers should be in charge of disciplining officers known to them; or even police disciplining police in general. There are concerns of bias, conflicts of interest and threats to independence. Many community members are concerned police officers may protect their own institutional interests, sanctioning an act of misconduct. To address these concerns and uphold accountability, Bill 103 disqualifies any police officer or former police officer from holding the position of Independent Police

³ Section 26.1(7)

⁴ Section 58(1)

⁵ Section 58(3)

⁶ Section 56(1)

Review Director or from serving as their employee.⁷ Some would claim, however, that police are the best at ferreting out a “bad apple.”

There are three ways for complaints to be reviewed. The Independent Police Review Director can choose to have the complaint investigated by the chief of police of the police force in question; have the complaint investigated by the chief of police of a different police force; or they can take over the investigation. The Independent Police Review Director has discretion to choose whichever method he/she deems appropriate while being guided by what is in the “public interest.”

Public Support and Education

Public Support and Education refers to the awareness citizens have about the current system of complaints and how well they know their rights and obligations. An effective complaints system is based upon the public’s knowledge of how it functions, the steps involved in filing a complaint and the actors responsible for reviewing police misconduct— in this case, the Independent Police Review Director. For civilian oversight to work, citizens must be aware of, and involved in, its’ administration.

Examples of how Bill 103 addresses public support and education...

Bill 103 requires that all procedural rules surrounding complaints be in writing and available to the public.⁸ Additionally, the Independent Police Review Director is required to provide publicly accessible information about the system and to arrange for assistance to members of the public in making a complaint.⁹ *What* information is made available, *how* it is presented and *where* it is available are important considerations and have a direct impact on *who* can access or read the relevant information. These provisions lay the groundwork for providing public support and education, however, there are *no* details as to how these requirements will be accomplished. Making the rules available and informing the public about the system is important, but “publicly available” is *not yet* defined, *nor is how* these requirements will be met.

Conclusion

This introductory discussion of the four principles of transparency, accessibility, accountability and public support and education is meant to direct Bill 103 delegate attention to the importance of assessing the Bill through these lenses. Consider how each one of these principles is met and served through the recent amendments to Ontario’s police complaint system. By providing some examples of how Bill-103 succeeds or falls short of these standards, Summit participants are encouraged to reflect on these four principles, their role in moving the process forward and the necessary steps to create an effective system of police complaints that works well for all of its stakeholders.

⁷ Section 26.1(2) and (5)

⁸ Section 56(2)

⁹ Section 58(4)

