

**Report to the Attorney General of Ontario  
and to the Independent Police Review Director of Ontario  
on the further development of Ontario's police complaints  
system and its Proposed Rules of Procedure (*May 29, 2009*)**

**Submitted by Scadding Court Community Centre**

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## INTRODUCTION

The Community Education and Access to Police Complaints Process (CEAPC) project developed out of a 2002 community-based response to issues of police-community relations initiated by the Alexandra Park & Greater Community Race Relations Task Team in downtown Toronto. This was a two year demonstration project developed by Scadding Court Community Centre (SCCC) that focused on making the police complaints system more accessible and available to Toronto's diverse communities. It was grounded in a partnership of forty organizations from across Toronto, including legal clinics, ethno-cultural organizations, community centres and grassroots, advocacy groups and the Toronto Police Service.

The philosophy and principles of the CEAPC project and partnership are based on the notion of community policing, i.e. police and citizens working together through innovative and collaborative problem-solving, regular contact and consultation with communities, ownership and responsibility in neighbourhoods, and the creation of opportunities for the community to have an active role in the police process. This work shaped the development of a three pillar model for the police complaints system – one that is premised on the meaningful, equitable and active participation of the community, the police and the government. Of these, the community pillar is the least developed and as such requires particular attention.

The three pillar model is the foundation for CEAPC's engagement at the policy level and has included: participation in the consultation process held by Justice Patrick LeSage; government consultations; the development and presentation of a detailed analysis of the Government of Ontario's proposed Bill 103 to the Justice Policy Committee: An Act to establish an Independent Police Review Director and create a new public complaints process by amending the Police Services Act in January 2007; and submission of the report "A Community Consultation with respect to the Position of Independent Police Review Director under Bill 103" in April 2007 following community consultations held across the province. This was followed by the Bill 103 Summit, a community-led, interactive conference held in Toronto from September 24th to 26th, 2008 and attended by 134 delegates from across the province. The Summit created an opportunity for the three pillars of community, police and government to engage in constructive dialogue and generated the "Bill 103 Summit Report" which was released in November 2008 and submitted to Ontario's new Independent Police Review Director and to the Attorney General of Ontario. Summit recommendations sought to inform a new police complaints system that is accessible, fair, effective and inclusive of the community perspective.

The present report consists of two sections. Section I further explores themes raised at the Bill 103 Summit and includes issues and recommendations that lie outside of and/or overlap with the jurisdiction of the Office of the Independent Police Review Director, extending to the Attorney General. Section II is a response to the proposed Rules of Procedures circulated for comment in May 2009 by the Office of the Independent Police Review Director.

Overall, there are signs of acknowledgement that community involvement is critical to the successful implementation, monitoring and evaluation of the system. However this aspect of the system is not as entrenched as it needs to be in either the legislation or the proposed rules to ensure the development of a system that truly meets the needs of all stakeholders. This report provides additional recommendations in this area.

Also referred to in this report is the need to pilot aspects of a new police complaints system to assess its functionality and refine its framework and tools. Such pilots are standard practice in the community and other sectors, in large part because of their value in testing approaches and tools, identifying unanticipated issues or barriers, refining models and determining resource needs. The implementation of a pilot project would allow for the inclusion and testing of many of the recommendations put forward in this and other reports and submission received by the OIPRD on this issue, and therefore identify and develop opportunities for on-the-ground collaboration between the three pillars of community, police and government.

# ***Section I***

**Follow up discussion of themes raised at the Bill 103 Summit with recommendations in the areas listed below:**

**I SYSTEMIC ISSUES**

**II NON-STATUS INDIVIDUALS**

**III PRIVACY AND CONFIDENTIALITY**

**IV INTERACTION WITH OTHER PROCESSES**

**V LEGAL SUPPORT FOR THE COMMUNITY**

**VI FUNDING THE POLICE COMPLAINTS SYSTEM**

**VII CODE OF CONDUCT**

**VIII ANNUAL REPORTING AND AUDIT PROCEDURES**

## EXECUTIVE SUMMARY

The Attorney General and the Office of the Independent Police Review Director (OIPRD) have central roles in developing the legislative and administrative framework for the establishment of a police complaints system under Part V of the *Police Services Act*. A viable complaints system must ensure access to justice for the community, while meeting the specific needs of both the community and the police. This will require clear policy direction and guidelines to inform the development of regulations, rules, practices and measures that will hold all pillars-community, government and police- accountable for the success of the system.

The factors that come into play when a decision is made by an individual to file a complaint against the police may be directly caused by police policy, service delivery or misconduct, real or perceived, but may also reflect larger, systemic problems within society, such as poverty, racism, legal status and other forms of marginalization. All three pillars must acknowledge and identify systemic problems, including the interaction between factors, and ensure that they are addressed in a pro-active, consistent, and systematic manner. The Office of the Independent Police Review Director should work with the community through established, ongoing consultation and engagement processes and ensure accountability by the police for appropriate response mechanisms, once systemic issues have been identified. Of critical importance is how the complaints system will address the fears and concerns of individuals marginalized due to lack of status to reside in Canada so that they can access the system without fear that so doing will trigger immigration procedures. Ideally services should be provided to them on the basis of need and residency rather than on legal status.

Accountable and transparent policies and practices are essential for addressing concerns about privacy and confidentiality with respect to the use, control and disclosure of complaint records. The OIPRD should develop regulations and rules that explicitly address the complex interplay between the police complaints system and other systems, notably the criminal and human rights systems. Complainants should receive information about the goals and outcomes of each system, how they interact and the consequences that flow from involvement in one or more proceedings.

There will be no meaningful access to the complaint system without access for the applicant to a full range of legal support and services, whether these are developed through existing legal resources, such as legal aid, or through training of community workers to meet new demands, or through the establishment of a legal system modeled on that under the Ontario human rights system. The OIPRD must ensure that there is sufficient funding to avoid added burden on already over-extended community resources. On a more general level, adequate and sustainable funding must be allocated to cover start up-and ongoing costs related to the development of the OIPRD. Funding formulas must be structured so as to meet current and future needs and information about spending and responsibilities for funding must be transparent. Funding considerations must also be based on the recognition of the interconnectedness of the pillars, specifically how funding for one pillar will affect or impact

another, including respective burdens. Funding for community roles in the system, in particular, must be adequate and sustainable for capacity development and ensure active involvement of community members. Funding considerations for the complaints system should be integrated with other administrative systems in Ontario.

The OIPRD must review the Act to ensure that there is community involvement in identifying and addressing misconduct, service or policy issues of police services, including the process for retention and expungement of records of misconduct. It may be necessary to consider whether the Act reflects current realities and best practices in addressing misconduct. The community also is a critical pillar for external monitoring, auditing and review of the OIPRD. It is essential that the OIPRD is legally and operationally autonomous from the Attorney General to the fullest extent possible and this will reflect on how and to which body it will report. At the same time, there must be clear guidelines on how and in what forum its decisions will be reviewed

## **I SYSTEMIC ISSUES**

Interaction between the community and police pillars that trigger complaints often reflect larger systemic problems within society, including racism, illiteracy, migratory status and poverty. Under s.57 of the Ontario *Police Services Act*, the OIPRD can review systemic issues: it “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...and may make recommendations respecting such issues to the Solicitor General, the Attorney General, chiefs of police, boards, or any other person or body.” Under Rule 13 of the draft Rules of Procedure the “OIPRD may at any time, as it deems appropriate, examine and review issues of a systemic nature that are the subject of or give rise to complaints made by members of the public under Part V of the Act.” The way in which the OIPRD views its mandate to examine and review systemic issues will determine the viability of policy commitments, the allocation of financial and other needed resources, and, to a certain degree, public trust in the system.

### *Addressing Systemic Discrimination*

The OIPRD must both recognize the existence of systemic discrimination within the police services and devise a comprehensive vision statement that addresses it. This commitment must be coupled with an policy approach that is pro-active, consistent, and systematic on several fronts, including recruitment of OIPRD staff with the requisite expertise and experience in detecting systemic issues, development of policies, procedures and work plans, establishment of operational mechanisms to dismantle systemic barriers and public education strategies (Ontario Council of Agencies Serving Immigrants, 2007, p. 3). Under Rule 13.2 of the draft Rules of Procedures, “the OIPRD shall determine the scope of any systemic review and may hold consultations and commission experts or any other persons to carry out research and provide any reports or information that the OIPRD considers necessary to carry out the review.” However, any such determination must be based on an approach that considers forms of oppression that are inextricably linked.

## *Ontario Human Rights System*

Borrowing from anti-racism policies, the approach taken under the Ontario human rights system considers various systems of social oppression that are linked:

*Anti-racism emphasizes a holistic approach to the development of anti-racist ideologies, goals, policies, and practices. As an organizational response it requires the formation of new organizational structures; the introduction of new cultural norms and value systems; changes in power dynamics; the implementation of new employment systems; substantive changes in services delivered; support for new roles and relationships at all levels of the organization; new patterns and more inclusive styles of leadership and decision-making; and the reallocation of resources. Strategic planning, organizational audits and reviews, monitoring and accountability systems and training are all considered an integral part of the management of anti-racist change*

(Tator, 2009)

Under the Ontario *Human Rights Code* (R.S.O. 1990, c. H.19), the Ontario Human Rights Commission (OHRC) has a clear mandate to address systemic issues that have a broad impact on communities and groups through ensuring proactive measures to prevent discrimination through, policy development, research, and public education. The OHRC conducts targeted inquiries and may initiate applications or intervene in important cases before the Human Rights Tribunal, particularly if they raise systemic issues that affect the public interest (Ontario Human Rights Commission, 2003; Ontario Human Rights Commission, 2008). The OHRC defines systemic discrimination as identified by:

- Patterns of behaviour, policies or practices
- Social or administrative structures of an organization
- Position of relative disadvantage created for persons identified by the Code

Three considerations are used to identify, monitor and address systemic discrimination at three levels:

- Policies, practices and decision-making processes
- Numerical data
- Organizational culture.

(Ontario Human Rights Commission, 2008)

Numerical data is an important tool for monitoring, preventing and ameliorating reported systemic and adverse discrimination. However, if the OIPRD is to collect and present data, it must do with clear guidelines on how data will identify systemic problems. One of the dangers with the use of data is the potential for feeding into stereotypes about marginalized communities, particularly concerning data collection based on race, which raises a number of contentious issues that will require consultation and analysis. Data must be presented in a responsible manner with qualifiers explaining the context and the nature of the information

presented, taking into account any negative perceptions due to misinterpretations or misunderstandings (Scadding Court Community Centre, 2008).

In its *Guidelines for Collecting Data on Enumerated Grounds Under the Code* (2003), the OHRC recommends that data collection based on grounds of race and disability should be undertaken on a periodic basis in key public services, including policing, with assurances that the results will not be used to treat and individual or groups in a discriminatory manner. Data provides an effective means of monitoring for and preventing profiling, institutionalized barriers, socio-economic disadvantage or unequal opportunity on the basis of race, disability, sex or other enumerated grounds. However, a data collection program must clearly serve a legitimate purpose under the Ontario *Human Rights Code*: to monitor and evaluate potential discrimination, identify and remove systemic barriers, ameliorate or prevent disadvantage and/or promote substantive equality for individuals identified by enumerated grounds. Additionally, where problems are identified, data analysis can provide useful direction for remedies to ameliorate systemic discrimination as well as evaluate the success of such measures. (Ontario Human Rights Commission, 2003).

The OHRC enumerates several conditions and requirements that must be present to justify a data collection program, including the existence of reasonable belief that data collection is necessary on the basis of census data showing a disproportionate disadvantage for individuals, such as “disproportional rates of interaction with law enforcement or the criminal justice system, and persistent allegations or perceptions of systemic discrimination”; requirement to inform individuals on whom data is being collected on how the collection and use of such data will assist in relieving disadvantage or discrimination and achieve equal opportunity; and measures to ensure the least intrusive means of data collection. (Ontario Human Rights Commission, 2003)

### *The OIPRD Mandate*

The OIPRD should clarify how data on systemic issues will be collected, including who will have responsibility for data collection, the degree of responsibility between the OIPRD, community organizations and the police forces and the use that will be made of data. The OHRC’s *Guidelines* serve as a useful point of departure for the OIPRD. Data serve an important public education function, highlighting efforts taken at countering systemic barriers and identifying trends and initiatives that will be undertaken (Ontario Council of Agencies Serving Immigrants, 2007). However, if presented in annual and other reports, public announcements with contextual background information should be made upon the release of reports and community groups should have a role in disseminating information contained in the reports to ensure that their contents are not misconstrued. (Scadding Court Community Centre, 2008). Under 13.7 of the draft Rules of Procedure, the OIPRD will post reports on the website. However, it is recommended that there be other more substantive, proactive dissemination strategies through multi-media formats.

The OIPRD's power to make recommendations to address systemic issues will have little impact unless this review is linked to accountability by police boards to respond with appropriate mechanisms when systemic problems have been identified. Under Rule 13.4 of the draft Rules of Procedures, "the Chief of Police of a police service that is the subject of a systemic review shall issue whatever orders are necessary to ensure the full cooperation of its members with the OIPRD or its designate in carrying out the review". What specific conditions will trigger response mechanisms? Additionally, under Rule 13.6 of the draft Rules of Procedures, "the OIPRD may impose such timelines and issue directions as it considers necessary for the receipt of records, information, reports or submissions in the course of the review". The OIPRD must clarify the process for and timeframe in which such responses to systemic issues will be provided by police boards? Another matter that must be addressed is that of remedies. What are appropriate remedies for systemic discrimination?

If the OIPRD is to effectively monitor police services in order to identify and dismantle systemic issues, it must establish both accountability and transparency procedures, as well as ongoing evaluation of efforts that address change within the organizational culture. This may entail strategic partnerships with police services, community organizations, research institutions and other administrative bodies, such as the Ontario Human Rights Commission. One way to provide meaningful space for the community is through advisory groups composed of members of the community. (Ontario Council of Agencies Serving Immigrants, 2007, p.4). The OIPRD should also convene an annual consultation/roundtable/town hall with stakeholders of the three pillars to review existing systemic issues and to identify emerging issues and trends, a process that should lead to recommendations for change. The Attorney General must recognize the need to involve other jurisdictions through the establishment of a well coordinated, inter-Ministerial approach linked to Cabinet level discussions in order to have real impact at the systemic level.

### **Recommendations:**

The OIPRD must

- **Adopt a clear vision statement about its commitment to addressing systemic discrimination through a pro-active consistent approach,**
- **Establish policies and procedures that take a holistic approach to different forms of marginalization and address oppression on several fronts e.g. work plans, staffing processes etc.,**
- **Provide guidelines for data collection programs e.g. stakeholders, accountability frameworks, remedies,**
- **Ensure meaningful and ongoing involvement of the community pillar through advisory groups, annual consultations, roundtables, town hall meetings, presentation and dissemination of data within a contextual framework, etc.**
- **Collaborate with organizations with similar mandates, e.g. OHRC**
- **Clarify the process for and timeframe in which the police have to address identified issues.**

The Attorney General must

- **Tap into consultative processes with stakeholders to facilitate connections to other ministries, commissions and agencies through a coordinated, inter-Ministerial approach to systemic issues that is linked to Cabinet-level discussions.**

## II NON-STATUS INDIVIDUALS

Sections 79(1) and 79(2) of *Police Services Act* prohibit harassment, coercion and intimidation, or the attempt to do so, by any person in relation to a complaint. If these sections are contravened a fine up to 2,000 dollars, imprisonment for up to one year, or both, can be imposed. Fear and intimidation is of particular concern for those individuals who do not have legal status to reside in Canada. This is a critical issue from a community perspective, raising issues of accessibility to the complaints system, as lack of status is a major deterrent to filing complaints against the police. Ideally, the OIPRD must consider a policy that protects these individuals from being reported to authorities, so that complaints do not trigger enforcement proceedings such as detention and/or removal.

### *Link Between Provision of Services and Immigration Status*

Provision of public services has been generally linked to immigration status. Some service providers provide services to non- status immigrants, while others do not. One study found that service providers in Toronto have not adhered to consistent policies or practices with regard to access to services for non status individuals, whether as a result of differing mandates or funding and other restrictions (Berenstein et al, 2006). Additionally, while some service providers are not required to ask about immigration status, at the same time they do not have the mandate *not* to report individuals to immigration authorities if they become aware of their lack of immigration status (Berenstein et al, 2006).

*Here, we can see the highly discretionary – as opposed to law based – aspect of immigration law, as city police make it a practice (although they are not directed to do so) to pass on details about immigration status the deportation arm of the Canadian state, the. What begins as a legitimate demand for protection ends up as a cruel form of discrimination.*

(Berenstein et al, 2006)

Understandably, inconsistent and unpredictable policies and practices prevent some non-status individuals from accessing services and limit the ability of community organizations to making referrals. Failure to provide services to all residents, regardless of their legal status, can lead to unhealthy and unsafe communities, particularly if non-status individuals are prevented from accessing health and social services, even in cases of emergencies. (Berenstein et al, 2006). For example, there have been cases of non-status women in Toronto detained after reporting

domestic violence, with victims reported to authorities and, in some cases, deported. (Berenstein et al, 2006)

### *Don't tell, Don't Ask*

Calls for the adoption of a “don’t ask, don’t tell” (DADT) policy have been in effect since the launch of the DADT campaign in Toronto in 2004 (Berenstein et al, 2004), A DADT policy for the police would prohibit authorities from asking about an individual’s immigration status (“don’t ask”) and prevent them from sharing this information with immigration or government authorities (“don’t tell”). In essence, services would be granted on the basis of need and residency rather than on legal status.

The issue of “don’t ask, don’t tell” policies is currently a topic of much discussion within police forces. In November 2008, the Toronto Police Board rejected a “don’t tell” proposal that would have prohibited police officers from reporting individuals suspected of immigration violations to federal authorities (Hanes, 2008). This proposal would have supplemented a limited “don’t ask” policy, in place since 2006, for witnesses and victims of family abuse cases (No One is Illegal Toronto, 2008). The existing policy directs police to “not ask” about status - for some people, some of the time. However, police are still allowed to “tell” immigration authorities about someone’s status when they become aware of it. Some proponents of a DADT policy argue that the police should only be required to call in immigration authorities if a warrant has been issued for their apprehension (Hanes, 2008)

### **Recommendations:**

The OIPRD must

- **Adopt consistent policies and practices regarding access to the complaints system for non-status individuals.**

The Attorney General must

- **Clarify the legal requirements and ramifications for non-status individuals,**
- **Promote consistency across different “systems” with respect to this issue**

### **III PRIVACY AND CONFIDENTIALITY**

Adequate safeguards must be established to ensure that concerns about privacy and confidentiality are addressed under the new system, specifically with respect to the use, control and disclosure of complaint records. Under the *Police Services Act*, both ss.26.1 (9) and 95 promote greater access to and transparency for the complaints system and serve to ensure that communication is provided to complainants on an on-going basis. Under s.26.1 (9), complaint records can be used for “law enforcement purposes”. This broadly worded subsection raises concerns about accountability for both the community and the police about the use of records and the exact criteria that will trigger their disclosure or production. It is also unclear as to who

will have control and custody of records, both during and after the complaint process. Concerns about custody and responsibility are of particular concern for those involved in criminal proceedings.

### *Privacy Laws*

It is unclear if Ontario privacy laws are applicable to the OIPRD, such as the *Freedom of Information and Protection of Privacy Act*, (R.S.O. 1990, c. F.31). The purpose of the Act is to provide a right of access to information under the control of institutions, to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information (s.1). Section 14 allows exemptions from the right of access: a head may refuse to disclose a record where the disclosure could reasonably be expected to interfere with a law enforcement matter. There is also an exemption where the release of information will deprive a person of the right to a fair trial or impartial adjudication. Still, despite these exemptions, a head can disclose a record that is a report prepared in the course of routine inspection by an agency that is “authorized to enforce and regulate compliance with a particular statute of Ontario” (s.14 (4)).

### *Access to Police Records*

Privacy issues raise important concerns for the police, one of which is the right of access for complainants to police records, notably to personnel files about misconduct, and the criteria that will be established for production of such records. In its decision in *R. V. McNeil*, (2009 SCC 3), the Supreme Court of Canada held that records can be produced for inspection by the court if they are “likely” relevant to a criminal law proceeding. The courts will weigh competing interests between third party privacy rights and an accused’s interest in making full answer and defence to determine whether production should be ordered and to what extent. (See also Toronto Police Service, *Review and Recommendations Concerning Various Aspects of Police Misconduct*, vol. I. 2003, Hereinafter, the “Ferguson Report”). Production may be limited or restricted, subject to redactions or other conditions, to ensure that a production order is necessary “to meet the exigencies of the case but do no more”. The Court stated:

*Ascertaining the true relevancy of records targeted for production may become particularly important when the information on the production application concerns police disciplinary records. The contentious nature of police work often leads to public complaints, some legitimate and others spurious. Police disciplinary proceedings may also relate to employment issues or other matters that have no bearing on the case against the accused. The risk in this context is that disclosure, and by extension trial proceedings, may be sidetracked by irrelevant allegations or findings of police misconduct. Disclosure is intended to assist an accused in making full answer and defence or in prosecuting an appeal, not turn criminal trials into a conglomeration of satellite hearings on collateral matters.*

The Supreme Court intended an active role for the Crown and the police in the disclosure process: the Crown has a duty to inquire about information that may be relevant and to produce it, if reasonably feasible to do so, and the police have a duty to participate in the disclosure

process and disclose relevant information pertaining to the accused. This duty on the police is also mandated under code of conduct provisions in various jurisdictions, for example, regulations under Ontario's *Police Services Act*.

Although the Supreme Court did not establish a requirement for automatic disclosure, it suggested several guidelines outlined in the Ferguson report that would trigger automatic disclosure of acts of misconduct by the police upon request by the Crown, among which include any finding of guilt for misconduct after a hearing under the *Police Services Act* or its predecessor Act and any current charge of misconduct under the *Police Services Act* for which a Notice of Hearing has been issued.

In commenting on *McNeil*, Tilley wrote:

*Interestingly, the court stopped short of specifying the proper procedure for how and which records should be turned over from police stations; it conspicuously ignored the question of who should make decisions about the relevancy of police records. The police themselves, it seems to me, are ill-suited to make decisions about which records ought to be disclosed. Not only is their own interest in maintaining the appearance of integrity likely to discourage broad disclosure of internal records, but police officers may lack the legal training and experience to determine how such documents might be relevant in complex proceedings. Another procedure, hinted at by the SCC, would have the police routinely disclose certain types of records to the Crown who, as a sort of gate-keeper, would determine which should be turned over to the defence"*

#### *Other Issues*

The Attorney General must clarify the criteria for the production of records, applicability of relevant privacy laws and provide guidance on responsibility and criteria for production of records, including the respective roles between the OIPRD, the police and the Crown. Another matter of concern is the rights to confidentiality for complainants without legal residence. Although discussed further in another section of this paper, those without legal residence will be prevented from accessing the system without policies in place that ensure that complaints against the police made by them will not lead to immigration procedures. However, if such assurances are not possible, at the minimum, non-status individuals should be provided with full information about the consequences that may result from filing complaints with the OIPRD. Another concern for both the community and the police is the lack of consistency across the province with respect to confidentiality criteria and management of records

#### **Recommendations**

The OIPRD must

- **Not be obligated to report non-status these individuals to immigration officials if they decide to file complaints,**
- **Assure consistent policies and practices across the province with respect to the custody, use and production of police records.**

The AG must

- **Establish criteria for production of records and applicability of privacy laws,**
- **Provide clarification on who would make decisions about the relevancy of records and the respective roles between the OIPRD, the police, and the Crown,**
- **Restrict production and disclosure of complaint records to criminal law enforcement purposes.**

#### **IV INTERACTION WITH OTHER PROCESSES**

Regulations and/or rules must explicitly address the complex interplay between the police complaints system and other systems that the community may access. The community pillar must have a clear understanding of the goals and outcomes of each system, as well as the consequences that flow from or, at the very least, impact on involvement in one or more proceedings.

##### *Interaction with the Criminal Law System*

There must be clear procedures on the interaction between the criminal justice system and the complaints system. Other systems with the potential to interact with the complaints system should also highlight options for filing police complaints and any overlap between proceedings in cases where the police are involved. The right of prosecutors to access complaint records is based on discretionary considerations and decided for strategic reasons on a case by case basis. While access by prosecutors to complaints records is not a denial of due process, greater transparency is required with respect to applicable rules or protocols, including those under privacy laws. At the very least, the community should be informed that involvement in criminal proceedings will not affect their ability to file a complaint against the police

##### *Interaction with the Human Rights System*

Facts and issues raised in applications filed under the police complaints system may also be applicable to those that can be filed under the Ontario *Human Rights Code*. The convergence of the two systems must be expressly clarified. Under s.45.1 of the *Code*, the Human Rights Tribunal may dismiss the application if the other proceeding has dealt “appropriately”, with the “substance” of the application

*The Tribunal may dismiss an application, in whole or in part, in accordance with its rules if the Tribunal is of the opinion that another proceeding has appropriately dealt with the substance of the application. 2006, c.30, s. 5 (section 45.1)*

Although applicants do have an opportunity to explain why they believe the other proceeding did not appropriately deal with the substance of their application, in practice the result is that applications to the Tribunal may not be accepted if an action or proceeding has been commenced and is based on the same facts for which a remedy is sought for a human rights violation under the *Code*. The legislative intent of s.45.1 is to ensure that there is no “abuse of process” – a

concept predicated less on the motives of the applicant and more on the integrity and coherence of the administration of justice- and to avoid the duplication of proceedings resulting from re-litigation of issues that have already been dealt with in another forum (Wasyliw, 2008). On a more general level, while the Tribunal will regard an application in light of its own specialized role -providing leadership in the interpretation and application of the *Code*- it may also respect the legitimacy of decision-making by other tribunals within their own mandates by deferring to their decisions (*Campbell V. Toronto District School* (2008 HRTO 62),

The Tribunal will consider if another proceeding, as defined under the *Code*, has dealt appropriately with the substance of the application. This will require it to examine the decision arising out of the other proceeding (*Campbell V. Toronto District School*). The appropriate manner of dealing with a complaint may differ depending on the essential nature of the complaint in issue. The inquiry is not whether the complaint was decided correctly in the other forum or to focus on the details of the matter, as the Tribunal's is not an appellate court, but to focus on the substance of the matter. Some of the factors that human rights adjudicators have considered in deciding whether it would be an abuse of process to determine issues which have been decided by another decision-maker in another forum include the wording of the other statute, the purpose of the other legislation, availability of an appeal in the other proceedings, circumstances giving rise to prior administrative proceedings, the issues decided in the other proceedings and whether fresh evidence is available which was not available in the earlier proceeding. (*Campbell V. Toronto District School*).

Section 45.1 addresses situations in which another proceeding *has* dealt with the substance of the Application, not in which another proceeding *could* deal with it, since the existence of other avenues is not by itself a basis for the application of s.45.1 (*Maurer v. Metroland Media Group* 2009 HRTO 200). Of note is that under s.45. 1, "proceedings" include settlements (*Dunn v. Sault Ste. Marie City* (2008 HRTO)). An application can, however, be filed if the court action was withdrawn. The new legislation allows the Tribunal to defer an application while an arbitration addressing the same subject-matter is taking place. Under s. 45 either party (applicant or respondent) may also request a deferral ("The Tribunal may defer an application in accordance with the Tribunal rules...").

### *Timelines*

Another issue stemming from the interplay between different proceedings is that of timelines. Under the police complaints system, a complaint must be filed within six months from the time of the alleged incident forming the basis of the complaint. After this deadline, the OIPRD has the discretion to extend the deadline. Thus, individuals may feel some time pressure to file a police complaint, unaware that so doing may bar pursuit of complaint under other systems, resulting in denying complainants justice under other proceedings. It is recommended that the OIPRD accept applications filed within the deadline, but, where there is an interaction with another system, address them after applications or proceedings pursued under other systems have been determined, even if this requires an extension of the six- month deadline. This is particularly important where the same fact situation gives rise to an issue that must be pursued under the police complaints system, but also raises other, separate issues that must be

addressed under other systems, which in turn will not address the police complaint portion of the case.

### *Public Education*

Ontario's new human rights system explicitly informs the public about overlap between other proceedings and those under the *Human Rights Code*. Information is provided on forms for both applicants and respondents about the impact or consequences that flow from accessing more than one process. For example, applicants are informed that they cannot apply to the Tribunal when there is or has been a civil court action based on the same facts or if a remedy is sought from the court for the human rights violations. (Human Rights Tribunal of Ontario, 2009), but can apply if the court action was withdrawn.

The OIPRD must develop similar public education tools, utilizing a multi-pronged approach, for example through protocols for system intake points, community legal education, and education of police.

### **Recommendations**

The OIPRD must provide

- **Guidelines and rules on the interaction between the criminal justice police complaints systems,**
- **Clarify process for access to complaints documentation,**
- **Ensure flexibility with respect to timelines: complainants should be able to register a complaint with the OIPRD and then address it at a later date once proceedings under other systems have been pursued,**
- **Accessible public education strategies for the community to inform members about the rules for and consequences of accessing more than one system, including the human rights and criminal law systems.**

## **V LEGAL SUPPORT FOR THE COMMUNITY**

Meaningful access to the police complaints system will require that the OIPRD provide the community with a full spectrum of legal resources, services, advice and/or support. Under the Act, the OIPRD "shall provide publicly accessible information about the complaints system and shall arrange for the provision of assistance to members of the public in making a complaint" (s. 58(4)). However, it appears that this provision does not *require* the OIPRD to provide complainants with legal resources. Given that the police have access to legal advice and support, an absence of the same for complainants will effectively create an imbalance between the community and police pillars.

A model administrative system for legal representation is provided under the Ontario human rights system. Under the Ontario *Human Rights Code*, the Human Rights Legal Support Centre provides services for applicants before the Human Rights Tribunal. If a similar model is adopted

under the police complaints system, at a minimum, the OIPRD could provide general legal information, if not legal advice, to the community and also provide services that will support complaints, such as staff to attend highly legalistic hearings. If such services cannot be provided, then the onus is on the Attorney General to ensure access by the community to legal services outside of the OIPRD. Unfortunately, few alternative processes exist for the community to access needed legal services – this is particularly the case for individuals who face linguistic, cultural and/or economic challenges.

One option is to provide legal services by building on existing infrastructure. Under the current legal aid system, legal aid certificates are not granted for complaints against the police. Policy changes to support the community would require extending the system to cover police complaints and also require the issuance of a greater number of legal aid certificates to meet demand. It will be essential to establish transparent processes for issuance of certificates: clear eligibility requirements and a rationale process for prioritization of requests, based on factors that may include complainant vulnerability, severity of alleged misconduct, presence/absence of physical or mental harm to the complainant and existence of human rights violations.

In addition, or alternatively, the OIPRD could channel additional resources to legal clinics that have the mandate and resources to take on new responsibilities under the complaints system. However, if this option is considered, there must be safeguards in place to limit the burden on an already overextended community pillar. Additional sources of support to complainants could be based on the establishment of cooperative frameworks between the OIPRD and other institutions, and place the burden on the OIPRD to:

- Identify and provide referrals to community legal clinics, *pro bono* lawyers or to appropriate and qualified community-based organizations,
- Train community legal workers to provide services. This can be carried out through accessing community organizations, such as interested organization from CEAPC, with training provided by the Attorney General, perhaps through partnerships with the community. For example, it may be possible for the Law Society of Upper Canada could include relevant topics in continuing education curricula.

One issue that must be addressed is whether and how recent changes made by the Law Society regarding accreditation for paralegals will limit the ability of community legal workers to provide such legal support. According to changes under the *Law Society Act*, anyone in Ontario who provides legal services requires a licence unless s/he is part of a group that is not captured by the Act or is specifically exempt under a Law Society by-law (Law Society of Upper Canada, 2009). Groups that do not require a licence –those not captured by the act-include persons acting in the normal course of carrying on a profession or occupation governed by another Act of the Legislature, or an Act of Parliament, that regulates specifically the activities of persons engaged in that profession or occupation, individuals acting on their own behalf, whether in relation to a document, a proceeding or otherwise. Those exempt by the by-law include persons who are not in the business of providing legal services and occasionally provide assistance to a friend or relative for no fee, employees of legal clinics funded by Legal Aid Ontario and employees of organizations similar to legal clinics that provide free services to low-

income clients, provided they meet certain criteria as to their non-profit status and funding. This would seem to indicate that there are no regulatory limitations for community legal workers to offer legal support and services. However, the Attorney General must provide clear guidelines on this matter.

## **Recommendations**

The OIPRD must

- **Consider establishing a system modeled on that under the Ontario *Human Rights Code* with provision of full legal services for complainants who file applications, or, legal information and support,**
- **Establish cooperative, collaborative relationships with the community to ensure access to legal support for the community through referrals to community organizations, development and leadership in training community organizations to provide services to the extent possible under regulations that govern paralegals**

The Attorney General must

- **Ensure that the OIPRD's funding formula/framework explicitly resources the provision of legal services to complainants, or**
- **Build on existing infrastructure to ensure access for the community to the new system, for example, by extending legal aid certificates to cover police complaints, or by channelling additional resources to legal clinics.**

## **VI FUNDING THE POLICE COMPLAINTS SYSTEM**

Decisions about funding procedures and entitlements have a direct impact on the respective roles that will be played by the government, police and community and how effectively they will be able to fulfill their roles. A properly funded complaints system must adequately address start up-and ongoing costs related to its development, establishment, operation and sustainability. Transparency necessitates clear funding formulas frameworks and criteria for both current and future needs, information about spending and identification of those who will be responsible for funding processes.

Although funding must be determined separately for each pillar, funding considerations must consider how the pillars are integrated. The amount and type of resources allotted to one pillar will directly impact the ability of another pillar to fulfil its own role. The OIPRD must be adequately funded to ensure its independence from the Attorney General and assume costs related to such responsibilities as developing communication and public education tools and investigating complaints. Municipal police forces require funding ensuring access to justice for the community to carry out investigations that are referred to them by the OIPRD. If the reason for OIPRD referrals to the police are as a result of the OIPRD's lack of funding or capacity to carry out its own investigations, then police forces will have a disproportionate burden placed on

their resources, in turn, limiting their ability to carry out their own responsibilities. (Regional Municipality of Peel, 2007, p. 5).

Decisions about funding levels to support community education and participation in the delivery of the system will impact on the way the community will access to the system, essentially the number of complaints made, by whom they are made and the ability of the system to address complaints. Funding for the community must be adequate and sustainable to ensure active involvement and the requisite capacity and resources to provide public education and support.

Pilot projects that will be undertaken, one in an urban area and another in a rural/remote area represent a way to gauge funding requirements for the new system, particularly with regards to the involvement of the community pillar. (see recommendations in the *Report on the Bill 103 Summit held September 24-26, 2008 in Toronto*), Scadding Court Community Centre, 2008).

On a general level, the OIPRD must be conceptualized in a wider context, with other systems, such as the human rights system. As resource allocations to other systems may directly impact on its own operations, the OIPRD must identify and utilize opportunities to build on existing infrastructure, systems, services and resources in Ontario.

## **Recommendations**

The OIPRD must

- **Develop a coherent system that considers the links between the pillars in all funding considerations,**
- **Build on existing infrastructure, systems, services, and resources in Ontario to maximize resources,**

## **VII CODE OF CONDUCT**

Legislation governing the conduct of police services establishes guidelines or principles to which officers must adhere and also proscribe behaviour-misconduct- for which punitive or corrective action may be taken. For example, under the *Police Services Act*, amongst other duties, police services must ensure the safety and security of all persons and property in Ontario and ensure co-operation between the providers of police services and the communities they serve (s.1). A police officer is guilty of misconduct if he or she commits one or more of the offences listed including insubordination, neglect of duty, deceit, breach of confidence, corrupt practice, unlawful exercise of authority and damage to clothing or equipment. (s.801)

Legislative provisions governing police behaviour also serve to ensure community confidence in the police and reflect a greater community awareness and expectation of ethical behaviour on the part of the police. Consideration must be given to the extent that the community will play in identifying misconduct. It is critical that the community has a central role in both identifying setting that standards and procedures for identifying and addressing misconduct and determining how records will be treated.

### *Addressing Misconduct Under Other Provincial Legislation*

Provisions under legislation of other provinces are broader in several aspects than those under the *Police Services Act* and it is opportune to look at the Act to determine whether it reflects current realities, including through a comparative review with other provincial legislation, and how the code impacts the complaints system and other processes.

The list of what constitutes misconduct under the Act is similar to that listed under other provincial legislation. However, punitive measures for misconduct are not listed under the Act in the section addressing misconduct-as they are under several provincial legislation. Under the *Law Enforcement Review Act* (LERA)(C.C.S.M. c. L75) of Manitoba, penalties for “disciplinary default” include dismissal, reduction in rank, suspension without pay up to a maximum of 30 days, written reprimand and a verbal reprimand and an admonition (s.30(1)). LERA also provides restitution for loss of property or damage to property sustained by the complainant as a result of the disciplinary default (s. 30(2)). Although penalties are listed under British Columbia’s *Code of Professional Conduct Regulation* ( B.C. Reg. 205/98 ), measures seek to correct behaviour and educate police officers, rather than blame or punish: *If the discipline authority considers that one or more disciplinary or corrective measures are necessary, an approach that seeks to correct and educate the police officer concerned takes precedence over one that seeks to blame and punish, unless the approach that should take precedence is unworkable or would bring the administration of police discipline into disrepute.* (s.19 (2)).

Interestingly, provisions that address misconduct under several provincial legislation distinguish between conduct of a public nature (“public trust” complaints in British Columbia) and conduct that concerns internal disciplinary matters. For example, in Manitoba, the *LERA* does not cover matters of internal police discipline which do not involve members of the public (s. 38). In Quebec, under the *Police Act* (R.S.Q., chapter P-13.1), internal discipline is dealt with under the provincial legislation by directing each municipality to enact a by-law concerning internal discipline procedures for members of its police force (s.256) (“ *Every municipality must make a by-law concerning the internal discipline of the members of its police force. The clerk or secretary-treasurer shall transmit a certified copy of the by-law to the Minister*”).

Under codes of several provinces a distinction is made between public and internal processes: public complaints-those addressing misconduct that directly concern or affect the public- are subject to external review processes, while internal processes, often less transparent, are addressed under other legislation and allow local authorities to deal with their own internal matters in the same manner as any employer/ employee relationship (Alberta, 2005, p.16). The distinction could also be based on who reports the allegation. If a member of the public files a complaint, the complaint may constitute a public issue (Alberta, 2005, p.15). Alternatively, there may be a presumptive characterization of all complaints as public trust complaints, subject to re-characterization on application. (Wood, 2007).

### *Expunging Police Records*

The issue of whether records regarding police misconduct should be expunged is a highly contentious one. The Attorney General must determine the threshold issues of whether records

of police misconduct can be expunged. Clarification will then be required on several procedural matters, including the retention period for records, whether retention periods will be determined by the nature of the misconduct and whether they will be expunged automatically or through an application process (Wood, 2007, p.86).

### **Recommendations:**

The Attorney General must

- **Ensure a strong community role in identifying misconduct**
- **Consider broadening the scope of code to reflect current realities , as well as best practices under other provincial legislation,**
- **Clarify the process for expunging records.**

## **VIII ANNUAL REPORTING AND AUDIT PROCEDURES**

Annual reporting and performance auditing processes represent critical mechanisms for fostering accessibility, accountability, public education and transparency of the police complaints system. Both processes must adhere to the highest possible professional standards and, at the same time, be easily accessible to those operating outside of the system.

### *Annual Reports*

The reporting process represents an important tool for the community and other stakeholders to gauge the effectiveness of the system and the performance of the OIPRD. Under the Act, the OIPRD must file an annual report on the “affairs of the office with the Attorney General at the end of each year, which should be made available to the public” (s.26.1 (8)). However, the OIPRD, with active input from the community pillar, must clarify the content requirements of the annual reports. At the *Bill 103 Summit*, delegates made a number of proposals on content, including overview of trends, initiatives that will be undertaken by the OIPRD to improve the system, dispositions and outcomes of complaints ( whether resolved or not), budget and spending information (Scadding Court Community Centre, 2008). The content of the OIPRD annual report should be detailed under the Rules of Procedure to ensure a level of consistency over time. The process should ensure public consultation to ascertain the framework, content and format for the report. If framework and standardized content requirements are not set out formally in this way, there is a risk that subsequent IPRDs could change the content, given their substantial powers.

If the OIPRD is to have the trust and confidence of the community, it must be –and seen to be– legally and operationally autonomous from the Attorney General to the fullest extent possible. The procedures that govern the reporting process will determine the extent of the OIPRD’s independence, notably from the Attorney General. Delegates at the Bill 103 Summit did not argue against submission of reports to the Attorney General, but recommended that annual reports be submitted to the Legislature and/or to the appropriate committee in addition to the Attorney General.

During the process leading up to the reform of Ontario's human rights system, advocates and policymakers recommended that annual reports be submitted directly to the Legislature rather than to the Attorney General as a way to allow for greater legal and operational independence from government:

*By definition, state institutions are constituted by government and hence are not fully independent. However, measures need to be guaranteed, preferably in the founding charters of these institutions, to ensure that an institution maintains adequate independence to discharge its responsibilities effectively. Independence can be formulated to include three elements: legal and operational autonomy, financial autonomy, and appointment and dismissal autonomy. Legal and operational autonomy is necessary to allow an institution to exercise independent decision-making and operation. Measures aimed at providing legal and operational autonomy include the granting of separate and distinct legal personality to an institution. Ideally, this will include a mechanism of direct reporting to a legislature..."*

(Ontario Human Rights Commission, 2009, p.21):

Under the *Human Rights Code*, the OHRC must make a report to the Minister and submit annual reports on its activities to the Legislature through the Lieutenant Governor in Council (s. 31(1)). Under the *Ombudsman Act* (R.S.O. 1990, CHAPTER O.6s.10), annual reports are submitted to the Legislature: the Ombudsman reports on the "affairs of the Ombudsman's office" to the Speaker of the Assembly and the report is laid before the Assembly. (s.11). Under the *Freedom of Information and Protection of Privacy Act*, (FIPPA), the Privacy Commissioner is appointed by and reports to the Legislative Assembly of Ontario.

There is a different process for the Special Investigative Unit (SIU). The SIU reports to the Attorney General rather than to the Legislature. However, the SIU carries out investigation and makes decisions independent of government (SIU, 2001), a point emphasized in its first annual report in 2001 (SIU, 2001p. 5). The SIU's independence from the Attorney General was questioned in a recent critical report from the Ombudsman of Ontario which concluded that although the SIU is not an integral part of the Ministry of the Attorney General, it is also not fully operationally independent from it and in fact operates with close links to the Ministry of the Attorney General, and is (Ombudsman, 2008). Interestingly, in the report, the Ombudsman drew a distinction between *legal* and *operational* autonomy, highlighting SIU's reliance on the Ministry for administrative and technical assistance and support. The SIU consults with the Ministry on a variety of financial, human resources, internal audit, technological, facilities management, policy and administrative matters. Still, it was suggested that such administrative links and operational supports need not preclude the SIU's independence in carrying out investigations without input or interference from the Ministry.

It may be difficult for those outside of the system and not well versed in reading legislation to understand clearly where the OIPRD reports and what the implications of this are with respect to accountability. Understanding this (or not) can affect the level of public trust in the independence of the system, which in turn affects their perception and use of that system.

## *Audit and Monitoring Processes*

Audits and monitoring processes represent important tools for assessing the OIPRD's performance within various regions and within different communities across Ontario. Under the Act, the OIPRD may require that a board submit a performance audit conducted by an independent auditor at the board's expense, of the board's administration of complaints made by members of the public and conducted in accordance with such directions given by the OIPRD (s.91). Additionally, the OIPRD may conduct a performance audit of any aspect of the administration of complaints, the results of which shall be publicly available (s.92).

Over the next few years it is critical to establish a process that ensures regular external monitoring to address issues that will arise as the system becomes established and works out initial problems. It is unclear as to who will have responsibility for external monitoring and this must be addressed. Rule 14 of the Rules of Procedure should be articulated in greater detail with respect to the audit of the OIPRD and it is recommended that this be carried out through the Auditor General to ensure accountability and legitimacy of the work of the OIPRD and to ensure consistency of mandate and application of the legislation. Annual audits need to include auditing/performance reviews of both the OIPRD and of the IPRD. Additionally, funds to support auditing and reporting processes should be explicitly incorporated into the funding formula for the new system.

There must also be clarification on the process for reviewing or appealing decisions made by the OIPRD. Under the FIPPA process, appeals of decisions are filed with Ontario's Divisional Court, from which further appeals are filed with Ontario's Court of Appeal and with the Supreme Court of Canada. The community's role in auditing and monitoring procedures must be established through consultations, planning, and other initiatives that engage members. In other words, through a democratic administrative system integrating community input into the auditing process.

### **Recommendations:**

The OIPRD must

- **Clarify content requirements for the annual reports,**
- **Ensure a public planning process to ascertain the framework, content and format for annual reports.**

The Attorney General must

- **Ensure that the OIPRD is legally and operationally autonomous from the Attorney General to the fullest extent as reflected in reporting and auditing processes,**
- **Establish clear lines of responsibility for external monitoring of the OIPRD,**
- **Incorporate funding for auditing and reporting processes,**
- **Clarify the process for review of OIPRD decisions,**
- **Establish the community in evaluation and auditing processes.**

# ***Section II***

## **Response to the Office of the Independent Police Review Director Proposed Rules**

## **RULE 2**

### *General Matters*

#### *Application and Interpretation of Rules*

While the Rules provide for greater flexibility than do regulations with respect to establishing policies and procedures for the complaints system, there is the risk that this flexibility could undermine the system by allowing for or facilitating modifications to the process at the discretion of an acting IPRD who has little accountability for such changes. It is problematic to entrust this degree of power and authority in an office holder who is accountable neither to the House, nor to a Committee of a House, but, to a Minister of Cabinet. This will lead to a very real possibility that public trust in the system will be undermined.

#### **Recommendation:**

The Attorney General must

- Ensure accountability and legitimacy of the office: the Auditor General should have a role in auditing the OIPRD and its work or outcomes to ensure consistency of mandate and application of the legislation.

#### *Communications with the OIPRD and Other Parties*

While recognizing the necessity for use of the two official languages, given the past and current demographic make-up of Ontario, consideration must be given to accommodate people who are not able to engage in these two official languages, particularly those involved in a legalistic process. When individuals with limited language skills access the system, there is the risk of miscommunication and misunderstandings which could compromise the process and its outcomes. The fact that complainants who cannot communicate in the two official languages would otherwise have to arrange for their own interpreter is a serious barrier for many Ontarians.

#### **Recommendation:**

The OIPRD must

- Consider existing models that offer mechanisms to address linguistic and cultural access barriers, such as the CEAPC model.

#### *Representatives*

The ability for complainants to engage a representative to assist with navigating the complaints system, as permitted in the rules, is beneficial to those who have the resources or the connections to secure representation. However, securing representation is problematic for

complainants who have neither the resources nor the connections. Also problematic is the lack of protection for complainants from fee-for-service agents whose interests in the process may not reflect or represent those of the public and/or the complainant, as has taken place in many documented cases of unscrupulous “immigration consultants”.

**Question:**

- Will the OIPRD provide a roster of sources of support for those who require them? If not, how can complainants obtain information and resources to access the system on an equal footing with those who are well-connected and /or have resources?

**Recommendation**

- Establish resources to provide support and representation for complainants – the CEAPC model is one example of how this can be done by building on existing infrastructure in the community,
- Provide protection against fee-for-service agents.

**RULES 3 and 4**

*Forms, Intake Process for Complaints*

4.2 The requirement for applicants to complete a form (presumably in English or French) presents a barrier to some members of the community who face literacy, linguistic and cultural capability challenges. It cannot be assumed that all individuals are equal with respect to their comprehension and literacy in Ontario’s official languages. Under the previous system, complaint applications could be submitted through various formats and written complaints submitted in languages other than in French or English. There should be consideration of whether standardized forms should be developed. What is needed is a mechanism to assist complainants with filling out forms correctly and in a timely manner, either through the community or through the OIPRD. It is not appropriate for the police to assist complainants with this part of the process.

4.5. Our experience indicates that, for various reasons, some complainants file at the very end of the six month period. In cases where complaints are submitted at or near the deadline, any delay in considering a complaint as “filed” as a result of administrative processes that complainants are unlikely to be aware of - e.g. police transfer of the complaint to the OIPRD (1 day), OIPRD need for additional information from the complainant-should not be a cause for rejection of the complaint on the basis of it being submitted outside the deadline.

**Recommendation:**

- A complaint should be deemed to have been received on the day on which it is delivered by the complainant to either the police or to the OIPRD.

**Question:**

- 4.6 There is a lack of clarity about the kind and level of assistance that will be provided and more detail is required. Will the OIPRD provide this assistance or is it being provided through a third party? Is assistance provided to assist with completing the forms or will this assistance be referred to another party? Will translation be provided?

*Information About Complaint Process to be Displayed at All Police Services in a Publicly Accessible Area )*

4.7 Providing information points accessible to the public is a welcome development and should be a requirement for all police services. However, other marketing and outreach initiatives must also be developed to ensure information about the complaints process is available at many different types of public venues, such as community centres, parks and recreation facilities, shelters, libraries, etc. Information material at police services and communication tools should reflect the local demographic makeup, for example in terms of linguistic profiles.

**Recommendation:**

- Provide accessible information points at different public venues and develop a variety of communication tools, ensuring that these are communicated in languages that reflect the local demographic makeup.

**RULE 5**

*Screening of Complaints*

5.3 (v). The OIPRD has the discretion not to deal with a complaint if, among other factors, a complainant fails to provide essential information in the complaint form. However, this may be as a result of the complainant being unaware of the type of information that is pertinent to the complaint, particularly as a result of language, cultural or other barriers or an inability to distinguish between emotional response and the facts. There is a need for clear guidelines, information tools and mechanisms to assist complainants to fill out the complaints form. These can be provided through assistance from community agencies or through the OIPRD. There must be opportunities for complainants to receive information at various points in the process, including after a complaint has been filed.

5.5. Complainants must be provided with information about the definitions of terms relevant to complaints, such as “frivolous”, “vexatious”, “in bad faith”, “not in the public interest”..

Where relevant, complaints should be able to be received and put “on hold” until other proceedings and bodies have dealt with the incident/issues. In addition to differing timelines, other proceedings may also address different aspects of the incident that gave rise to the complaint against the police. Thus, the OIPRD should remain open to accepting, “holding” and then processing a complaint if the police-related substance of it has not been dealt with explicitly under another system

5.6. The lack of options for appeals throughout the police complaints process is problematic as appeal mechanisms offer legitimacy, accountability and support the transparency and integrity of systems

### **Recommendation**

- Provide information to ensure complainants understand information that is required to file complete and viable complaints, as well as relevant terms,
- Ensure the availability of options to review decisions taken throughout the process.

### *Third Party Complaints*

Policy complaints should be less restrictive with respect to which parties are permitted to file a complaint. Part of the role of the OIPRD is to address systemic issues and allowing for third party complaints is one way to further identify and address systemic issues. Terms such as “direct effect on the complainant” (5.8) or “discretion” (5.9) require clarification. There is also need for clarity on the meaning, implication and the criteria with regards to what will be considered “remote”. Where do professional relationships enter into this aspect of the process, if at all? These may represent relationships that the community forms with service providers e.g. community, welfare, personal care, child welfare. Service providers may be made aware of incidents through clients and may want to access the system. For example, a person may confide in a health care provider who may in turn feel that the client’s emotional, mental or physical health is at risk. (5.10).

### **Recommendation:**

- Provide clarification on terms relating to third party complaints and criteria with respect when third party complaints are permitted.
- Given their potential to flag systemic issues, criteria for filing third party complaints should be less restrictive for policy complaints.

### *Consolidation of Complaints*

5.11 While measures to streamline the process or consolidate complaints may result in greater operational efficiency, options for summary dismissal of complaints or decisions to pursue one case rather than another, could serve to erode public trust in the system. The danger is that individuals may feel that their complaints are not valued nor taken seriously. The existence of restorative options or resolutions must be available as these serve to provide closure, peace of mind and build or maintain positive community-police relations.

Efforts to consolidate complaints may complicate the identification of systemic issues with regard to how they are reflected through statistical data. There is the risk that this type of “class-action” approach could skew statistics.

### **Recommendation:**

- Ensure that processes for consolidation of complaints do not sacrifice public confidence in the system.
- Ensure that statistical documentation of complaints reflects the original number of complaints filed.

## **RULE 7**

### *Investigation of Conduct Complaints*

#### *Representation during an Interview*

7.9 Complainants should be guaranteed the same rights to representation as police officers. The police have many sources of support (formalized, for example through their Associations) which is lacking for complainants. It is incumbent on the OIPRD to equalize that imbalance of representation, for example, through community agencies.

## **RULE 8**

### *Local Resolution*

The community must be part of this process in order for the system to work. The OIPRD needs to articulate this through policy and practice.

## **RULE 9**

### *Informal Resolution*

Again, the community must actively engage in this process. Although it is agreed that the informal resolution process represents an important option in the system, it will only be a viable option if complainants have access to adequate supports systems that facilitate their participation in this process. Equal access to the informal resolution process will prevent power imbalance between the community and police pillars. There is a need for the community, agencies, organizations and support systems to play an active role in this process.

### **Recommendation**

- Provide adequate support systems for the community to participate in informal resolution processes on an equal level with the police.

## **RULE 11**

### *Powers of the Independent Police Review Director*

Concerns over checks and balances on the exercise of the OIPRD's powers raise important questions about requirements for review and external monitoring. Although these processes are discussed in another section of this report, it is worth emphasizing that stopping at these requirements (and reporting to the Minister only) will not adequately ensure the necessary checks and balances in the system, nor will it be politically advisable, given that the Minister has responsibilities to the public due to his position, yet at the same time is a member of and has responsibilities to a particular political party.

#### **Recommendation:**

- Establish adequate checks and balances on the OIPRD's exercise of power

#### **Question:**

11.1 How is the different time zone in northern Ontario addressed with respect to filing deadline requirements?

11.15 & 11.16. Under the Rules, complainants may be restricted from using documents under for purposes other than police complaints or "otherwise required by law". The OIPRD has discretionary power to make directions to protect the confidentiality of "personal or sensitive" information. This requirement requires clarification as it raises concerns about whether documents used for the complaints system can be used where the complainant wants to file under other systems, such as the criminal and human rights systems.

## **RULE 12**

### *Withdrawal of Complaints*

Although the right to withdraw a complaint is not a problematic aspect of the system, if a person has literacy or ability challenges, providing written notice can present a barrier to accessing this part of the system (12.1). There needs to be supports in place to assist with this aspect of the system for those who require assistance. Communities are well placed to provide this.

## **RULE 13**

### *Systemic Reviews*

Systemic reviews are critical for the ongoing development of the complaints system, and will reflect the evolvement of the police complaints system and of society in general. Such reviews

must provide for the active engagement of the community through annual consultations, roundtables, town hall meetings with stakeholders from the three pillars to review existing systemic issues and identify emerging issues and trends that the system must address. This review should lead to recommendations for systemic change.

The process should also engage stakeholders from other systems and jurisdictions, such as those operating under the human rights system and ensure coordination, as well as a coordinated, inter-Ministerial approach. Ultimately, the process must be linked to the Cabinet or risk having little impact at the systemic level

13.7 Posting reports about results of systemic reviews on the website represents is one viable tool for informing the public. However, there must be more substantive, proactive dissemination of information and this will require the development of a multi-media communication strategy tailored to the needs of the community .e.g. linguistic profiles.

**Recommendation:**

- Establish participatory mechanisms for annual systemic reviews.
- Systemic reviews must engage all stakeholders through various processes as well as other systems to ensure a coordinated inter-Ministerial approach,
- Provide information to the public through a multi-media communication strategy tailored to their needs.

**RULE 14**

*Audits*

**Recommendation:**

- There is a further requirement for this rule to be articulated in greater detail to include the audit of the OIPRD. This should be done through the Auditor General.

**OTHER**

The content of the OIPRD annual report should be be detailed in these rules so as to ensure a level of consistency over time. Any such determination must provide for public consultation to ascertain the report framework, content and format. If the framework and standardized content requirements are not set out formally in this way, there is a risk that subsequent IPRDs could change the content which could lead to reports being less useful or meaningful as public documents. It is essential that reports are consistent, given the substantial powers of the IPRD.

**Recommendation:**

- Establish a public consultation process to determine content, framework and requirements for OIPRD annual reports.

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