REPORT OF THE

Independent Police Oversight Review

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The Honourable Michael H. Tulloch

Queen's Printer for Ontario

The Honourable Michael H. Tulloch is a judge of the Court of Appeal for Ontario.

ISBN 978-1-4606-9850-1 (Print)
ISBN 978-1-4606-9851-8 (HTML)
ISBN 978-1-4606-9852-5 (PDF)
Available in print, HTML, PDF, and EPUB formats
Available at www.ontario.ca/mag
Disponible en français

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ACKNOWLEDGMENTS

This report is the end product of the support, input, and collaboration of a number of people, all of whom have been integral to its success and completion.

First, I must acknowledge and thank Chief Justice George Strathy, the Chief Justice of Ontario, and my judicial colleagues from the Court of Appeal for their moral support, understanding, and indulgence while I have been away from the court on this assignment.

Second, I want to thank Rod McLeod, who introduced me to the issues and complexities of civilian oversight of policing when he asked me to join his team as counsel twenty-one years ago during the very first review of civilian oversight of policing in Ontario. Rod was an excellent mentor and teacher with an unparalleled work ethic, whose approach continues to inform and influence me to this day.

Third, I must thank my former colleagues the Honourable Stephen Goudge and the Honourable Susan Lang, as well as the Honourable Patrick LeSage. They, through their own experiences in conducting similar reviews, were able to provide me with invaluable advice at the outset of this Review. Their good counsel gave me the insight to lay the foundation for what I feel was a very successful and inclusive process.

Fourth, I must acknowledge and thank all the team members who worked with me on this Review over the last eleven months. All their names are listed at the front of this report. All are consummate professionals who were integral to the success of this entire process. Each of the team members gave over and above what was expected in both time and effort. They worked tirelessly to ensure that our timelines were met and that the end product of this report would meet the standard expected of us.

Fifth, I would like to thank the various stakeholders and members of the public

with whom I met, both in private meetings and public consultations, as well as those who were unable to meet with me, but who provided written submissions. Their input was invaluable and informed my recommendations.

Sixth, there were also a number of individuals I called on at times to test my ideas and provide feedback on portions of my report. They all know who they are. I want to publicly acknowledge them and thank them for their contributions.

Last, but certainly not least, I want to thank my family who coped with my absence over the last year. Your sacrifice and support are very much appreciated. I could not have participated in this process without you.

The same can be said for the families of my team members. I personally want to thank you for supporting them during this process.

MICHAEL H. TULLOCH

LETTER TO THE ATTORNEY GENERAL

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March 31, 2017

The Honourable Yasir Naqvi
Attorney General
720 Bay Street, 11th Floor
Toronto, Ontario
M7A 2S9

Dear Minister Naqvi:

Re: The Independent Police Oversight Review

I am pleased to provide you with my report in response to the Order-in-Council dated April 29, 2016, and amended October 19, 2016.

Within this report I have answered the questions outlined in the Order-in-Council. My answers and recommendations follow broad consultation and reflect the invaluable input of all the various stakeholders and members of the public with whom I met.

Thank you for the opportunity to conduct this Review. I trust that you will find my recommendations helpful in moving forward to improve the transparency, accountability, and effectiveness of the civilian oversight bodies in Ontario.

Yours very truly,

Michael H. Tulloch

LETTER TO PARTICIPANTS AND STAKEHOLDERS

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March 31, 2017

Dear Participants and Stakeholders:

Re: The Independent Police Oversight Review

My consultation process is complete and I have now produced a report reflecting your submissions.

I want to take this opportunity to personally thank all of you for your participation in this process. Your contributions have been invaluable to my team and me. I am very hopeful that your input will result in a more transparent, accountable, and effective civilian oversight system in Ontario.

Yours very truly,

Michael H. Tulloch

ABBREVIATIONS

OCPC	Ontario Civilian Police Commission
OIPRD	Office of the Independent Police Review Director
OPP	Ontario Provincial Police
RCMP	Royal Canadian Mounted Police
SIU	Special Investigations Unit

PART I

Executive Summary

EXECUTIVE SUMMARY

1. On April 29, 2016, following public demonstrations of dissatisfaction with policing and police oversight, I was charged with reviewing Ontario's three civilian police oversight bodies.

2. The first of those bodies is the Special Investigations Unit (SIU), which investigates police-civilian interactions that result in serious injury or death to a civilian. The second is the Office of the Independent Police Review Director (OIPRD), which oversees public complaints about the police in Ontario. And the third is the Ontario Civilian Police Commission (OCPC), which primarily adjudicates appeals of police disciplinary hearings, among a number of other functions.

3. This report focuses on recommendations to improve the transparency, accountability, and effectiveness of those three civilian police oversight bodies. In this executive summary (part I of my report), I summarize the context of this Review (part II) and my recommendations (part III).

Summary of "Part II – The Context of this Review"

4. Police oversight, the police, and the communities they serve are inextricably intertwined. Therefore, understanding police oversight requires understanding the police as well as the communities they serve.

5. The relationship between the police and the communities they serve is at

times very complex. This relationship must be situated within its historical context in our modern, pluralistic society. For some communities, particularly Black and Indigenous communities, historical realities have led to a distrust of the police, a distrust that sometimes extends to the oversight bodies themselves.

6. This is no small problem. Modern policing, after all, is founded on public trust. That trust is tested when the police cause a civilian's death or serious injury, or behave in a manner that is seen to fall below the professional standards expected of them.

Modern policing, after all, is founded on public trust. That trust is tested when the police cause a civilian's death or serious injury, or behave in a manner that is seen to fall below the professional standards expected of them.

7. For the public to have confidence that the police will be held accountable, the investigation and resolution of such matters often requires the involvement of an outside investigative body.

8. It is within this context that the three civilian police oversight bodies operate in Ontario.

9. For this Review, I was asked to make recommendations for improving the civilian police oversight bodies in four main ways:

- Ensuring they are effective and have clear mandates;
- Reducing overlap and inefficiencies between them;
- Enhancing their cultural competency when interacting with Indigenous peoples; and
- Enhancing their transparency and accountability.

10. On this last point, enhancing transparency and accountability, three further questions were put to me concerning the SIU:

- Whether more information should be released to the public about SIU investigations, including the SIU director's reports? And, if so, how should that be done?
- Whether the names of the following individuals should be released in an SIU investigation:
  - The officer who is the subject of the investigation;

  - Police witnesses; and
  - Civilian witnesses?
- Whether the past reports of the SIU director should be released? And, if so, how should that be done?

11. In addition to the four broad areas described above, the government asked me to address the following issues:

- Whether the police oversight bodies should employ former police officers?
- Whether the mandates of the three oversight bodies should be set out in legislation separate from the *Police Services Act*?
- Whether the police oversight bodies should share any information they collect with each other? And, if so, how should that be done?
- Whether the three police oversight bodies should collect demographic information? And, if so, how should that be done?

12. The process for answering these questions involved assembling a team, conducting research, consulting broadly, analyzing issues, and making recommendations.

To me, context is always of critical importance. Accordingly, it was very important for this Review to include the voices of as many people as possible.

13. Here, I wish to briefly highlight the Review's consultation process. To me, context is always of critical importance. Accordingly, it was very important for this Review to include the voices of as many people as possible. I therefore committed to holding an open, extensive, and accommodating consultation process.

14. That process took place over seven months, during which I met with more than 1,500 individuals. I did so in 17 public consultations and over 130 private meetings. In the end, those people I met greatly informed my understanding of police oversight and shaped my recommendations to improve it. For this report, those people were not merely helpful, but absolutely essential. For that, I am deeply grateful.

15. Because context is so crucial, I also examined oversight bodies in other jurisdictions as well as past reports on police oversight in Ontario. Throughout my discussion and recommendations, I draw

on best practices from other jurisdictions and insights from past reviewers.

Summary of "Part III – Discussion and Recommendations"

16. My recommendations are set out in part III, in chapters 4 to 12. I have included a list of them in appendix A. Here I briefly touch on each chapter, highlighting key recommendations.

Chapter 4 – Composition of the oversight bodies

17. My discussion and recommendations begin with chapter 4, where I review the laws that constitute the oversight bodies and the people who make the bodies operate. This includes answering the Ontario government's questions about separate legislation and former police officers.

18. On separate legislation, I say that the civilian police oversight bodies should have their own legislation, separate from the *Police Services Act* (see recommendation 4.1). Separate legislation would make it easier for people to understand how the oversight bodies work. Also, it would confirm their importance and independence.

19. On former police officers, I conclude that they should not be excluded from working as investigators at either the SIU or OIPRD. Excluding such candidates would place too much emphasis on where they used to work rather than who they are as individuals.

20. After all, someone who has never worked as a police officer could still be strongly biased in favour of the police, and thus make a poor civilian oversight investigator. In contrast, a former police officer could be unbiased and make an excellent, objective civilian oversight investigator, one whom it would be unfortunate to pass over.

Separate legislation would make it easier for people to understand how the oversight bodies work.

21. The better solution, therefore, would be to incorporate anti-bias measures into hiring, training, educating, and evaluating investigators (see recommendations 4.17, 4.18, and 4.19).

22. That said, I recommend that the oversight bodies should do more to increase their complement of high-quality investigators who do not have a back-

ground in policing (see recommendations 4.13, 4.14, 4.15, and 4.16). Including more of those investigators makes the oversight bodies appear more independent. It also provides the oversight bodies with the many benefits that come with diversifying investigative teams.

23. Elsewhere in chapter 4, I recommend developing greater social and cultural competency within the oversight bodies (see recommendation 4.3). I also recommend ensuring that the oversight bodies better reflect the diversity of the communities they serve (see recommendations 4.4 and 4.6).

24. For the SIU, I make recommendations aimed at improving its ability to fulfill its public accountability function (see recommendations 4.7, 4.8, 4.9, 4.10, and 4.11).

25. Finally, I conclude chapter 4 by recommending that the Ombudsman should have jurisdiction over all three oversight bodies (see recommendation 4.20).

Chapter 5 – Effective criminal investigations

26. Chapter 5 is the first of two chapters that focus on the SIU. This chapter targets its investigative function, while chapter 6 looks at its public accountability function.

27. My recommendations in this chapter address the SIU's mandate. Currently, that mandate is to investigate the circumstances of serious injuries or deaths that may have resulted from criminal offences committed by police officers, including allegations of sexual assault.

28. My recommendations in this chapter also address the police duty to notify the SIU that its mandate may be invoked, and the police duty to cooperate with SIU investigations.

My recommendations in this chapter address the SIU's mandate. Currently, that mandate is to investigate the circumstances of serious injuries or deaths that may have resulted from criminal offences committed by police officers, including allegations of sexual assault.

29. First, I make recommendations to clarify the SIU's mandate and to make it more effective. This includes the following:

- Defining what a "serious injury" is, in accordance with the Osler definition, so that the mandate is clearer (see recommendation 5.1);

- Including within the mandate all incidents involving the discharge of a firearm at a person (see recommendation 5.2);
- Allowing the SIU the discretion to conduct investigations into any criminal matter when it is in the public interest to do so (see recommendation 5.3);
- Clarifying that the SIU has the discretion to lay a charge for any criminal or provincial offence uncovered during an investigation (see recommendation 5.4); and
- Extending the SIU's mandate to special constables employed by a police force and auxiliary members of a police force (see recommendation 5.5).

30. Second, I say that the requirements for police notification should be set out in legislation (see recommendation 5.7).

31. Third, I similarly recommend that the general requirements of the police's duty to cooperate should be set out in legislation (see recommendation 5.8). This includes recommendations to clarify the types of information and evidence the SIU is entitled to receive, as well as ones that address issues arising out of the police's duty to cooperate (see recommendations 5.9, 5.10, 5.11, 5.13, 5.14, and 5.15). It also includes a recommendation that the legislation include a sanction for failing to cooperate with the SIU (see recommendation 5.12).

Chapter 6 – Transparent and accountable criminal investigations

32. This chapter focuses on the SIU's public accountability function, and, in particular, its public reporting.

33. Public accountability is a crucial function of the SIU. For the public to have confidence in policing and police oversight, justice must not only be done, but also be seen to be done. That means investigations must be effective and impartial. It also means that members of the public must be able to carefully examine a decision not to charge to assure themselves that the investigation was effective and impartial.

Public accountability is a crucial function of the SIU. For the public to have confidence in policing and police oversight, justice must not only be done, but also be seen to be done.

34. In this chapter I make recommendations about the release of names, public reporting, and the release of past reports. I also touch on investigative timelines and coroner's inquests.

35. For the release of names, I say that a subject officer's name should be released in the same circumstances that the name of a civilian under investigation would be released. That is, at the end of an investigation, it should be released if the officer is charged (see recommendation 6.1).

36. In my opinion, releasing an officer's name at the end of an investigation when that officer has not been charged would do little to advance the SIU's objectives. It would not make a completed investigation any better. Nor would it do much to help people understand the charging decision. Rather, the key is for more transparent and accountable reporting on SIU investigations.

I recommend that the SIU report to the public on every investigation.

37. For public reporting, I recommend that the SIU report to the public on every investigation, although the content of that reporting would depend on the nature of the investigation (see recommendation 6.4).

38. First, there are cases where the SIU is notified of an incident but withdraws its mandate after a preliminary investigation. In those cases, the SIU should report in summary the reasons for its decisions as part of its annual report (see recommendation 6.5).

39. Second, there are cases where the SIU lays a charge. In those cases, the public reporting should be minimal. The SIU should release the officer's name, the charge laid, and the date of the next court appearance (see recommendation 6.6). This limited reporting is to avoid interfering with the integrity of the criminal proceeding.

40. Finally, there are cases where the SIU does not lay a charge after a full investigation. In those cases, the SIU should release the director's report to the public (see recommendation 6.7).

41. The report should include enough information for the public to carefully examine the decision. That is, it should include items such as summaries of witnesses' evidence; any video, audio, or photographic evidence; and the reasons for the director's decision, including an

explanation of any legal standard applied (see recommendation 6.8).

42. Some information, however, should be excluded. That includes information that identifies witnesses and information whose release is restricted by law or may pose a risk of serious harm to an individual (see recommendation 6.9).

43. The next issue I discuss is the release of past reports. These are the reports that were written in SIU cases where no charges were laid.

44. For past reports, I recommend that they be released, subject to the privacy considerations of affected persons and families, in the following cases:

- In every case involving a death;
- In any case, when requested by the affected person, or if that person is deceased, a family member of the affected person; and
- In any other case, when requested by any individual, if there is a significant public interest (see recommendation 6.12).

45. The release of past reports is a challenging issue. That is mainly because they were not drafted for public consumption, as they included information that should be excluded in public reports. That means that they will have to be edited to protect sensitive information. When making such edits, I therefore suggest inserting explanatory notes in the body of the report. Those notes would describe the nature of the redacted information and why it was redacted (see recommendation 6.13).

46. For investigative timelines, I recommend that the SIU should aim to conclude investigations within 120 days. If it does not do so, it should report to the public at that time and every 60 days thereafter (see recommendation 6.14). This is in addition to earlier recommendations to improve the SIU's capacity to close investigations in a timely manner (see recommendations 4.7, 4.8, 4.9, and 4.10).

The release of past reports is a challenging issue. That is mainly because they were not drafted for public consumption.

47. For coroner's inquests, I recommend that they also be mandatory whenever a police officer's use of force is a direct contributor to the death of an individual (see recommendation 6.15). Furthermore, for families, I recommend that they be provided with funding for legal

representation at the inquest (see recommendation 6.17).

Chapter 7 – Public complaint investigations

48. This is the first of two chapters that focus on the public complaints system. The next chapter addresses the adjudication of such complaints, while this chapter deals with the process leading up to adjudication. That includes a broad range of recommendations, including ones to improve the OIPRD's accessibility, its independence, its effectiveness, and its transparency and accountability.

For a complaint-driven process to be successful, that process must be accessible to complainants.

49. First, I make recommendations to improve the OIPRD's accessibility. For a complaint-driven process to be successful, that process must be accessible to complainants. Throughout my consultations, however, I heard that this was not always the case.

50. To make the OIPRD more accessible, my recommendations include the following:

- Expanding the OIPRD's outreach program, which would include targeting the general public and community organizations that serve vulnerable people (see recommendation 7.2);
- Working together with community groups and organizations to help complainants navigate the complaints process (see recommendations 7.4 and 7.5); and
- Renaming the OIPRD to something that is more easily understood and better reflects its core functions (see recommendation 7.1).

51. I also say that the OIPRD should have the discretion to investigate a matter without a public complainant in certain circumstances, including the following:

- When it is in the public interest to do so;
- If an investigation reveals misconduct other than that alleged in the complaint itself; and
- On referral from the SIU, a police chief, or a police services board (see recommendations 7.10 and 7.11).

52. In addition, I make recommendations related to who can and cannot make complaints, as well as about who may be the subject of such complaints (see

recommendations 7.6, 7.7, 7.8, and 7.9).

53. Second, I make recommendations to improve the OIPRD's screening process (see recommendations 7.13, 7.14, 7.15, 7.16, 7.17, and 7.18).

54. As part of the screening process, I say that the OIPRD should track complaints to identify officers who are the subject of multiple complaints and complainants who file multiple complaints without merit (see recommendation 7.19).

55. Third, I make recommendations to increase the OIPRD's independence and appearance of independence.

Independent investigation would help foster public trust in not only the complaints system, but policing more generally.

56. During my consultations, many were surprised to learn that a complaint made to the OIPRD about an officer could be referred back to that same officer's police force for investigation.

57. A commonly expressed view at my consultations was that "the police should not be investigating police." Nonetheless, that is the current state of affairs. The OIPRD is largely a screening body and not an investigative one.

58. This, of course, is not the OIPRD's fault. It was never designed to investigate all public complaints. It does not have the resources to do so.

59. In my view, that should change. All public conduct complaints should be investigated by the OIPRD. Independent investigation would help foster public trust in not only the complaints system, but policing more generally.

60. I recommend that within five years the OIPRD should be the sole body to investigate public conduct complaints (recommendation 7.20). To do so, I also recommend that it be resourced accordingly (see recommendation 7.21).

61. I further recommend that the OIPRD should have the power to lay disciplinary charges against police officers, rather than having to direct a chief of police to do so (see recommendation 7.25).

62. Fourth, I make recommendations to ensure that the OIPRD be able to investigate effectively. These are similar to my recommendations on the SIU. I say that there should be a duty for the police to cooperate with the OIPRD, and that the requirements of this duty

should be set out in legislation (see recommendations 7.27, 7.28, and 7.29). I also recommend that there should be a sanction for failing to cooperate (see recommendation 7.30).

63. Fifth, I make recommendations aimed at enhancing the OIPRD's transparency and accountability. These include recommendations to periodically report to involved parties about the status of the complaint, to develop performance metrics that are reportable to the public, and to collect and publish summary information on the outcomes of public complaints (see recommendations 7.33, 7.34, 7.35, and 7.36).

64. Finally, I address systemic reviews and monitoring. For systemic reviews, I recommend that the OIPRD publish the results and recommendations of its systemic reviews in the form of a written report (see recommendation 7.37). In addition, for greater accountability, I say that a chief of police should be required to respond in writing to the OIPRD's recommendations, if designated to do so by the OIPRD (see recommendation 7.38).

65. For monitoring, I recommend that the OIPRD monitor complaints and publish the results of disciplinary charges, including the outcomes and penalties imposed (see recommendation 7.39).

Chapter 8 – Public complaint adjudications

66. Trust in the public complaints process requires that public complaints be fairly prosecuted and adjudicated.

67. During my consultations, however, virtually all stakeholders agreed that the current system for prosecuting and adjudicating public complaints is not working and fails to promote public confidence.

68. That system has the chief of police selecting both the prosecutor and the adjudicator for disciplinary hearings arising out of public complaints.

69. This arrangement causes serious concerns about real or apparent bias. A fair and effective public complaints adjudication system demands greater independence and impartiality.

Virtually all stakeholders agreed that the current system for prosecuting and adjudicating public complaints is not working and fails to promote public confidence.

70. To achieve greater independence and impartiality, I recommend that public complaints be prosecuted by independent prosecutors before independent adjudicators (see recommendations 8.1 and 8.3).

71. Those prosecutors should be selected and employed by the Ministry of the Attorney General, thereby enhancing their independence from the chief of police.

72. The independent adjudication should be carried out by a renewed OCPC. The OCPC is well-suited to this role. It is already an expert body of independent adjudicators with legal training and police knowledge. Moving first instance disciplinary hearings for public complaints away from police services to the OCPC would help foster confidence in the disciplinary system.

73. In this chapter I also make the following recommendations aimed at improving the public complaints adjudication process:

- The OIPRD, complainants, and other interested parties may seek leave to intervene at OCPC disciplinary hearings (see recommendation 8.2);
- Reviews of OCPC decisions should be limited to judicial review by the litigants in the Divisional Court (see recommendation 8.5);
- The prosecutor may settle complaints after the OIPRD has laid a disciplinary charge, and the OCPC may direct that the parties engage in alternative dispute resolution, when appropriate (see recommendations 8.6 and 8.7); and
- The OCPC's disciplinary hearing decisions should be released as soon as practicable and made available to the public (see recommendation 8.8).

74. I comment briefly in this chapter on the interaction between the public complaints process I have recommended and the current internal disciplinary process for police.

Chapter 9 – Coordinating oversight and removing inefficiencies

75. This chapter is divided into two parts.

76. The first part of the chapter addresses overlap and existing inefficiencies by making recommendations on the coordination of investigations. That includes recommendations on parallel investigations and cross-referrals.

SIU investigations should take priority over all other investigations, especially non-criminal investigations.

77. For parallel investigations, I say that SIU investigations should take priority over all other investigations, especially non-criminal investigations (see recommendation 9.1). When there is a parallel criminal investigation, a memorandum of understanding between the SIU and the police services should set out the mechanics of the investigations. When there is a parallel non-criminal investigation, such as an OIPRD investigation, the OIPRD investigation should stand down at the discretion of the SIU.

78. For cross-referrals, I recommend that the SIU should be authorized to refer conduct matters to the OIPRD (see recommendation 9.6). While the SIU should focus on its criminal investigations, it would be a waste of resources to bar it from raising matters of concern uncovered during its investigation.

79. Similarly, I recommend that the OIPRD should be able to refer matters potentially falling within the SIU's mandate to the SIU (see recommendation 9.7).

80. Another area of overlapping investigation involves the chiefs of police. By law, chiefs are required to review any matter where the SIU was notified. Those reviews focus on whether there are any conduct, service, or policy issues. For these investigations, often called section 11 investigations, I recommend the following:

- The section 11 reports should be made public, subject to the same considerations for SIU director's reports (see recommendation 9.3);
- Police services should provide section 11 reports to the OIPRD for review, which review could include directing further investigation, laying conduct charges, or commenting publicly (see recommendation 9.4); and
- Section 11 reports should be completed as soon as is practicable (see recommendation 9.5).

81. In the second part of chapter 9, I make a series of recommendations to reduce overlap and inefficiencies by focusing the OCPC on its core adjudicative mandate.

In my view, the OCPC would be more effective and instill greater public confidence in civilian police oversight if it focused instead on an adjudicative role within its expertise.

82. Despite having a predominantly adjudicative focus centred on police disciplinary matters, the OCPC also engages in a number of non-adjudicative activities. It also has some adjudicative responsibilities for which it has no particular expertise. As a result, the OCPC's current mandate sometimes leads to confusion, the potential for the appearance of bias, and decision-making outside the OCPC's core expertise.

83. In my view, the OCPC would be more effective and instill greater public confidence in civilian police oversight if it focused instead on an adjudicative role within its expertise. Accordingly, I recommend that non-adjudicative functions and adjudicative functions for which it has no particular expertise should be eliminated from the OCPC's mandate (see recommendations 9.9, 9.10, 9.11, 9.12, 9.13, 9.14, 9.15, and 9.16).

84. At the same time, I recommend that the OCPC should not be foreclosed in the future from adjudicating matters other than disciplinary hearings of public complaints, when appropriate (see recommendation 9.8).

Chapter 10 – Indigenous peoples and police oversight

85. As part of my mandate, I was asked to make recommendations on how to enhance cultural competency in the SIU, OIPRD, and OCPC in relation to their interactions with Indigenous peoples. In my view, developing cultural competency is crucial to address systemic issues that have hindered positive Indigenous engagement with the oversight bodies.

86. Understanding the context of Indigenous-police relations is essential to understanding my recommendations in chapter 10.

87. As a result, I begin this chapter by providing background about the history of Indigenous engagement with the police and police oversight bodies. I discuss how Indigenous peoples were policed historically and how they are policed today.

In my view, developing cultural competency is crucial to address systemic issues that have hindered positive Indigenous engagement with the oversight bodies. Understanding the context of Indigenous-police relations is essential.

88. Next, I provide an overview of some of the concerns Indigenous peoples shared with me about the civilian police oversight bodies.

89. Then, I make recommendations to enhance the cultural competency of the oversight bodies and to strengthen the oversight system for First Nations policing.

90. Broadly speaking, Indigenous cultural competency will require developing the knowledge, self-awareness, and skills to engage respectfully and effectively with Indigenous peoples.

91. To accomplish greater cultural competency, I recommend that the oversight bodies develop and deliver mandatory Indigenous cultural competency training for all of their staff. That training should be developed in partnership with Indigenous persons and communities, and should be a permanent commitment within each organization (see recommendation 10.1).

92. Cultural competency, however, is not limited to learning about Indigenous peoples. It also is about recruiting and developing Indigenous staff (see recommendation 10.3). And it requires applying a culturally-competent approach to service delivery (see recommendation 10.4).

93. To assess the effectiveness of cultural competency and institutional change, I also recommend that the oversight bodies develop an ongoing cultural competency audit process (see recommendation 10.5).

94. Sustained, proactive outreach and relationship-building are also key components of cultural competency. Crucially, respectful relationships with Indigenous peoples cannot be built at a time of crisis.

95. I therefore recommend that the oversight bodies increase outreach to Indigenous communities and establish meaningful and equitable partnerships with Indigenous organizations (see recommendation 10.2).

96. Finally, effective civilian oversight of policing in First Nations communities is needed. During my consultations, I repeatedly heard about the value of

First Nations policing in First Nations communities. However, First Nations Constables are not "police officers" within the meaning of the *Police Services Act*. Similarly, First Nations police services are not "police forces." As a result, the oversight processes largely exclude First Nations police and communities.

Effective civilian oversight of policing in First Nations communities is needed.

97. The exclusion of First Nations policing from civilian oversight results in many First Nations communities not having access to the same oversight mechanisms as other Ontarians. This gap further exacerbates the distinction between policing for First Nations and policing for all other Ontarians.

98. In my view, consideration should be given to bringing First Nations policing within the province's civilian police oversight mechanisms, subject to the opting in of individual First Nations (see recommendation 10.6).

Chapter 11 – Demographic data collection

99. As part of my mandate I was asked whether the police oversight bodies in Ontario should collect demographic data.

100. In my view, they should. And the demographic data they collect should include gender, age, race, religion, ethnicity, mental health status, disability, and Indigenous status (see recommendation 11.1).

Data collection offers many benefits. It supports evidence-based public policy and decision-making, promotes accountability and transparency, and, if used properly, may build public confidence in policing and police oversight.

101. Data collection offers many benefits. It supports evidence-based public policy and decision-making, promotes accountability and transparency, and, if used properly, may build public confidence in policing and police oversight.

102. On this issue, Ontario's police oversight system lags behind the United States, the United Kingdom, and other public sectors in Ontario.

103. Data collection raises a number of complicated issues. Because of that, I also recommend creating an advisory committee to work with the oversight bodies to set up best practices (see recommendation 11.2). This includes practices relating to the collection, management, analysis, and disclosure of the data.

104. Stakeholders such as community representatives, advocacy groups, law enforcement representatives, and academics could work with the Ontario Human Rights Commission, the Anti-Racism Directorate, and the Information and Privacy Commissioner to design a demographic data regime.

Chapter 12 – Other forms of police oversight

105. My Review focuses on improving the transparency, accountability, and effectiveness of the SIU, OIPRD, and OCPC. These bodies, however, are part of the broader police oversight system.

106. During my consultations, I heard about a number of police oversight issues that did not relate directly to the three bodies or fall squarely within the terms of my mandate. Given the oversight bodies' role within the broader system, I comment on two further issues.

Police services boards are a vital component of the civilian police oversight system in Ontario.

107. The first is the selection and training of members of police services boards. Police services boards are a vital component of the civilian police oversight system in Ontario. Yet the selection criteria for board members and the training provided to them is inconsistent. In my view, the system would be strengthened by establishing consistent selection criteria for board members and providing them with mandatory training to equip them with the skills and knowledge to be effective board members (see recommendations 12.1 and 12.2).

108. The second issue is the professionalization of policing. In my view, serious consideration should be given to establishing a College of Policing in Ontario as the professional body for policing, and to modernizing the policing curriculum (see recommendations 12.3 and 12.4).

109. A College of Policing would be a valuable addition to the existing oversight regime in the province. It would not eliminate the SIU, OIPRD, or OCPC. Rather, it would complement the civil-

ian oversight system. It would do so by developing a culture of professionalization through a more regulated body that specializes in enhancing policing standards and service.

A College of Policing would be a valuable addition to the existing oversight regime in the province.

110. Police services with well-trained, professionally-accredited members are well-suited and well-prepared to understand the problems, demands, and opportunities of policing. They should be empowered to act proactively to identify and address individual or systemic issues before they escalate. And they should be encouraged to set high professional standards to build public trust and confidence in policing. A College of Policing would help to achieve these aims.

PART II

The Context of this Review

CHAPTER 1

Introduction

1. The relationship between police and the communities they serve is at times very complex. This is increasingly so within a pluralistic and diverse society.

2. Modern police are called on to respond to a wide range of challenging social issues. These issues include domestic violence, sexual assault, organized crime, human trafficking, child exploitation, guns and gang related crimes, and intervention in mental health crisis situations.

3. Modern day policing in Canada identifies its roots with the passage of the *Metropolitan Police Act* in the United Kingdom in 1829, under the guidance of Sir Robert Peel.[1]

4. One of the cornerstones of modern policing is that "the police are the public and the public are the police." This principle, associated with Sir Robert Peel, recognizes the indivisibility of the interests of the police and the public.

5. It also underlies the basis for public confidence in the police. It recognizes that the special authority bestowed on the police is at the behest of the public and is to be exercised in the public interest. This is generally referred to as "policing by consent."

6. "Policing by consent" involves giving considerable authority to police officers with the consent of the public, thereby providing officers with powers and legal defences unavailable to other citizens. In essence, the police are simply citizens in uniform who ensure the welfare of the community.

7. Thus the role of the police is not simply to prevent crime, but to serve and protect members of the community. To Sir Robert Peel, this was seen as preferable to maintaining order through military force.

8. Policing by consent recognizes that the exercise of special powers by the police depends on public approval, also known as legitimacy. The public's acceptance of the police's role in society as legitimate is based on public trust and requires the respect and cooperation of the public.

9. Sometimes, however, the police find themselves in circumstances requiring the use of force, which may result in the death of a civilian.

10. Other times, police contact with members of the public may result in situations in which a person feels that an officer was rude or behaved in a manner that was below the expected standard of professionalism.

11. For the public to have confidence that the police will be held accountable for any wrongdoing, the investigation and

resolution of potential police misconduct often requires the involvement of an outside investigative body.

12. It is within this context that civilian police oversight bodies operate in Ontario.

13. While there has been some version of civilian oversight in Ontario since the establishment of the Ontario Police Commission in 1962, the landscape today is considerably more developed.

14. First, the Special Investigations Unit (SIU) is an independent investigative body charged with investigating police officers' potential criminality whenever a police-civilian interaction results in serious injury or death to a civilian.

15. Second, the Office of the Independent Police Review Director (OIPRD), and its predecessors, were established to oversee and manage complaints into police conduct, policies, and services.

16. Third, the Ontario Civilian Police Commission (OCPC) primarily adjudicates disputes related to police disciplinary decisions, in addition to fulfilling a variety of other functions related to policing.

17. All three oversight bodies were established to be arms-length, civilian-administered bodies that would provide the public with a mechanism for transparency and accountability in policing. This includes addressing potential police misconduct, be it criminal or non-criminal.

18. The effectiveness of the civilian police oversight bodies in Ontario cannot be looked at in isolation. Rather, these bodies must be viewed in the context of the complex history which shaped the perceptions of the affected segments of the community that called for their establishment.

19. We have come to view the police in North America as an institution that evolved out of a uniform set of circumstances, with its main objective being to serve and protect the community.

20. The historical reality, however, is much more nuanced.

The relationship between Canada's Indigenous peoples and the police is rooted in a history of distrust and conflict. During my consultations, some described this distrust as going back as many generations as they could remember.

21. To understand the perceptions of policing held by members of some communities, it is important to consider how policing developed and responded to their communities. Two such groups are the Indigenous and Black communities.

22. The relationship between Canada's Indigenous peoples and the police is rooted in a history of distrust and conflict. During my consultations, some described this distrust as going back as many generations as they could remember.

23. Indigenous-police relations are directly tied to a history of colonialism. Often the face of colonialism was that of a police officer, beginning with the North-West Mounted Police, and continuing through to modern police services. Police officers came to Indigenous communities to enforce discriminatory laws and take away Indigenous children. Due in part to this unique history of oppression, Indigenous peoples today are less likely to engage with the police or police oversight bodies.

24. Members of Black communities also recount a long history of discrimination, oppression, and marginalization, the effects of which resonate to this day.

25. Similar to the concerns of the Indigenous peoples, members of Black communities noted that historical discrimination has often placed them at odds with the police, leading to fear and distrust. Within Black communities, there is a prevailing perception that they have always been over-policed and targeted as criminals. This, some say, reinforces insidious stereotypes associating Blacks with criminality.

26. These perceptions are grounded in historical reality. It is a little known fact that Black people were considered 'property' well into the 1800s here in Canada.[2] Canada has its own legacy of slavery, notwithstanding Lieutenant Governor John Graves Simcoe's call in 1792 for an end to its 'practice.'[3] A system of slave patrols, sanctioned by the United States Congress' *Fugitive Slave Act* of 1850, pursued slaves and monitored Black people in general as far north as Canada.[4]

27. It is within this historical context that the Black communities' relationship with the police was formed and initially defined.

Within Black communities, there is a prevailing perception that they have always been over-policed and targeted as criminals.

28. By coming to grips with these historical realities, we can make sense of the dynamics today between Black communities and the police.

29. I began this process against the backdrop of protests from Black communities following the shooting of Andrew Loku by the police.

30. Through my numerous consultations, it became clear to me that the distrust and skepticism felt by some communities towards the police often extends to the police oversight bodies.

31. This includes the SIU, where investigations rarely result in charges being laid, with little explanation to the public. And it applies to the OIPRD, where the majority of conduct complaints are screened out or returned to the police for investigation.

32. All communities, including Black and Indigenous communities, believe that the police perform a very important function in our society. At the same time, they also believe that effective, transparent civilian oversight is critical to maintaining both public trust in the police and police accountability to the public.

33. The term "bad apples" arose often in the course of this Review. As with any large profession, inevitably there will be individuals who act below expectation. The need to manage those individuals at the earliest opportunity is particularly compelling when the profession involved is that of policing.

The public's voluntary conferral of powers on the police comes with a commensurate right to ensure that those powers are being used properly and effectively.

34. At the same time, there are problems of a systemic nature lying at the root of many challenges between the police and the community. Indeed, they are two sides of the same coin and both must be addressed directly and effectively.

35. The public's voluntary conferral of powers on the police comes with a commensurate right to ensure that those powers are being used properly and effectively. This requirement of accountability has led to increased adoption of various models of civilian oversight of police around the world. While in many jurisdictions police initially resisted civilian oversight, most police today recognize its value.

36. In Ontario, civilian police oversight

is performed in large part by the SIU, OIPRD, and OCPC. An officer may be investigated by any of these three bodies. An officer also may also be sued civilly, examined in coroner's inquests, be subject to human rights complaints, or face internal disciplinary proceedings.

37. Police action should not be judged from the viewpoint of a "Monday morning quarterback."[5] The job of a police officer is, at times, a very difficult one. Sometimes it requires making life and death decisions in an instant. That said, there may be circumstances where the actions of a police officer simply cannot be justified.

38. While the immediate concerns that led to this Review relate mainly to the SIU, I also have been tasked with reviewing the OIPRD and OCPC. These three bodies form an integral part of our province's police oversight system.

39. This report focuses on recommendations to improve the transparency, accountability, and effectiveness of those three civilian police oversight bodies. It is based on my broad consultation with a number of stakeholders who made contributions that are vital to my ultimate recommendations.

40. Our society is governed by the rule of law. That law applies to all members of society, including members of our police services. I hope that the recommendations made in this report will restore the confidence of the public in the police, while also ensuring that complaints and incidents are properly and fairly investigated.

41. Nothing that I have said in this report should be taken to detract from the rule of law as it applies to police officers. The public should know that the same burden of proof applies in criminal investigations of police officers as in criminal investigations of civilians. An accountable and transparent process requires nothing more, and demands nothing less.

42. I have divided the report into twelve chapters.

43. I continue on from this introduction with "Chapter 2 – Mandate and Methodology," which sets out the scope of this Review and touches on how it was conducted.

44. "Chapter 3 – Background" provides background information on policing and police oversight in Ontario.

45. "Chapter 4 – Composition of the Oversight Bodies" discusses the laws and people that make up the oversight bodies.

46. "Chapter 5 – Effective Criminal Investigations" clarifies the SIU's investigative mandate and the police's duty to cooperate with SIU investigations.

47. "Chapter 6 – Transparent and Accountable Criminal Investigations" focuses on improving the SIU's public reporting on investigations.

48. "Chapter 7 – Public Complaint Investigations" reviews the OIPRD's role in overseeing the public complaint system.

49. "Chapter 8 – Public Complaint Adjudications" discusses how to improve the current system for adjudicating public complaints, including the OCPC.

50. "Chapter 9 – Coordinating Oversight and Removing Inefficiencies" looks at ways for the SIU and OIPRD to cooperate more efficiently with each other and others. It also discusses the OCPC's various functions.

51. "Chapter 10 – Indigenous Peoples and Police Oversight" provides historical context on Indigenous peoples and the police. It also reviews how the oversight bodies could enhance their cultural competency in relation to their interactions with Indigenous peoples.

52. "Chapter 11 – Demographic Data Collection" explores whether the oversight bodies should collect demographic data and, if so, how.

53. Finally, "Chapter 12 – Other Forms of Police Oversight" touches on police services boards and the professionalization of policing.

CHAPTER 2

Mandate and Methodology

2.100 – Introduction

1. Policing is complex. There are many aspects of policing that could be reviewed and potentially improved. Those include hiring practices, training, performance evaluation, promotion, internal discipline, and external oversight. For this Review though, I have been asked to look into external oversight only. In particular, I have been asked to review part of the civilian police oversight system in Ontario.

2. In this chapter, I explain what exactly I was asked to do for this Review. I do that in part to make it clear why I make recommendations about some things, but not others.

3. Then, I describe my process for conducting this Review. This includes touching on the research that went into this report. It also includes discussing the Review's consultation process, a process which involved meeting with a broad range of stakeholders and interested persons across the province and beyond. In reviews like this one, the consultation process itself is of critical importance.

2.200 – Mandate

4. When the Ontario government appointed me as the Independent Reviewer, it set out the terms of reference for the Review in a legal document known as an Order-in-Council. That document can be found in appendix B to this report.[6]

5. Those terms of reference indicated not only what issues I was to consider and make recommendations on, but also what matters I was not to report on or express conclusions about.

6. In the next sections, I first elaborate on the matters that I was asked to review. Then I touch on what matters fall outside the scope of the Review, and what matters were explicitly excluded from the Review.

2.210 – The focus of the Review

7. The Review focuses on three police oversight bodies and four broad areas for improvement.

8. The three police oversight bodies are the Special Investigations Unit (SIU), Office of the Independent Police Review Director (OIPRD), and Ontario Civilian Police Commission (OCPC).

9. At first, the Review was to focus on improving those oversight bodies in three main areas:

- Enhancing their transparency and accountability, while preserving fundamental rights;

- Ensuring they are effective and have clear mandates; and
- Reducing overlap and inefficiencies between them.

10. And I was empowered to consider anything else related to those areas. Below, I explain what terms such as transparency and accountability mean, and identify where those topics are addressed in the report. Later, the government added a fourth broad category for me to review:

- How those bodies could enhance their cultural competency when interacting with Indigenous peoples (see chapter 10).

11. In addition to the four broad areas described above, the government asked me to address the following issues:

- Whether the police oversight bodies should employ former police officers (see section 4.720);
- Whether the mandates of the three oversight bodies should be set out in legislation separate from the *Police Services Act* (see section 4.210);
- Whether the police oversight bodies should share any information they collect with each other. And, if so, how that should be done (see section 9.200); and
- Whether the three police oversight bodies should collect demographic information. And, if so, how that should be done (see chapter 11).

2.211 – Enhancing the police oversight bodies' transparency and accountability

12. This section explains what is meant by enhancing an oversight body's transparency and accountability, and sets out where I make recommendations on this subject in the report.

13. To operate transparently is to operate in such a way that others are able to see and understand what you are doing. Transparency, in the context of police oversight, refers to being open, clear, candid, accurate, and communicative. It is the opposite of being secretive, ambiguous, or evasive.

14. Accountability is related to transparency.

15. Accountability refers to a need to account for one's actions. If an organization is transparent – showing others what it is doing and why – that organization is being accountable as well. But accountability also involves accepting responsibility for one's actions. And for that to happen, it often requires that

somebody else is able to question your actions in the first place.

So a transparent and accountable organization would be open about what it does, may be called on to account for its actions when appropriate, and can be held responsible when it does not do what it should.

16. So a transparent and accountable organization would be open about what it does, may be called on to account for its actions when appropriate, and can be held responsible when it does not do what it should.

17. In my terms of reference, the government asked me to look into the following issues on transparency and accountability:

- Whether more information should be released to the public about SIU investigations, including the SIU director's reports. And, if so, how that should be done;
- Whether the names of the following individuals should be released in an SIU investigation:
  - The officer who is the subject of the investigation;
  - Police witnesses;
  - Civilian witnesses; and
- Whether the past reports of the SIU director should be released. And, if so, how that should be done.

18. These issues are addressed in chapter 6.

19. In addition to those issues, my recommendations for more transparent and accountable oversight include ones on the following:

- Increasing accountability measures for the oversight bodies; and
- Making sure the public complaints process is open and shares enough with the public.

20. These issues are addressed in chapter 6 and sections 4.800, 7.400, and 8.320.

2.212 – Ensuring the police oversight bodies are effective and have clear mandates

21. This section explains what is meant by being effective and having a clear mandate. It also sets out where I make recommendations on this subject in the report.

22. Being effective means that you are good at doing what you are meant to do.

Or, in other words, it means that you are good at fulfilling your purpose.

23. The purpose of the police oversight bodies, as I will elaborate on later, is to enhance public trust in policing. Generally, the oversight bodies aim to accomplish that by investigating civilian-police interactions for misconduct or criminal conduct.

24. So, when I review the oversight bodies to see if they could be more effective, I am looking for changes that would let them investigate police more effectively, in a way that is fair to all affected parties.

25. One way to improve the effectiveness of police oversight bodies is to ensure that they have clear mandates.

26. A mandate is an order, charge, or commission to do something. A clear mandate then is one where it is easy to understand what the "something" is that an organization has been established or ordered to do.

27. For effective oversight and clearer mandates, I recommend changes dealing with, among other things, the following:

- Ensuring the oversight bodies are independent enough from police and government;
- Addressing who they should have as investigators and the training those investigators should complete;
- Finding ways that their mandates could be clearer and better tailored to their purpose;
- Making sure it is easy for people to access them;
- Providing them with simpler and faster ways to collect evidence; and
- Reducing delay in investigations.

28. These issues are addressed in chapters 4, 5, 7, 8, and 9.

2.213 – Reducing overlap and inefficiencies

29. I will briefly explain what it means to review the oversight bodies to reduce overlap and inefficiencies.

30. Overlap and inefficiency are closely related.

31. Overlap, in the police oversight context, is when two organizations do the same thing.

32. Inefficiency happens when an organization wastes time, energy, or resources.

33. So when two organizations overlap they may be inefficient: they may be wasting time, energy, and resources.

34. Of course, an oversight body could be inefficient – wasteful of time, energy, or resources – even if another body or organization does not have overlapping responsibilities.

35. On this topic, I recommend changes dealing with, among other things, the following:

- Providing for better sharing and coordination between oversight bodies; and
- Removing functions that the bodies are not suited to do.

36. These issues are addressed in chapter 9.

2.220 – The boundaries of the Review

37. During my consultations, members of the public brought up a wide range of policing matters. These discussions provided much-needed context for the recommendations made in this Review. However, at the same time, my mandate focuses on making improvements to the police oversight system in Ontario, not directly to the police themselves.

38. For that reason, I do not make recommendations on issues such as police hiring practices, whether police should have more training on de-escalation techniques, whether police chiefs should be able to suspend officers without pay, or the police practice known as "carding" or "street checks."

39. Also, the terms of reference for the Review explicitly stated that I am not to report on any individual cases that are being investigated or that were investigated. Nor am I to express any conclusion or make any recommendation about any specific professional discipline matter, or about anyone's civil or criminal liability.

40. In short, my focus here is on improving the police oversight system, and not on reviewing whether anything went wrong in an individual case.

2.300 – Methodology

41. The process for this Review involved assembling a team, conducting research, consulting broadly, analyzing issues, and making recommendations. The end product is this report, which is meant to be read not only by the government of Ontario, but also by the people of Ontario, especially those who came out to be heard during the consultation process.

42. Below I briefly expand on two parts of the Review's process. First, I touch on some of the research that went into my recommendations, as well as where

that research can be found in this report. Then I discuss the consultation process that so greatly enriched my understanding of police oversight, and accordingly informed my recommendations to improve it.

2.310 – Research

43. For civilian police oversight, context is crucial. To better appreciate civilian police oversight in Ontario, I researched various areas relevant to this subject. I will highlight three such ones here.

44. First, I reviewed the existing legislation, processes, and practices of each oversight body. This is reflected mainly in chapter 3, and also throughout my discussion on the oversight bodies.

45. Second, I reviewed past reports that were relevant to civilian police oversight in Ontario. This too is reflected mainly in chapter 3. And, when discussing issues and making recommendations, I often draw upon the insights of the past reviewers of civilian police oversight in Ontario.

46. Third, I reviewed the police oversight systems in other jurisdictions. This included other police oversight systems in Canada, as well as some from abroad, such as England and Wales, and Northern Ireland. I have provided short summaries of the police oversight systems in other jurisdictions in appendix C.

47. Often my recommendations rely on best practices that I have identified from those other jurisdictions. Other times, in my discussion of the issues, I draw upon the practices in other jurisdictions for greater context.

2.320 – Consultation

48. The terms of reference set out that I was to engage in public consultations, but that I would determine the method, content, and extent of the consultations required for this Review.

I also understood that this process would be seen as an opportunity for stakeholders, some who felt their frustrations had gone unheard for too long, to have a chance to share their experiences and offer suggestions for improving police oversight.

49. To me, context is always of critical importance.

50. I also understood that this process would be seen as an opportunity for

stakeholders, some who felt their frustrations had gone unheard for too long, to have a chance to share their experiences and offer suggestions for improving police oversight.

51. Accordingly, it was very important for this Review to include the voices of as many people as possible. I therefore committed to holding an open, transparent, extensive, engaging, and accommodating consultation process.

52. To do so, I held both public and private consultations. Together with some of my team, I travelled all over Ontario: as far north as the Pikangikum First Nation, as far west as Kenora, as far east as Ottawa, and as far south as Windsor.

53. In over seven months, I met with more than 1,500 individuals. I did so in 17 public consultations and over 130 private meetings.

54. The public consultations were designed to allow anybody that had an interest in police oversight to come forward and be heard. They took place in the following locations: North York, Scarborough, York, Thunder Bay, Brampton, Mississauga, Sudbury, Ottawa, Ajax, Hamilton, Toronto, Windsor, London, Kingston, Oshawa, Thornhill, and Kitchener.

55. These meetings were recorded and posted to the Independent Police Oversight Review website (www.policeoversightreview.ca).

56. Through that website, some were able to participate without being physically present at our meetings. The website provided information about the Review and the oversight bodies. And it allowed for concerned individuals to make submissions directly to the Review.

57. In addition, the Review engaged in social media. The Review did so by providing live-updates of public consultations through Twitter (@IPOReview), as well as by maintaining active profiles on Facebook and Instagram.

58. In private consultations, my team and I were able to discuss issues candidly and in-depth with a broad range of experts and stakeholders. This included consultations with the following individuals and groups:

- The families of individuals whose deaths were caused by the police;
- Policing stakeholders such as police associations, chiefs of police, police commissioners, and police services board members;
- Black and other racialized communities such as the Arab, Somali, South Asian, and East Asian communities;

- Indigenous communities, including those living in urban communities and those living on reserve, Chiefs, Elders, band council members, Indigenous service providers, First Nations Constables, First Nations police services chiefs, and First Nations police services board members;
- Legal clinics;
- Government officials from Ontario, other provinces in Canada, and the United Kingdom;
- Educators and parent groups;
- Experts and academics, including experts and academics on demographic data collection;
- Mental health service providers, survivors, and consumers;
- Youth and youth workers;
- Representatives from various faith communities such as the Sikh, Muslim, Jewish, and Christian communities;
- Representatives from the LGBTQ community;
- Domestic violence and sexual assault survivors, as well as their supporters and advocates; and
- Leadership and staff of police oversight bodies in Ontario, the rest of Canada, and the United Kingdom.

59. In the end, those people who met with me greatly informed my understanding of police oversight and shaped my recommendations to improve it. For this report, those people were not merely helpful, but absolutely essential. For that, I am deeply grateful.

CHAPTER 3

Background

3.100 – Introduction

1. Who are the police? And who oversees them? In this chapter, I answer those questions.

2. I begin by providing an overview of policing in Ontario. I then discuss the roles and functions of the SIU, OIPRD, and OCPC, as well as their histories.

3.200 – Policing in Ontario

3. Police oversight is intertwined with policing itself. To better understand police oversight then, it helps to know how policing works in Ontario.

4. The blueprint for policing in the province is set out in the *Police Services Act*.[7]

5. In this section I will draw from that blueprint and touch on some of the main actors in Ontario's policing system, including the police officers themselves, the associations that represent them, police services boards, and the Ontario government.

3.210 – Municipal police officers

6. Municipal police officers are the police officers who work for municipal police services.

7. There are about sixty municipal police services in Ontario.[8] Each is headed by a chief of police and overseen by a police services board.

8. Altogether, there are about eighteen thousand municipal police officers out of roughly twenty-six thousand police officers in the province. The largest municipal police service is the Toronto Police Service, with more than five thousand uniformed officers. Many municipal police services are much smaller though. For example, the Espanola Police Service in northern Ontario has only a dozen police officers, including the chief.[9]

9. These police officers are responsible for all aspects of municipal policing, including the following:

- Patrolling neighbourhoods;
- Responding to calls for service;
- Detecting, preventing, and investigating crime;
- Enforcing municipal by-laws;
- Laying charges and participating in prosecutions; and
- Assisting victims of crime.[10]

3.220 – Municipal chiefs of police

10. Each municipal police service has a chief of police, who is chosen by the

municipal police services board.[11] The chief has four main duties:

- To run the police service according to the objectives, priorities, and policies established by the municipal police services board;
- To ensure that members of the police service perform their duties according to the *Police Services Act*, in a manner that reflects the needs of the community, and maintains discipline;
- To ensure that the police service provides community-oriented police services; and
- To administer the complaints system.[12]

11. The last duty, administering the complaints system, includes two different types of complaints that are relevant to this Review: public complaints (discussed further in section 3.320), and internal complaints.

12. Internal complaints are complaints made by the chiefs themselves. The chief will use the internal complaint system to discipline police officers for misconduct or unsatisfactory work performance, including demoting, suspending, or terminating a police officer.

13. The chief generally begins the internal complaint process by notifying the officer subject to the complaint.[13] Then the chief has the complaint investigated. If the complaint is substantiated, then the chief decides if it is serious or not. If it is not serious, then the chief may try to informally resolve the matter with the officer.[14]

14. For serious matters though, the chief must hold a hearing. At that hearing, the chief chooses the prosecutor and the adjudicator, although the chief may act as the adjudicator instead.[15] The police officer is usually represented by a lawyer.

3.230 – OPP officers

15. Municipalities have their own police officers, and so too does the province.

16. The Ontario Provincial Police (OPP) is the second largest police service in the country, after the Royal Canadian Mounted Police (RCMP).[16] It has just over six thousand police officers. As the provincial police, these officers are responsible for the following:

- Patrolling provincial highways and waterways;
- Investigating major crimes that stretch across the province, the country, or the world (such as organized crime, human trafficking, and drug smuggling); and

- Providing support to municipal police forces for major cases.

17. In addition, the OPP provides local police services for some communities that do not have their own municipal police service.[17] It also provides local police services to municipalities that have contracted it to do so.[18] In those cases, OPP officers generally have the same responsibilities as municipal police officers.[19]

18. Instead of a police chief, the OPP is headed by a commissioner. It has its headquarters in Orillia, with regional detachments all over the province.

3.240 – The OPP Commissioner

19. The OPP Commissioner is appointed by the province.[20] The OPP Commissioner has the general control of the OPP, subject to direction from the Minister of Community Safety and Correctional Services.[21]

20. For internal complaints, the OPP Commissioner has the same role and responsibilities as a municipal chief of police.[22]

3.250 – Other key police service providers

21. Other key police service providers in Ontario include First Nations Constables, special constables, and auxiliary members of a police force.

22. Though they provide services that may traditionally be associated with police, they are not "police officers" under the *Police Services Act*.[23] As such, neither the SIU nor OIPRD have the jurisdiction to investigate their conduct.

23. I discuss First Nations policing, including the role of First Nations Constables, in section 10.230. I will briefly touch on special constables and auxiliary members of a police force here.

3.251 – Special constables

24. Special constables provide police-like services, but they are not police officers. They may be appointed by the OPP Commissioner or by a police services board.[24]

25. Special constables commonly fulfill some of the following roles:

- Campus security for colleges and universities;
- Court security;
- Prisoner transport; and
- Community housing security.

26. Although special constables are not police officers, they may be granted the powers of a police officer to the extent needed to satisfy the purpose of their appointment.[25] For example, a special constable may be authorized to use reasonable force to carry out their court security duties.

27. Special constables often work together with police officers. However, as noted above, they are not subject to the same oversight regime as police officers. This means that for the same incident, a police officer would be investigated by the SIU, while the special constable could be investigated by the local police service itself.

3.252 – Auxiliary members of a police force

28. Auxiliary members of a police force are typically unpaid volunteers.

29. Auxiliary members, like special constables, may be appointed by the OPP Commissioner or by a police services board, although a board requires ministerial approval to do so.[26]

30. Auxiliary members may have the authority of a police officer, but only if that member is supervised by a police officer and the chief of police has authorized them to perform police duties.[27] This authorization requires "special circumstances."[28] In practice, this means that it is relatively rare for an auxiliary member to discharge a firearm or otherwise use force on a civilian.

3.260 – Police associations

31. The *Police Services Act* prohibits police officers and employees of police services from joining trade unions.[29] Instead members of police services have police associations that promote their interests.

32. Police associations advocate on behalf of their members in a variety of ways, including lobbying internal and external decision-makers to influence them on issues affecting their members.[30] They also assist their members with discipline matters and SIU investigations. For example, a police association representative may help arrange for a lawyer for an officer under investigation.

33. There are many different police associations in Ontario. Generally, each municipal police service has an association representing its members, such as the Ottawa Police Association. Many of these associations are then affiliated with the provincial association, the Police

Association of Ontario. This arrangement allows the local association to focus on local issues, and the provincial association to focus on provincial issues. A notable exception is the Toronto Police Association, which is not affiliated with the provincial association.

34. OPP officers have their own association as well, the Ontario Provincial Police Association.

35. There is also a separate police association for senior officers – the Ontario Senior Officers' Police Association. And there is an association for chiefs of police – the Ontario Association of Chiefs of Police. These associations aim to serve the specific needs of their members.

3.270 – Police services boards

36. Police services boards work in municipalities that have a municipal police force, a joint police force with other municipalities, or a contract with the OPP for the provision of police services.[31]

37. Board members have broad responsibility to oversee how policing is provided in their communities. They determine objectives and priorities and set policies for police services after consulting with the chief of police or OPP detachment commander, as applicable.[32]

38. Municipal police services board members recruit and appoint the municipal chief of police and deputy police chiefs.[33] They direct the chief and monitor their performance, and they appoint the members of the municipal police force.[34]

39. OPP police services board members do not directly hire their detachment commander or officers, but they do participate in the selection of the detachment commander and monitor their performance.[35]

40. Police services boards also have an important role in the public complaints system. Municipal police services boards establish guidelines for dealing with both public and internal complaints, and review the police chief's administration of the complaints system.[36]

41. Municipal police services boards also consider complaints against municipal police chiefs and deputy police chiefs,[37] review the police chief's disposition of a policy or service complaint at the complainant's request,[38] and adjudicate requests to serve a notice of a disciplinary hearing on a police officer if more than six months have passed since a complaint was initiated.[39]

42. For their part, OPP police services boards review the detachment commander's administration of the complaints sys-

tem[40] and their disposition of local policy complaints at a complainant's request.[41]

3.280 – The Ontario government

43. Both the police services and boards are overseen in turn by the Minister of Community Safety and Correctional Services, formerly known as the Solicitor General.[42] That minister was designated as the minister responsible for policing by the Legislative Assembly of Ontario.

44. The Legislative Assembly of Ontario, also known as the Ontario legislature, is made up of all members of provincial parliament who are elected throughout the province.

45. Ultimately, the Ontario legislature has the power to make all the laws that govern policing and police oversight in the province. Its power in that regard is absolute, so long as it does not conflict with Canada's constitution.

46. The legislature exercises that power by creating laws known as "statutes," such as the *Police Services Act*.

47. For certain policing matters, the legislature has delegated authority to make "regulations."[43] This typically means that the Premier of Ontario, a minister, or the Lieutenant Governor in Council, also known as the cabinet, can make laws by regulation that provide additional details not covered in a statute, but without the need for parliamentary debate and a vote.

48. For example, while the SIU was created by a statute, the conduct and duties for SIU investigations have been further defined in a regulation.[44]

49. The Ontario legislature has declared that policing in Ontario should be provided in accordance with the following principles:

- The need to ensure the safety and security of all persons and property in Ontario;
- The importance of safeguarding the fundamental rights guaranteed by the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code*;
- The need for cooperation between the providers of police services and the communities they serve;
- The importance of respect for victims of crime and understanding their needs;
- The need for sensitivity to the pluralistic, multiracial, and multicultural character of Ontario society; and
- The need to ensure that police forces are representative of the communities they serve.[45]

50. The Ontario legislature also has set out the responsibilities of the Minister of Community Safety and Correctional Services in overseeing policing services. These include monitoring police forces to ensure they provide adequate and effective police services, developing and promoting programs to enhance professional police standards and training, and inspecting and reviewing police forces.[46]

3.300 – How the current system of civilian oversight operates

51. My mandate for this Review is to examine three civilian police oversight bodies in Ontario: the SIU, OIPRD, and OCPC.

52. These three independent bodies, established under the *Police Services Act*, share responsibility for civilian police oversight in the province. They play a critical role in overseeing the police and promoting a positive relationship between the police and the public.

53. The legislative framework and operations of the SIU, OIPRD, and OCPC are discussed below.

3.310 – The SIU

54. Established in 1990, the SIU is a civilian body, independent of the police. The SIU is, in practice, an arm's length agency of the Ministry of the Attorney General[47] with jurisdiction extending to all police officers in Ontario.[48]

55. The SIU is mandated to conduct investigations into the circumstances of serious injuries and deaths that may have resulted from criminal offences committed by police officers, including allegations of sexual assault.[49]

56. It has the power to investigate police officers and lay criminal charges against them if there are reasonable grounds to do so.[50]

57. The legislative framework for the SIU is set out in section 113 of the *Police Services Act*. Ontario Regulation 267/10 (*Conduct and Duties of Police Officers Respecting Investigations by the Special Investigations Unit*) further specifies the responsibilities and duties of police officers during SIU investigations.

58. The SIU is led by a director, who is appointed by the Lieutenant Governor in Council and must never have been a police officer.[51]

59. SIU investigators may be former

police officers, but they cannot be current police officers. They cannot participate in investigations involving a member of their former police force.[52]

60. When an incident that could reasonably fall within the SIU's investigative mandate occurs, the SIU must be notified immediately.[53] The scene of the incident is secured for the SIU investigators.[54] And the officers involved are segregated from one another until the SIU has completed its interviews with them.[55]

61. Members of police forces must "cooperate fully" with the SIU in the conduct of investigations.[56]

62. The regulation distinguishes between "subject officers," whose conduct appears to have caused the death or serious injury under investigation, and "witness officers," who are involved in the incident but not a subject officer.[57]

63. Both subject officers and witness officers must complete their notes on the incident in accordance with their duties, but only witness officers have a duty to provide their notes to and be interviewed by the SIU.[58] Subject officers do not have the same obligation, but may voluntarily provide their notes or be interviewed.

64. Both subject officers and witness officers have a right to consult with legal counsel or a representative of the police association and to have counsel or a representative attend their interview with the SIU.[59] Subject officers need to have different counsel than witness officers.[60]

65. The SIU is not allowed to make public statements about an investigation during the course of the investigation, unless the statement is to preserve the investigation's integrity.[61] Police forces are similarly barred from disclosing any information about the incident or investigation, except to say the SIU has been notified and is conducting an investigation.[62]

66. Following the investigation, if the SIU director determines that there are reasonable grounds to believe that an officer has committed a criminal offence, they will charge the officer.[63] The case is then transferred to Crown counsel for prosecution. Crown counsel will screen the charge to determine whether there is a reasonable prospect of conviction and whether it is in the public interest to proceed with the prosecution.[64]

From 2002 to 2016, the SIU was involved in 3,932 incidents and laid charges in 129 cases.

67. The SIU director must report the results of all investigations to the Attorney General.[65] When no charges are laid, the SIU director gives the Attorney General a written report describing all the evidence and the rationale for their final decision. Generally, only the Attorney General receives a copy of the report.

68. From its inception in late 1990 to the end of 2016, the SIU was involved in 5,775 incidents:[66]

- 142 incidents related to firearm deaths, or about 5 firearm-death incidents each year;
- 249 incidents involved firearm injuries;
- 527 incidents involved custody deaths;
- 2,851 incidents involved custody injuries;
- 210 incidents involved vehicle deaths;
- 1,054 incidents involved vehicle injuries;
- 591 incidents involved sexual assault complaints; and
- 33 incidents involved other injuries or deaths.

69. From 2002 to 2016, the SIU was involved in 3,932 incidents and laid charges in 129 cases.

3.320 – The OIPRD

70. The OIPRD has operated the public complaints systems against the police since 2009. It is an independent, neutral, arm's length agency of the Ministry of the Attorney General.[67]

71. The legislative framework for the OIPRD is set out in the *Police Services Act* and its regulations. Part II.1 of that act establishes the OIPRD and sets out its investigative powers. Part V, which was originally designed for disciplinary proceedings in an employment context, now addresses both public and internal complaints and disciplinary proceedings.

72. Under the legislation, the OIPRD is led by the Independent Police Review Director.[68] The director is appointed by the Lieutenant Governor in Council and must never have been a police officer.[69]

73. OIPRD staff cannot be current police officers.[70] That said, former police officers can and do work at the agency.[71]

74. The OIPRD's oversight role begins with the receipt of a public complaint. Members of the public may complain to the OIPRD about a police officer's conduct or a police force's policies or services.[72]

75. Before a complaint is formally screened, the OIPRD will review it to

determine whether it is suitable for customer service resolution. Customer service resolution is a voluntary process where the parties, aided by an experienced facilitator or mediator, discuss and try to resolve the complaint.[73] If a complaint is not suitable for resolution through customer service resolution or if customer service resolution is unsuccessful, the complaint enters the screening process.

76. Complaints are presumptively screened in and reasons must be given if the OIPRD decides not to deal with a complaint.[74] Complaints may be screened out on a variety of grounds, such as being frivolous or vexatious, made more than six months after the event in question, not in the public interest, or not within the OIPRD's jurisdiction.[75] During the course of an investigation, a complaint may be closed for the same reasons.[76]

77. Policy and service complaints that are screened in are referred back to the relevant municipal chief of police, OPP Commissioner, or local OPP detachment commander.[77] The OIPRD does not have the authority to investigate these complaints, but is notified of their disposition.[78]

78. For conduct complaints, the OIPRD has different options available. Complaints may be retained by the OIPRD, referred to the chief of police of the police force to which the complaint relates, or referred to the chief of police of a different police force.[79]

79. Conduct complaints about a municipal chief of police or deputy chief of police are referred to the relevant police services board.[80] Complaints about the OPP Commissioner or a deputy OPP Commissioner are referred to the Minister of Community Safety and Correctional Services.[81]

80. At any time during the investigation of a conduct complaint, the complaint may be resolved informally. This requires the consent of the complainant and police officer, the OIPRD's approval, and that the conduct not be of a serious nature.[82]

81. In practice, the majority of complaints received and screened in by the OIPRD are referred to the police chief of the police force that the complaint is about.[83] The police force's professional standards unit then investigates and provides a report to the police chief.[84]

82. If the chief determines that the complaint is unsubstantiated, no further action is taken except to notify the complainant, the police officer subject to the complaint, and the OIPRD.[85]

83. If the chief believes on reasonable grounds that the officer's conduct constitutes misconduct or unsatisfactory work performance, the matter will proceed to a disciplinary hearing, unless the misconduct or unsatisfactory work performance is deemed not to be of a serious nature.[86]

84. A complainant who disagrees with the determination that their complaint is unsubstantiated or that the misconduct is not of a serious nature may request that the OIPRD review the matter.[87] If the OIPRD agrees with the complainant, it instructs the chief of police on how to deal with the complaint. This may include directing a hearing.[88]

85. Conduct complaints that are referred to another chief follow a similar process, except that the investigation and report are done by that other police force and then provided to the officer's chief for further action.[89]

86. The OIPRD has the right, after referring a complaint to any chief of police and before a hearing, to direct the way the complaint is dealt with.[90]

87. When the OIPRD retains a conduct complaint, it conducts its own investigation.[91] The OIPRD has various investigative tools, including summons powers.[92]

88. Following its investigation, the OIPRD will provide a report to the chief of police. The report must say whether or not the OIPRD has substantiated the complaint.[93] If the complaint is substantiated, the OIPRD must indicate whether it believes the misconduct or unsatisfactory work performance was serious in nature.[94]

89. Matters that are not of a serious nature may be informally resolved. Otherwise, a substantiated complaint will proceed to a disciplinary hearing.[95]

90. Disciplinary proceedings are conducted by police services and follow the same procedure whether they stem from a public complaint or an internal complaint. The proceedings are characterized primarily as employment matters and not criminal or penal proceedings.[96]

91. The parties to a disciplinary hearing are the prosecutor, the involved police officer, and the complainant.[97] The OIPRD is not a party, even if it conducted the investigation or directed the hearing. The chief of police designates both the prosecutor and the hearing officer.[98]

92. A police officer is guilty of misconduct if they commit an offence described in the Code of Conduct or engage in an activity set out in the legislation.[99] Misconduct or unsatisfactory work per-

formance may be found to have occurred only on clear and convincing evidence.[100] This is a higher standard than a balance of probabilities.[101]

93. If a police officer has engaged in misconduct, they may be dismissed, demoted, suspended, required to forfeit pay or days off, or any combination thereof.[102] In addition, the officer may be reprimanded, directed to undergo specified counselling or training, ordered to participate in a specified program or activity, or any combination thereof.[103]

94. The police officer and complainant both have a right of appeal to the OCPC, but the chief of police and the OIPRD do not.[104]

95. Between April 1, 2014 and March 31, 2015, the OIPRD received 2,926 complaints:

- 143 complaints were successfully resolved by customer service resolution;
- 1,440 complaints were screened out, including 677 complaints determined not to be in the public interest;
- 1,280 complaints were screened in, including 1,183 conduct complaints, 20 policy complaints, and 77 service complaints;[105] and
- Of the 1,183 conduct complaints, the OIPRD
  - retained 168 complaints;
  - referred 1,008 complaints to the same police service; and
  - referred 7 complaints to another police service.[106]

96. Between April 1, 2014 and March 31, 2015, 734 conduct complaint decisions were issued involving 2,802 allegations:

- 620 complaints were found to be unsubstantiated;
- 77 complaints were found to have at least one substantiated allegation of a less serious nature and no substantiated allegations of a serious nature; and
- 37 complaints were found to have at least one substantiated allegation of a serious nature.[107]

97. In addition, the OIPRD has the power to examine and review systemic issues revealed by public complaints.[108] Between April 1, 2014 and March 31, 2015, the OIPRD undertook further work on two existing systemic reviews: the use of force when dealing with people in crisis and a now-completed systemic review on practices for DNA canvasses.[109]

3.330 – The OCPC

98. The OCPC is an independent, quasi-judicial oversight agency. Operational since

2009, it is the successor of the Ontario Civilian Commission on Police Services, which was created in the 1990s as the successor of the Ontario Police Commission, founded in the early 1960s.[110]

99. Since 2013, the OCPC has been clustered with other adjudicative tribunals within the Safety, Licensing Appeals and Standards Tribunals Ontario.[111] It reports to the Ministry of the Attorney General. Its members are appointed by the Lieutenant Governor in Council through a competitive, merit-based process.[112]

100. The OCPC was established pursuant to part II of the *Police Services Act*. Its powers and duties are set out in various provisions of the legislation.

101. Broadly speaking, the OCPC is given statutory authority to engage in a range of activities, including hearing appeals of police disciplinary decisions,[113] adjudicating budget disputes,[114] and conducting investigations and inquiries into the conduct of police officers, chiefs of police, and members of police services boards.[115]

102. Subsection 22(1) of the *Police Services Act* provides a summary of some of the OCPC's various statutory powers and duties. The specific components of the OCPC's statutory mandate include the following:

- Adjudicating disciplinary appeals of hearings conducted by police services that arise from public and internal complaints;[116]
- Adjudicating appeals from employees who have been discharged or retired due to disability;[117]
- Approving municipal detention facilities;[118]
- Investigating, inquiring into, and reporting on certain policing matters, including the conduct of police officers and police services board members;[119]
- Investigating, at the direction of the Lieutenant Governor in Council, any matter relating to crime or law enforcement;[120]
- Directing municipal police forces and police services boards to comply with prescribed standards of police services and imposing sanctions for failing to comply with these standards;[121]
- Directing internal complaints about the conduct of a police officer;[122]
- Performing various administrative functions involving the budgets and the structure of police services, including resolving certain budgetary disputes;[123]

- Performing certain specialized labour relations functions involving police forces;[124]
- Approving the appointment of and terminating and suspending First Nations Constables;[125] and
- Reviewing public complaints relating to matters that arose prior to the OIPRD's creation in 2009.

103. The long and varied list shows that the OCPC has a multi-function statutory mandate.

104. Notwithstanding this broad mandate, the majority of the OCPC's activities relate to hearing disciplinary appeals. Police officers and, in the case of public complaints, complainants, have the right to appeal the decision of a hearing officer.[126] At the appeal, the OCPC may confirm, vary, or revoke the hearing officer's decision, substitute its own decision, or order a new hearing.[127]

105. The OCPC's powers to conduct hearings about matters such as police budgets, the structure of police services, the accommodation of disabilities, membership in a bargaining unit, and whether the standards of police services in a community have been met, occupy a much smaller amount of the OCPC's time compared to disciplinary appeals.

106. Finally, the OCPC's investigative and inquiry powers also are used much less frequently than its authority to hear disciplinary appeals.

3.400 – Civilian police oversight in other jurisdictions

107. Ontario is not the only jurisdiction with civilian police oversight. As part of my review, I examined oversight systems in other jurisdictions. I have included short summaries of some of these systems in appendix C.

3.500 – The history of civilian police oversight in Ontario

108. The establishment and evolution of the SIU, OIPRD, and OCPC are the result of significant consultation, much debate, and a number of reviews over the last several decades. In response, governments have amended and built upon existing legislation. The result is a patchwork of civilian police oversight in the province.

109. The SIU, OIPRD, and OCPC are a product of this history. Their development provides context for this Review and my recommendations going forward.

The establishment and evolution of the SIU, OIPRD, and OCPC are the result of significant consultation, much debate, and a number of reviews over the last several decades. In response, governments have amended and built upon existing legislation. The result is a patchwork of civilian police oversight in the province.

110. The OCPC has the deepest historical roots among the oversight bodies. Although the OCPC has only been operational since 2009, it is the successor of the Ontario Civilian Commission on Police Services, and before that, the Ontario Police Commission.[128]

111. The Ontario Police Commission was created in 1962, before the establishment of the Ministry of the Solicitor General (now the Ministry of Community Safety and Correctional Services).[129] The Ontario Police Commission's original mandate was to "play a general watch-dog role over law observance and enforcement in Ontario."[130] Today, some of the OCPC's powers and duties trace their origin to the Ontario Police Commission.[131]

112. During the 1960s and 1970s, civilian oversight of policing was the subject of increased public interest. A series of reviews at the time called in particular for a greater civilian component in the public complaints system against police.[132]

113. In 1977, the government responded by introducing a bill proposing a province-wide complaints system that included greater civilian involvement. The bill, however, did not pass.[133]

114. The following year, the Ontario Police Commission, working in consultation with police forces, was asked to develop voluntary procedures for the handling of complaints.[134] Those procedures were adopted in whole or part by many local boards of commissioners of police (the predecessors to today's police services boards).[135]

115. The changes, however, did not fully satisfy the concerns of some members of the public. This was especially the case in Toronto, where police shootings and allegations of police misconduct, particularly in Black communities, were causing the police-community relationship to deteriorate.[136]

116. Further reports followed about the need to include civilian participation in the public complaints process. In 1981, the government responded by passing legislation creating a pilot project for handling public complaints in Toronto.[137] The legislation established the Public Complaints Commissioner, a role made permanent in 1984.[138]

117. The Office of the Public Complaints Commissioner monitored the handling of complaints about the police in Toronto, performed initial investigations in limited circumstances, reviewed certain decisions made by the police service, and referred cases to an independent civilian board of inquiry for adjudication if doing so was in the public interest.[139]

118. In 1988, after more deadly shootings involving members of Black communities, the government appointed Justice Clare Lewis to chair a task force "to address promptly the very serious concerns of visible minorities respecting the interaction of the police community with their own."[140]

119. In its 1989 report, the task force made a series of recommendations to improve the relationship between the police and Black and other racialized communities.[141]

During the 1960s and 1970s, civilian oversight of policing was the subject of increased public interest. A series of reviews at the time called in particular for a greater civilian component in the public complaints system against police.

120. One of the recommendations was the creation of "an investigative team to investigate police shootings in Ontario" comprised of both civilian members drawn from government investigative agencies and homicide investigators not from the force involved in the shooting.[142] The task force further noted an ongoing demand for mandatory, province-wide independent civilian review of allegations of police misconduct and the extension of the Public Complaints Commissioner's jurisdiction beyond Toronto.[143]

121. In 1990, the government responded to the recommendations by passing new legislation, the *Police Services Act*.[144] Notably, the new legislation set up a special investigations unit to investigate police shootings. The unit's mandate was to conduct investigations into the circum-

stances of deaths and serious injuries that may have resulted from criminal offences committed by police officers.[145]

122. In addition, the new legislation gave province-wide authority to the Public Complaints Commissioner, now renamed the Police Complaints Commissioner.[146] And it clarified the structure, powers, and duties of the Ontario Police Commission, now renamed the Ontario Civilian Commission on Police Services.[147]

123. Shortly after, Stephen Lewis published his 1992 report on race relations, highlighting the pervasiveness of racism in Ontario, particularly anti-Black racism.[148] A recommendation in the report led the government to transfer administrative responsibility for the newly-established SIU from the Ministry of the Solicitor General to the Ministry of the Attorney General in 1993 to reinforce the SIU's independence.[149]

124. In 1995, Margaret Gittens and Justice David P. Cole published their report on systemic racism in the Ontario criminal justice system.[150] The report concluded that the SIU had not met the public's expectation for increased accountability. And it emphasized the need to develop an effective response to police shootings.[151]

125. The next year, the government commissioned Roderick M. McLeod to conduct a review of civilian oversight of policing in Ontario. His report made several further recommendations to change the oversight system, including streamlining the various civilian oversight agencies into a single body, clarifying the SIU's mandate and officers' duty to cooperate in SIU investigations, and transferring greater power over public complaints back to local police services.[152]

In 1995, Margaret Gittens and Justice David P. Cole published their report on systemic racism in the Ontario criminal justice system. The report concluded that the SIU had not met the public's expectation for increased accountability. And it emphasized the need to develop an effective response to police shootings.

126. Although most of these specific recommendations were not enacted, the government amended the legislation in 1997 to transfer responsibility and

authority for public complaints away from the province and to local authorities. The Police Complaints Commissioner posting was abolished and the Ontario Civilian Commission on Police Services was given limited review powers.[153]

127. Some of the most significant changes to the legislation governing the SIU came the next year following the release of Justice George W. Adams' first report on the SIU.[154] More specifically, the SIU's annual budget was greatly increased, a regulation was passed on the "duty to cooperate" in SIU investigations, and the police officers' Code of Conduct was changed to make failing to comply with the regulation a neglect of duty.[155]

128. In 2003, Justice Adams evaluated the implementation of the SIU reforms in a follow-up report.[156]

129. On the public complaints side, by 2004 there was a growing unease over the lack of oversight in the devolved, locally-based public complaints system.[157] As a result, the government appointed Chief Justice Patrick J. LeSage to conduct a review of the complaints system.[158] A key recommendation in his 2005 report was the creation of an independent civilian body to administer the public complaints system.[159]

130. In 2007, the government amended the legislation to create a new public complaints process, establish the OIPRD, and change the name of the Ontario Civilian Commission on Police Services to the OCPC.[160] The amendments came into force in 2009.[161]

131. That same year, the government again asked Chief Justice LeSage to review issues between the SIU and the police in SIU investigations. These and other issues had been well-documented in a 2008 report from Ombudsman André Marin on the SIU's effectiveness and credibility.[162]

132. Following the release in 2011 of Chief Justice LeSage's report,[163] the government amended the regulation governing the conduct and duties of police officers in SIU investigations.[164]

133. Also in 2011, Ombudsman André Marin published a second report, evaluating the progress made in implementing the recommendations from his 2008 report.[165]

134. Since that time, Ontario's system of civilian police oversight has continued to be a subject of much debate. Some argue for further reform. It is within this context that I was tasked with conducting this review of the SIU, OIPRD, and OCPC.

PART III

Discussion and Recommendations

CHAPTER 4

Composition of the Oversight Bodies

4.100 – Introduction

1. The police oversight bodies are created by laws, but they are run by people.

2. In the end, the oversight bodies are only as good as the people running them, and as those laws allow them to be.

3. In this chapter I focus on the laws and people that make up the oversight bodies.

4. I first touch briefly on the laws that establish those bodies, which are found in the *Police Services Act*.

5. In doing so, I answer the government's question: should the oversight bodies have their own set of laws, ones that are separate from the *Police Services Act*?

6. I say that they should because it would make the oversight system easier to understand. And it would reassure the public that the oversight bodies are independent of the police.

7. Then I discuss the people who make up the oversight bodies: the directors, the investigators, and so forth. This is divided between the people who carry out investigative functions and those who support public accountability and other functions.

8. This includes examining whether the oversight bodies should employ former police officers as investigators.

9. In my view, former police officers should not be excluded from either the SIU or OIPRD. Rather, as I will explain, those bodies should focus on incorporating anti-bias measures into their recruitment, training, education, and evaluation of investigators.

10. Finally, I address oversight of the police oversight bodies themselves. There I recommend that the Ombudsman should have the ability to respond to complaints about all three oversight bodies.

4.200 – The legislation that governs the oversight bodies

11. In this section I explain why the oversight bodies should have their own legislation. I also say that the SIU should be an agency in law, like the OIPRD and OCPC.

4.210 – Separate legislation

12. Legislation is a law or series of laws. Right now, all of the laws establishing the police oversight bodies are found in the *Police Services Act*.[166]

13. But would it make more sense for the oversight bodies to have their own legislation? In my opinion, it would.

14. While ultimately the content of the legislation is what is most important, separate legislation offers two key benefits: it would make it easier for people to understand how the oversight bodies work and it would confirm their independence.

15. An interested person should be able to read the police oversight legislation and understand how the oversight system works. That person should be able to do so without too much difficulty and without years of legal training.

16. This is especially so for people who have a complaint about police conduct.

17. Yet the laws on the oversight bodies in the *Police Services Act* are hard to find in that act and hard to understand. That is largely because the *Police Services Act* is mainly labour legislation. It deals with the roles and responsibilities of municipalities, police officers, police chiefs, and police services boards. It addresses how police officers negotiate collective agreements, arbitrate disputes, and transfer assets between pension plans.

18. The laws about the oversight bodies are then scattered throughout the *Police Services Act*. They are found mainly in parts II, II.1, V, and VII of that legislation.

19. In part V, they are mixed with laws that are not about the civilian oversight system, but instead deal with the internal complaints system, the system a police chief uses to discipline police officers.

20. This should be fixed with new legislation that is separate from the *Police Services Act*. And that legislation should be user-friendly and use language that is easy to understand.

An interested person should be able to read the police oversight legislation and understand how the oversight system works. That person should be able to do so without too much difficulty and without years of legal training.

21. That way, when someone has a complaint, that person is able to see how the process works, know what they have to do, and understand the roles and responsibilities of the oversight bodies.

22. Separate legislation has another advantage. It would confirm to the public that these oversight bodies are important and that they are independent from the police.

23. Many people I spoke with said that mixing police oversight legislation with policing legislation is not appropriate. The reason is that some people may get the impression that the oversight bodies are not independent of police. Because of the legislative comingling, they may believe that the oversight bodies operate as part of the police services, like the professional standards units that handle internal discipline.

Separate legislation has another advantage. It would confirm to the public that these oversight bodies are important and that they are independent from the police.

24. This is a problem since oversight bodies must not only be independent, but they must appear to be independent.

25. Appearances matter. Police oversight depends on people being willing to engage with the oversight bodies. So the public must be confident that the oversight bodies are independent of the police. Separate legislation would help build that confidence.

Recommendation 4.1

The laws on the civilian police oversight bodies should be set out in a statute, and regulations made under that statute, dedicated to civilian police oversight, and separate from the *Police Services Act*.

4.220 – The legal status of the oversight bodies

26. When it comes to their status within government, one of the three oversight bodies is not like the others.

27. While the OIPRD and OCPC are "agencies," the SIU is not. Instead, the legislation establishes the SIU as a "unit" under the "Ministry of the Solicitor General."[167] This should change.

28. The SIU should be legally recognized as an arm's length agency accountable to the Ministry of the Attorney General.

29. Recognizing the SIU as an agency would provide at least three benefits.

30. First, it would make the SIU more accountable. Agencies must post annual reports to the public.[168] They also must produce business plans and are subject to periodic mandate reviews.[169]

31. Second, it would improve and highlight the SIU's independence. Agencies carry out their public day-to-day work without ministry involvement.[170]

32. In practice, the Attorney General allows the SIU to operate like an arm's length agency. But that, to me, is not good enough. The SIU's level of independence should not be left to a minister's discretion.

33. Third, if the SIU were an agency, it would improve the process for choosing the SIU director. Provincial agency appointees are recruited through an open and transparent process.[171] They also are subject to review by the Legislative Assembly's Standing Committee on Government Agencies.[172]

34. In addition, the legislation should clarify that the SIU is accountable to the Ministry of the Attorney General. It has operated under that ministry since 1993, following a recommendation by Stephen Lewis.[173] But the legislation still says that the SIU is a unit under the Ministry of the Solicitor General (which is now the Ministry of Community Safety and Correctional Services).[174]

35. That is problematic. That ministry is responsible for policing services in Ontario. And the police are one of its biggest stakeholders. As such, none of the oversight bodies should report to it.

36. Rather, they should report to the Ministry of the Attorney General, the ministry responsible for upholding the rule of law.

37. The legislation should explicitly recognize this.

Recommendation 4.2

The SIU should be recognized as an arm's length agency accountable to the Ministry of the Attorney General.

4.300 – Overview of the people that run the oversight bodies

38. The next sections look at the people who make the oversight bodies operate.

39. I begin by discussing an important issue that applies to all of the oversight bodies, and all of the people at those oversight bodies. That is the issue of social and cultural competency.

40. Then I focus on the investigative oversight bodies, which are the SIU and OIPRD. I start by addressing the people in charge of those bodies, the directors. Then, I discuss the people needed to fulfill

the public accountability function, which is mainly focused on the SIU. Finally, I review the people who carry out the oversight bodies' investigative functions.

4.400 – Social and cultural competency programs

41. To provide all Ontarians with effective oversight, the oversight bodies must be both socially and culturally competent.

42. This includes all individuals at the oversight bodies: the directors, the investigators, the adjudicators, and the staff dedicated towards outreach, communications, administration, affected persons services, and so forth. It also includes looking at each organization itself: its policies, programs, and operations.

43. During my consultations, I heard from many different groups about the distinctive challenges they face when dealing with the police and police oversight bodies. They said that, in some ways, they did not feel valued or understood by the oversight bodies.

44. Some, for example, said that the oversight bodies did not understand gender-based violence or issues relating to mental health. Others complained that language barriers were not properly addressed. Still others felt that the oversight bodies were not sensitive to their communities' historical relationships with the police.

Social and cultural competency begins with understanding a community's history and its relationship with police and police oversight.

45. All such concerns limit the effectiveness of the oversight bodies.

46. In my view, the oversight bodies should invest in developing greater social and cultural competency.

47. Greater social and cultural competency would allow members of the oversight bodies to navigate situations where social or cultural differences may be a factor.

48. Social and cultural competency begins with understanding a community's history and its relationship with police and police oversight. It includes understanding, for example, that men and women often are treated differently, as are those affected by mental health issues. It also includes recognizing that there are power imbalances in many relationships, particularly in domestic relationships, but

also in other situations involving interactions between the police and the public. And it includes recognizing the barriers to accessibility facing some communities, such as persons with mental or physical disabilities.

49. Developing greater competency in these areas involves self-reflection on one's own perceptions of certain communities and social norms, and how those perceptions may shape one's interactions with others.

50. Social and cultural competency also includes developing techniques to work in a respectful and sensitive manner with people from a broad range of communities.

51. Finally, for competency development to be truly successful, it will need to involve critically assessing organizational policies, programs, operations, and general practices to ensure a socially and culturally respectful approach.

52. To accomplish greater overall competency, I therefore recommend that the oversight bodies implement ongoing training and evaluation programs that address social and cultural competency issues, anti-racism, diversity, inclusion, accessibility, gender-based violence, and mental health.

53. The programs should be developed in partnership with the communities served by the oversight bodies and their supporters, such as women's groups, race-based organizations, and mental health organizations. The should include extensive courses on the communities served by the oversight bodies, including, but not limited to, Ontario's Black, South Asian, East Asian, Arab, Muslim, and LGBTQ communities, as well as women and persons with mental or physical disabilities.

54. The competency programs should be consistent, comprehensive, and mandatory for all staff. They should be a permanent and ongoing commitment within each organization. Key performance indicators should be developed to track the programs' outcomes and success.

55. In addition, I recommend that the oversight bodies make efforts to reflect the diversity of Ontario and the communities they serve, through recruitment and development of people from communities currently under-represented at those organizations.

Recommendation 4.3

The oversight bodies should develop and deliver mandatory social and cultural competency programs for their staff. These programs should be developed and delivered in partnership with the communities they serve and organizations supporting those communities.

Recommendation 4.4

There should be ongoing recruitment and development of people from communities under-represented within the oversight bodies, including in senior and leadership positions.

56. I elaborate on this topic in chapter 10, where I make recommendations that focus on enhancing the oversight bodies' cultural competency with Indigenous communities.

4.500 – The directors

57. In this section I recommend that directors of the SIU and OIPRD should have terms of appointment that promote greater independence. I also address the need to promote a greater appreciation of diversity when making appointments for the SIU director.

4.510 – Security of tenure

58. Independence is a key feature of civilian oversight bodies.

59. Not only should the oversight bodies be independent of police, they also should be free from political interference.

60. This applies to the leaders of the oversight bodies too. They should not fear that the government will dismiss them if it disagrees with a decision. Nor should those leaders fear dismissal just because they have spoken out about civilian oversight concerns.

61. Rather, a director should know that their job is safe, so long as there is no good reason to dismiss them.

62. To achieve greater independence, I recommend that the directors should be appointed for a fixed term of five-years, renewable once, during which they cannot be fired, unless for just cause.

63. This is the arrangement in place in Manitoba and Nova Scotia.[175] To me, it strikes the right balance between maintaining independence while allowing for periodic renewal and diversity.

Recommendation 4.5

The SIU director and the Independent Police Review Director should be appointed for a five-year term of office. A person may be re-appointed as director for a second five-year term, but may not serve more than two terms. A director's appointment may not be terminated, except for cause.

4.520 – Appointment of the SIU director

64. In its roughly twenty-seven year existence, the SIU has been led by thirteen SIU directors.

65. During that period, there has been only one rule imposed by law about who can be the SIU director: that person cannot ever have been a police officer.[176]

66. Despite this being the only rule, the SIU directorship has displayed a lack of diversity over the years. For one, the former directors have not reflected the racial diversity of the province. And, out of thirteen directors, all but two have been men (and the two women only served on an interim basis). In addition, the directors have lacked professional diversity: all have been lawyers, and all of those lawyers were former prosecutors, except one.

67. It is true that the SIU director must have an understanding of criminal investigations. And the director should appreciate the importance of conducting fair, impartial investigations in accordance with the law.

68. But there is no reason why the director has to be a lawyer. Most leaders of law enforcement agencies are not lawyers. That is why many of them, including the SIU and other civilian oversight bodies, have access to advice from legal counsel, including counsel with criminal law expertise.

69. Non-lawyers are more than capable of running oversight bodies. Currently, non-lawyers are leading oversight bodies in other jurisdictions, such as British Columbia and England and Wales.

70. Nor does the director need to be a Crown Attorney or prosecutor. Like former police officers, appointing such individuals may raise concerns about bias since they could have spent their entire careers working with police officers. In addition, they would seem less likely to appreciate public relations.

Indeed, without a public accountability function, there would seem to be little reason for the SIU to investigate a police officer, as opposed to enlisting an outside police service.

71. As I expand on later in section 4.600 and chapter 6, the SIU has a critical public accountability function. Not only must it investigate police effectively, but also it must account to the public in a transparent way to assure the public that it has done so.

72. Indeed, without a public accountability function, there would seem to be little reason for the SIU to investigate a police officer, as opposed to enlisting an outside police service.

73. Therefore, whoever is appointed as SIU director must understand this critical function.

74. In my opinion, the SIU directorship's overall lack of cultural and professional diversity is problematic, especially for an organization that serves such a diverse community of stakeholders.

75. Hiring people from diverse backgrounds has a number of advantages. For example, people who come from different backgrounds bring different skill sets to a job. They see things in different ways. They have different ways of approaching similar problems. And they have a different appreciation of the needs and concerns of the community of stakeholders the SIU serves.

76. In contrast, people from the exact same background tend to see things in the same way. If you consistently hire them as leaders, you risk developing organizational blind spots. And you miss out on the innovative solutions that people with different perspectives bring to the table.

77. This is perhaps why the SIU has consistently struggled over the years with understanding its public accountability function.

78. Accordingly, when recruiting and selecting candidates for the SIU directorship, the government should place greater value on cultural and professional diversity.

Recommendation 4.6

When appointing the SIU director, the following additional factors should be considered:

(a) The candidate's understand-

ing of the SIU's dual functions of effective investigations and public accountability;

(b) The candidate's understanding of the needs and concerns of the community of stakeholders the SIU serves; and

(c) The added value that a candidate's work or cultural background would bring to the organization.

4.600 – The people who fulfill the public accountability function at the SIU

4.610 – Overview

79. This section focuses on the SIU, and specifically the people dedicated to its public accountability function. I address public accountability at the OIPRD in chapter 7.

80. In my opinion, the SIU has neglected this function for too long. Here I make recommendations on staffing that aim to change that.

81. First, I review the current organizational structure the SIU has in place for public accountability. Then, I address the benefit of creating a deputy director position to oversee operations and communications. Next, I discuss the need for establishing an office dedicated to public accountability. Finally, I touch on improving services to people who are affected by the incidents investigated by the SIU, as well as community outreach.

4.620 – Public accountability

82. The SIU is different from other law enforcement agencies in Ontario. Like other law enforcement agencies, one of its core functions is to effectively investigate possible crimes. But unlike other law enforcement agencies, it has an equally important public accountability function.

83. That function ultimately aims to promote public confidence in law enforcement. This is done by holding police accountable for any potential criminality, and by showing the public that this has been done.

84. The SIU director is the one charged with leading the SIU to fulfill these functions.

85. In fact, the law concentrates the power and responsibility to do so in the director. It is the director alone who can lay charges.[177] And it is the director who must report the results of an investigation to the Attorney General.[178]

But unlike other law enforcement agencies, it has an equally important public accountability function.

86. This is in addition to the director's responsibility to oversee the SIU's training, outreach, policy, investigations, communications, administration, and services to affected persons.

87. It is a lot for one person.

88. Currently, the director has an administrative manager and executive officer who assist with these responsibilities.

89. The administrative manager, as the title suggests, oversees the administration of the SIU. That involves managing things such as the budget, secretarial services, and purchasing.

90. The executive officer then oversees investigations, training, communications, outreach, and services to affected persons.

91. This, to me, is a problematic arrangement. That is because the executive officer oversees activities that call upon very different skill sets.

92. In reality, what seems to have happened is that investigations have been prioritized to the neglect of public accountability. This is reflected in the selection of a former police officer as the current executive officer.

93. And it is reflected in the amount the SIU spends in these areas. In 2014-2015, the SIU spent about 4 percent of its total expenditures on "communications, outreach and affected persons" ($352,584 out of $8,193,615), plus amounts expended on training.[179] In contrast, investigative and identification services combined for 80 percent, although that also includes expenditures on transcribers, a central registry clerk, and an administrative secretary.[180]

94. Its personnel reflect it too. The SIU currently has one person that handles communications. One person does outreach. And one person coordinates services for affected persons, although she only works part-time. In contrast, it has about seventy people devoted to investigations.

95. This disparity between the two functions should be addressed. And I say this should be done by providing the SIU with more resources to fulfill its public accountability function.

4.630 – Deputy directors

96. Reducing the disparity between investigations and public accountability starts at the leadership level.

97. There should be one person who shares the SIU director's responsibility for effective investigations. And there should be another person who shares the responsibility for public accountability and all other aspects of the SIU's operations.

98. To reflect the dual nature of the SIU, these two should have equal status within the organization.

99. In this way, there should be a strong voice advocating for public accountability at the top of the organization.

Recommendation 4.7

The SIU should have a deputy director of investigations and a deputy director of operations and communications.

4.640 – Public accountability office

100. Reducing the disparity between the SIU's dual functions also requires providing adequate resources for public accountability.

101. Public accountability is vital to the SIU's success. Yet the SIU currently has only one person responsible for public communications.

Public accountability is vital to the SIU's success.

102. This has not been enough to manage the SIU's current communications workload. In fact, the SIU told me that it is only able to report on one out of four cases. One person will certainly not be enough to handle the public reporting that I recommend in section 6.300.

103. What I propose is that the SIU should create a public accountability office, which could be modelled after the one at British Columbia's Independent Investigations Office.

104. There, an executive director oversees its public accountability operations, assisted by a manager of strategic communications, and supported by a public accountability team.

105. The individuals at that office should have expertise in public relations and communications. They also should be socially and culturally competent and reflect the diversity of Ontario.

Recommendation 4.8

The SIU should create a public accountability office responsible for public communications and should be provided with adequate resources for this function.

4.650 – Services to affected persons

106. Another thing the SIU must improve is its services to persons affected by the acts under investigation.

107. Affected persons often deal with stress, trauma, and financial difficulty. This is especially so for family members of a person who died in a police interaction.

108. Unfortunately, I heard that the SIU tended to worsen, rather than ease, their problems. Affected family members told me that there was a lack of communication from the SIU. They said that investigators were not sensitive enough. And they said that there were not enough victim supports made available to them. In fairness to the SIU on this last point though, most affected persons are simply unable to qualify for government financial assistance programs.[181]

109. Complaints about the SIU's services to affected persons are not all that surprising, given the amount of resources the SIU dedicates to that function.

Affected persons often deal with stress, trauma, and financial difficulty. This is especially so for family members of a person who died in a police interaction.

110. As noted earlier, the SIU only has one part-time employee, the affected persons coordinator, tasked with serving affected persons.

111. Despite this position being part-time, the coordinator has a lot to do. After all, the SIU investigates about 250 cases a year. The coordinator is then expected to support the affected persons in those cases throughout the investigative process.

112. Such support includes referrals to counselling, liaising between investigators and the affected persons, and helping affected persons access victim support programs.

113. Because of limited resources, the coordinator is generally unable to make first contact with affected persons. Instead investigators do. But investigators are generally not trained to deal with people experiencing grief and trauma. Instead

they are focused on gathering evidence.

114. Making things worse, some of these investigators carry themselves like police officers. This can be quite distressing for someone who is being told that their loved one just died at the hands of a police officer. It also undermines such a person's confidence that an independent, impartial investigation is taking place.

115. To me, it is clear that the SIU needs more staff and resources dedicated to supporting affected persons. Such staff should be socially and culturally competent so that they can serve the diverse communities affected by SIU incidents. And they should have the skills and experience that allow them to address the following areas: trauma, counselling, crisis intervention, and mental health and addictions.

Recommendation 4.9

The SIU should enhance its services to affected persons and should be provided with adequate resources for this function.

116. With more staff, the affected persons services could serve as the window into the SIU for all affected persons.

117. These staff, rather than investigators, should make initial contact with affected persons, when possible.

118. And they should maintain ongoing, proactive communications about the case. This is especially important before the SIU publishes any media release, including the final report.

119. This staff also should aim to accompany investigators during any meetings that they have with affected persons. In this way they can ease communication and support affected persons during these difficult conversations.

Recommendation 4.10

Affected persons support staff should make initial contact with affected persons who are not witnesses. They should maintain ongoing, proactive communication with all affected persons throughout an investigation.

4.660 – Community outreach

120. The oversight bodies also need to improve their community outreach. Here I touch upon the SIU alone, although I address concerns about outreach at the OIPRD in section 7.210.

121. Improving community outreach is an important part of the SIU's renewed public accountability focus.

122. Outreach supports the SIU's mandate by enhancing transparency and building trust in the community.

123. In my consultations, I found a lack of trust existed between the SIU and many of the communities that it serves.

124. This was especially true for Black and Indigenous communities, and for persons with mental health challenges. These communities have been disproportionately impacted by incidents investigated by the SIU.

125. To me, better community outreach could improve trust between such communities and the SIU.

126. Currently, the SIU has one person dedicated to community outreach, the outreach coordinator. The coordinator is tasked with meeting with the diverse community of stakeholders across the province to increase awareness of the SIU, its mandate, and the investigative process.

127. Just like communications and services to affected persons, it is a lot for one person to do.

128. In my view, additional staff and resources are needed for the SIU to meaningfully engage in community outreach.

Recommendation 4.11

The SIU should enhance its community outreach and should be provided with adequate resources for this function.

4.700 – The people who carry out the investigative function

129. In this section I discuss the people who carry out the investigative functions for the oversight bodies. While this mainly focuses on the investigators at the SIU and OIPRD, I also touch on the benefit of having a deputy director of investigations at the SIU.

4.710 – Deputy director of investigations for the SIU

130. Although its public accountability function needs the most attention, reorganizing the SIU also would benefit its investigative function.

131. In my view, a deputy director of investigations would be a key resource in reducing investigative delay.

132. As noted earlier, the SIU director is the only person at the SIU who may lay charges.

133. This does not mean that the director must review every single piece of evidence in every single investigation. But it imposes a significant burden nonetheless.

134. Investigative delay has been a major complaint throughout my consultations. Many suggested that it is partly because the legislation burdens the SIU director with the responsibility for all charging decisions.

135. A deputy director of investigations could ease that burden significantly, allowing the SIU director to attend to the many other responsibilities of the job.

136. This deputy director should be given the same power, and face the same restrictions as the SIU director. That is, the deputy should be able to lay charges and delegate authority. Because of that responsibility though, the person named as deputy director should not have ever been a police officer.

Recommendation 4.12

The legislation should be amended to provide the following:

(a) The director or deputy director of investigations may lay charges;

(b) The deputy director of investigations may not be a person who is a police officer or former police officer; and

(c) The deputy director of investigations may designate a person, other than a police officer or former police officer, as acting deputy director of investigations to exercise the powers and perform the duties of that deputy director if that deputy director is absent or unable to act.

4.720 – Former police officers as investigators

4.721 – Overview

137. An ideal police oversight investigator would be someone who is a skilled investigator of crime or police misconduct, whether by past experience or through further training.

138. At the same time though, that investigator should not be someone who is biased in favour of or against the police. Nor should that investigator be someone who even appears to be biased in favour of or against the police.

139. As police oversight investigators, former police officers pose a challenge. Nobody doubts their ability to investigate. Yet many question whether they are biased in favour of police officers, their former colleagues.

140. For this review, the Ontario government asked me whether the oversight bodies should employ former police officers as investigators.

141. My answer is that they should continue to do so.

142. In my opinion, eliminating former police officers is not the solution to ensuring unbiased police oversight. Rather, a more promising approach would focus on two things.

143. First, the oversight bodies should focus on selecting and developing individuals that are best-suited to conducting effective, unbiased oversight investigations. The goal, after all, is to prevent biased oversight investigators, whether they were former police officers or not. This, to me, would be better achieved through hiring practices that attract and screen in quality candidates, and through education, training, and ongoing performance evaluation.

144. Second, the oversight bodies should attempt to attain a more appropriate balance in the composition of their investigative teams. While the oversight bodies should not exclude former police officers, they should do more to attract and develop quality investigators that do not have a background in policing. This would enhance their appearance of independence. It also would promote variety and balance in the perspectives and skills brought to bear by individual investigators.

145. In this section, I first address the SIU, followed by a brief discussion of the OIPRD. In making my recommendations, I review their current practices, what other jurisdictions do, and what other reviewers have recommended. In the next section, I elaborate on what I say is the answer to the threat of biased investigations: proper recruitment, training, education, and evaluation of investigators.

4.722 – Composition of former police officers as investigators at the SIU

146. Unlike some other jurisdictions, investigators at the SIU may not be current police officers.[182]

147. However, former police officers may still work as investigators. They may do so with one restriction: they are not allowed

to investigate anyone from one of their former police forces.[183]

148. Other than the SIU director, the SIU currently employs former police officers in all investigative roles, though over time it has become less reliant on them.

149. When Justice Adams reviewed the SIU in 1998, apparently all but three investigators were former police officers.[184] Ten years later, the SIU had seven full-time investigators and six on-call investigators who were not former police officers.[185] Now the SIU has over twenty investigators who are not former police officers.

150. The current composition of former police officers in the investigative team at the SIU is as follows:

- Forensic managers: 2 of 2
- Forensic investigators: 9 of 9
- Investigations managers: 2 of 3
- Full-time investigators: 3 of 15
- On-call investigators: 31 of 41[186]

151. Thus, in total, forty-seven out of seventy investigators are former police officers (about 67 percent). For non-forensic investigators, the total is thirty-six out of fifty-nine (about 61 percent).

152. The SIU has continued to employ former police officers in part because it has been recommended that they do so, because other jurisdictions do so, and because for its forensic investigation work it would be very difficult to find anybody else with the required education, training, and experience.

153. Previous reviewers of police oversight in Ontario have considered this issue. Yet none have recommended that the SIU exclude former police officers.

154. Nor is Ontario distinct in employing former police officers as investigators. All other police oversight bodies in Canada and the United Kingdom continue to do so.

155. In addition, when it comes to forensic investigations, I have been told that, at present, it would be almost impossible to do without former police officers. That is because forensics expertise is generally dependent upon police training, education, and experience.

4.723 – Past recommendations on employing former police officers at the SIU

156. No previous reviewer has recommended that the SIU exclude former police officers. At the same time though, they have all stressed the importance of including civilian investigators as well.

157. That includes the Race Relations and Policing Task Force led by Justice Clare Lewis, whose 1989 report led to the creation of the SIU. The task force said that "police, given their expertise, must continue to play an integral role in such investigations but that the process must also involve civilian oversight."[187]

No previous reviewer has recommended that the SIU exclude former police officers. At the same time though, they have all stressed the importance of including civilian investigators as well.

158. Stephen Lewis felt that experienced police officers would benefit the SIU, even though their independence would have to be assured. In his 1992 report, he rejected the idea of excluding former police officers from the SIU:

> I don't agree. Criminal investigation takes years and years of experience to acquire, and in the process of investigation, there is equally the need to be intimately familiar with police culture. Independence must absolutely be assured, but it should be possible to find and attract skilled police criminal investigators of excellence, who would wish to join the Special Investigations Unit because they believe, above all, in a fair, law-abiding and incorruptible police force, and they're prepared to devote their careers to that end.[188]

159. Far from excluding former police officers, Justice Adams tried to reach consensus on employing seconded police officers at the SIU (those would be current police officers transferred from their regular police posts to the SIU for a temporary period).[189]

160. In the end, he made no such recommendation. Instead he recommended giving the SIU more resources for training. He also encouraged the SIU to recruit "qualified" investigators from more culturally diverse backgrounds.

161. Ontario's Ombudsman's 2008 report similarly focused its recommendations on diversifying the investigative staff and management, but without excluding former police officers.[190]

4.724 – Practices in other jurisdictions

162. Civilian oversight bodies typically employ a combination of people with no police background, former police officers, and seconded police officers.

In Canada and the United Kingdom, all civilian oversight bodies like the SIU continue to employ former police officers or seconded police officers.

163. In Canada and the United Kingdom, all civilian oversight bodies like the SIU continue to employ former police officers or seconded police officers.

164. In Canada, this includes Alberta, Manitoba, Nova Scotia, Québec, and British Columbia.

165. The Alberta Serious Incident Response Team contains a blend of civilian investigators and investigators seconded from various Alberta police services.[191]

166. In Manitoba, investigators may be current or former police officers, or they may have no policing background.[192] However, currently serving officers must be released from all other duties when they join the unit.[193]

167. In Nova Scotia, at present, their Serious Incident Response Team only employs investigators with policing experience. It has two civilian investigators who were former police officers and two seconded police officers.[194]

168. In Québec, the Bureau des enquêtes indépendantes now has twenty-two investigators, half of whom are former police officers and half of whom have no background in policing.[195]

169. British Columbia's Independent Investigations Office is the only oversight body in Canada that aims to eventually be staffed entirely by investigators who have never been police officers.[196] However, there is no set deadline to meet this goal.[197] There, investigators must not be current police officers and must not have served as police officers in the province within the previous five years.[198]

170. The Independent Investigation's Office appears to be the oversight body least dependent on investigators with a policing background in Canada. According to its website, as of March 1, 2015, only about 40 percent of the investigator positions are held by former police officers.[199]

171. In Northern Ireland and England and Wales, single oversight bodies investigate both matters involving serious injury or death (like the SIU), and public complaints (like the OIPRD).

172. In England and Wales, the Independent Police Complaints Commission employs a mix of former police

officers and people with no policing background.[200] In 2012, the incoming chair of that commission announced a specific policy of targeting people with non-policing backgrounds.[201] At present, only about 25 percent of its investigators are former police officers.[202]

173. In Northern Ireland, according to a 2011 study, 41 percent of the Police Ombudsman of Northern Ireland's investigative staff had a policing background.[203] Yet complainants report a high level of satisfaction with the Ombudsman's oversight role nonetheless.[204] The Police Ombudsman's view is that ideal oversight combines seconded and retired police officers in addition to civilians.[205]

4.725 – Discussion on former police officers at the SIU

174. To promote public trust, members of the public must believe that police oversight investigations are both effective and unbiased.

175. The employment of former police officers is a challenging issue to resolve. That is because a former police officer's education, training, and experience point towards them being an effective investigator. Yet the public's concern that such investigators may be biased points toward limiting or excluding them from police oversight.

176. As mentioned earlier, many people are concerned that a former police officer will investigate with a pro-police bias.

177. Indeed, during my consultations, members of the public and affected families consistently expressed concern about whether the SIU can ever be truly independent of the police if it is staffed by former police officers.

178. And these concerns have support. A former SIU director shared that he thought the problem of bias was *actual* and not just one of appearance. In his experience, some former police officers tended to over-identify with the police.

179. This is troubling, of course. An oversight body will fail to promote public trust if people think its investigators are biased. But even worse, if the investigators are actually biased, then police officers may not be held accountable for committing criminal acts.

180. Still, in my view, excluding all former police officers would be misguided.

181. To exclude such candidates would place too much emphasis on where those people used to work rather than who they are.

The better solution would be to incorporate anti-bias measures into hiring, training, education, and evaluation.

182. The better solution would be to incorporate anti-bias measures into hiring, training, education, and evaluation. I expand on this in section 4.730.

183. After all, someone who has never worked as a police officer could still be strongly biased in favour of the police, and thus make a poor civilian oversight investigator.

184. In contrast, a former police officer could be unbiased and make an excellent, objective civilian oversight investigator, one whom it would be unfortunate to pass over.

185. What is crucial therefore, is a careful examination of a candidate's disposition as an individual.

186. In that way, the SIU need not exclude candidates whose wealth of criminal investigative experience and knowledge would be hard to replace.

187. As potential investigators, former police officers offer many advantages:

- They arrive with investigative skills and knowledge of the internal policies and procedures of the police;
- They need less additional investigative training, which saves limited resources;
- They are more likely to have specialized skills in areas such as witness interviewing, managing complex investigations, scene preservation, and forensics;
- They have an insider's understanding of police culture and informal practices; and
- Police witnesses may be more forthcoming if speaking to an investigator who was a former police officer.[206]

188. In some ways, SIU investigations may be simpler than ones by police. For example, the identity of the subject officer is usually known from the start. This means that investigators may focus on whether a police officer's use of force was justified.

189. Yet this more limited focus does not lessen the need for investigative expertise to ensure fair and effective SIU investigations. These are, after all, investigations into potential criminality. Because of that, there are many rules of evidence and procedure that investigators must follow. Indeed, an investigator's improper questioning or handling of evidence could jeopardize the integrity of an entire investigation.

190. In all, former police officers serve as a valuable resource for the SIU.

191. This is particularly so with respect to part-time investigators. Low, unstable pay and demanding job requirements strongly favour employing retired police officers as on-call investigators.

192. The SIU relies heavily on these on-call investigators to handle unpredictable, as-needed investigative work for the many cases from outside the Greater Toronto Area.

193. That is because the SIU's only office is in Mississauga. According to the SIU, there is not enough investigative work outside of the Greater Toronto Area to sustain full-time staffing in satellite offices.

194. When an incident occurs outside of that area, the SIU sends on-call investigators who live nearby to quickly secure the scene and interview witnesses.

195. Though a full-time investigator will usually join the investigation, these on-call investigators play a critical role in reducing delay and ensuring an effective investigation.

196. Many civilians, concerned about financial stability, are unable to commit to this unstable work.

197. Retired police officers, on the other hand, are seen as ideal candidates. That is because their SIU salary generally supplements their pension earnings.

198. Still, while I appreciate the value that former police officers offer the SIU, I do believe the SIU should be less reliant on them.

Including more investigators from different backgrounds also helps diversify the skill set and perspectives of the investigative team.

199. As mentioned earlier, investigators who do not have a background in policing enhance the SIU's appearance of independence and impartiality. Including more investigators from different backgrounds also helps diversify the skill set and perspectives of the investigative team.

200. In my view, to increase the SIU's composition of investigators who are not former police officers, it should offer more competitive pay.

201. SIU investigators do the same work as police investigators. Yet, despite this critical role, they are not paid at a competitive rate.

202. Offering more competitive pay for investigators may make part-time investigative work financially viable to a broader group of potential candidates.

203. It also may attract more high-quality civilian recruits for full-time investigator positions. Because of the similarity to police work, the SIU is attempting to compete with police services for quality recruits with similar aptitudes and abilities. Without competitive pay, however, its chances of successfully doing so are lower.

204. In conjunction with providing more competitive pay, the SIU also should actively recruit civilian investigators with relevant experience who were not former police officers. This may include investigators with backgrounds in child welfare, regulatory investigations, and the insurance industry.

Recommendation 4.13

Salaries paid to SIU investigators should be comparable to those paid to other investigators.

Recommendation 4.14

The SIU should actively recruit civilian investigators with relevant experience who were not former police officers.

205. Consistent with being less reliant on former police officers, the SIU should ensure that at least half of the investigators on an investigative team have no background in policing.

206. A review of the literature and practices in other jurisdictions shows that a team approach is best for criminal oversight investigations.[207] The investigative team should consist of both investigators with no police background and those with policing experience.

207. Each would bring different skills and perspectives that would benefit the investigation.

208. For example, civilian witnesses might respond better to investigators with no police background. And police officers might respond better to investigators who do.

209. By ensuring that at least half of the criminal investigators assigned to each case are from a purely civilian background, I believe the SIU would promote greater confidence in its ability to conduct effective and impartial investigations.

Recommendation 4.15

At least 50 percent of the non-forensic investigators on an investigative team at the SIU should be investigators with no background in policing.

4.726 – Discussion on former police officers at the OIPRD

210. Like the SIU, the OIPRD may employ former, but not current police officers.[208]

211. Chief Justice LeSage, whose report led to the creation of the OIPRD, recommended that no more than half of its investigators be former police officers.[209]

212. Currently, the OIPRD employs the maximum amount of former police officers so recommended. Half of its investigators have a background in policing.

213. Unlike the SIU, OIPRD investigators do not investigate the most serious of criminal matters. They do not undertake criminal investigations at all. Rather, they investigate conduct complaints against police officers.

214. In short, the stakes are lower and the rules are simpler.

215. Accordingly, there is less to gain from a former police officer's knowledge and experience in criminal investigations.

216. However, as with the SIU, I do not think that the OIPRD should completely exclude former police officers. Including some former police officers would allow the OIPRD to benefit from their specialized knowledge of police culture, practices, and procedures.

217. And the key again is to incorporate anti-bias measures into their recruitment, training, education, and evaluation.

218. At the same time, I do not think that half of the OIPRD's investigators should come from a policing background. That is too great a proportion for the type of investigations being conducted, and may unnecessarily undermine the OIPRD's appearance of independence and impartiality.

219. In addition, investigators without a police background offer their own advantages. The OIPRD deals with public complaints. People who are complaining about the police may feel intimidated by former police officers. They may feel more comfortable dealing with investigators from civilian backgrounds. As well, such investigators would add greater diversity to the organizational culture of the OIPRD investigative team.

220. In my view, to better promote its independence and impartiality, both real

and perceived, the OIPRD should seek to employ a greater proportion of investigators who do not come from a policing background.

Recommendation 4.16

The OIPRD should actively recruit civilian investigators with relevant experience who were not former police officers. No more than 25 percent of the OIPRD's investigators should be former police officers.

4.730 – Recruitment, education, training, and evaluation of oversight investigators

221. In this section I discuss how recruitment, education, training, and evaluation can be used to address concerns about biased investigators. I also discuss how education and training could lead to better, more respected oversight investigators. This is meant to be in addition to my recommendations to encourage greater social and cultural competency for all members of oversight bodies, including investigators, discussed in section 4.400 and chapter 10.

222. The first measure I recommend is for the oversight bodies to carefully screen candidates for investigator positions.

223. An ideal oversight investigator would be open-minded, self-aware, and embrace opportunities for learning and personal development. And, of course, an ideal investigator would need to be temperamentally suited to performing truly impartial and independent investigations.

224. When hiring, the oversight bodies should look for those qualities. They should look for people who, in the words of Stephen Lewis, "believe, above all, in a fair, law-abiding and incorruptible police force, and [who are] prepared to devote their careers to that end."[210]

225. For greater certainty, the oversight bodies also should conduct personality assessments to screen a candidate's personality for bias, including discriminatory biases, self-awareness, and any behavioural or attitudinal issues.

226. By understanding a candidate's values, attitude, and motivation, the oversight bodies will be better able to hire the best person for the job, regardless of where that person used to work.

227. The second measure I propose is for the oversight bodies to recruit more broadly.

228. Ideally, the oversight bodies should recruit university graduates, those possessing a high level degree in law, criminal justice, criminology, or a related social science. And they should prefer those individuals who have a demonstrated commitment to social justice. As in Manitoba, the required qualifications and experience of oversight investigators could be set out in a regulation.[211]

229. The oversight bodies also should consider recruiting people with investigative experience from outside of policing, such as investigators with backgrounds in child welfare, the military, regulatory fields, and the insurance industry. Such candidates present a valuable hiring pool for the oversight bodies to draw from.

230. The third measure I recommend is accreditation through a comprehensive training program. Accreditation promotes more precise quality control. It helps to ensure competency and suitability for the position, regardless of whether the candidate comes from a policing or purely civilian background.

231. Indeed, accreditation offers advantages to both investigators with a policing background and those without one.

232. For example, investigators with no policing background may be more vulnerable to challenges about their experience and reliability when they testify as witnesses. With accreditation, they are able to rely on that assurance of investigative competence. This not only improves their own confidence, but also promotes the confidence of any adjudicator in them.

233. Former police officers may benefit in a similar manner. Such investigators are not necessarily equipped to conduct the types of investigations that the SIU and OIPRD engage in. After all, the SIU investigates only the most serious of cases, ones that are often limited to specialized police units within a police service. Thus, an accreditation could serve as an indication of their demonstrated competence in an investigative area.

234. The fourth measure I recommend is that the training and accreditation program should be one that is dedicated to civilian police oversight.

235. Investigators for the SIU currently receive training at the Ontario Police College. Some OIPRD investigators also have received training from the Ontario Police College in the past. This is problematic for several reasons.

236. Police college training risks enculturation into an organization and mindset

that is inconsistent with police oversight and accountability.

237. In addition, the Ontario Police College focuses primarily on the training of police officers. Their training is prioritized.

238. Oversight investigators receive their training only when classroom space is available. Since space is frequently limited, oversight investigators are sometimes placed on a standby list for training.

239. Police stakeholders claim that civilian investigators lack sufficient training. The current system reinforces that concern.

240. Most importantly, the training and accreditation program I am recommending should be separate because police programs are not designed to meet the distinct requirements of oversight bodies.

241. In my view, there should be a separate training program for oversight investigators at an institution other than the Ontario Police College.

242. That training program could then be tailored to the specialized requirements of the police oversight bodies.

In my view, there should be a separate training program for oversight investigators at an institution other than the Ontario Police College.

243. Such programs are already in place in Northern Ireland and Québec. Indeed, I was very impressed by the comprehensiveness of these programs.

244. For example, all investigative staff with the Police Ombudsman for Northern Ireland go through thorough development programs accredited by a local university. I was informed that these programs combine attendance at knowledge and skills development workshops, knowledge assessments, and workplace development and assessment.

245. Similarly, in Québec, the Bureau des enquêtes indépendantes has recently developed and offered a four hundred hour training program for its investigators. This program, presented in partnership with three universities, was divided into several blocks aimed at providing investigators with the knowledge, skills, and practical experience necessary to be effective investigators. All investigators, including former police officers, underwent the same training.

246. In my view, a similar training and accreditation program in Ontario for SIU and OIPRD investigators would greatly benefit these investigators, and, in turn, the people of Ontario that they serve.

247. Such a program, developed in consultation with one or more post-secondary institutions, should combine formal classroom learning with practical on-the-job training and mentorship. It should cover the roles, purposes, standards, and expectations of oversight investigators and the oversight bodies. And it should equip investigators with the investigative tools and techniques to succeed in their work.

248. In addition, should Ontario develop such a program, it may be able to provide training to investigators at other oversight bodies in Canada, especially in provinces where they may not have enough demand to justify creating their own program. Including other oversight bodies may make such a program more feasible for Ontario as well.

249. The final measure I propose is that the oversight bodies should provide ongoing training and evaluation of investigators. That training and evaluation should focus on ensuring that an investigator is independent and objective.

Recommendation 4.17

The SIU and OIPRD should incorporate anti-bias measures into their recruitment, training, education, and evaluation of investigators.

Recommendation 4.18

There should be a standardized education program to accredit SIU and OIPRD investigators.

Recommendation 4.19

The required qualifications and accreditation of an oversight investigator should be set out in a regulation.

4.800 – Oversight of the oversight bodies

250. Many people I consulted with, both police and civilian, thought there should be some way to deal with complaints about the police oversight bodies themselves.

251. Such an avenue already exists for the SIU. Both the public and the police

are free to complain to the Ontario Ombudsman about the SIU.

252. Yet the Ombudsman does not have jurisdiction to deal with complaints about the public complaints or discipline process involving the OIPRD or OCPC.

253. Despite that, the Ombudsman still regularly receives complaints about those processes of these bodies. For example, the Ombudsman receives complaints about the quality of the OIPRD's investigations, its dismissal of complaints, and its practice of referring matters back to police services.

254. Since the Ombudsman lacks jurisdiction though, it is unable to do anything about them.

255. In my view this should change. The Ombudsman is ideally placed to handle complaints about all three police oversight bodies.

256. The Ombudsman's office has the mandate to independently and impartially investigate individual and systemic complaints. It does so about the administrative conduct of more than a thousand public sector bodies, including administrative tribunals.

257. To investigate such complaints, the Ombudsman has been granted broad investigative powers. And after completing an investigation, the Ombudsman is able to issue reports and make recommendations for reforms to policy, legislation, and practices and procedures.

258. Such a change would enable the Ombudsman to promote consistency in the oversight bodies' practices and enhance public confidence in police oversight. Such a change would allow for greater accountability in police oversight in this province.

Recommendation 4.20

The Ombudsman should have jurisdiction over all three police oversight bodies.

CHAPTER 5

Effective Criminal Investigations

5.100 – Introduction

1. The SIU would not have come into existence in 1990 were it not for the advocacy of Charles Roach, Dudley Laws, the Black Action Defence Committee, and others; the protests of many, especially those from Black communities; and the deaths in 1988 of two Black men, Lester Donaldson and Michael Wade Lawson.

2. Those two men were fatally shot by police in the Greater Toronto Area. Donaldson, a forty-five year old with a history of mental health issues, was shot in his home after allegedly threatening an officer with a knife.[212]

3. Wade Lawson, who was seventeen years old, was shot multiple times after driving a stolen vehicle towards two police officers. An autopsy revealed that one of the bullets entered through the back of his head.[213]

4. These deaths led to a "sense of crisis" and created "an atmosphere of mutual mistrust and pessimism."[214] Protests ensued. People demanded change.

5. In response, the Ontario government appointed Justice Clare Lewis to lead a task force on race relations and policing.

6. That task force concluded that "police internal investigations no longer satisfy the public demand for impartiality" and that post-shooting police investigations "will inevitably lead to a serious deterioration of public confidence."[215]

7. Having the police investigate the police was no longer an option. As Alan Borovoy, then general counsel for the Canadian Civil Liberties Association, put it in his submission to the task force, "if you have self-investigation it just cannot enjoy public confidence. I mean it is just as simple as that."[216]

8. The task force recommended a special investigations team for investigating police shootings in Ontario.[217] The task force envisioned the team operating as follows:

> Its mandate would be to investigate the facts surrounding the shooting and to disclose appropriate information to the public on an on-going basis. Such a process, by which the public would be provided with information on a continuous basis from an early stage, would be invaluable in dissipating ignorance of the event and resentment from the public. The team would be charged with deciding whether or not criminal charges against the police officer are warranted. It would be required to convey its findings to the public and, when warranted, to lay criminal charges.[218]

9. The Ontario government listened and, in turn, created the Special Investigations Unit (SIU).

10. When the SIU began its operations in 1990, it promised to improve public confidence in policing.

11. Over twenty-five years later, however, many – especially those from Indigenous, Black, and other racialized communities – question how much of that promise has been fulfilled.

12. In 2016, after the SIU cleared police of any criminal wrongdoing in the death of Andrew Loku, a forty-five year old Black man with mental health issues who was fatally shot in his home, protests ensued once again. The public, especially Black communities, and groups such as Black Lives Matter, made it clear that they still lacked trust in the police and police oversight. People demanded change.

13. In response, the Ontario government asked me to review the civilian police oversight bodies in Ontario.

14. This is the first of two chapters that focus on improving the public's confidence in the SIU's investigations into potential criminality.

When the SIU began its operations in 1990, it promised to improve public confidence in policing. Over twenty-five years later, however, many – especially those from Indigenous, Black, and other racialized communities – question how much of that promise has been fulfilled.

15. In the next chapter, I discuss how the SIU could be more transparent and accountable. That discussion focuses on public reporting.

16. In this chapter, I make recommendations aimed at making the SIU more effective at investigating police.

17. This includes clarifying what incidents the SIU should investigate and how the police should cooperate with the SIU during those investigations.

18. Both categories of recommendations target the ultimate goal of civilian police oversight: improving public confidence in policing. They do so, however, in different ways.

19. Public confidence is promoted when justice is done and seen to be done.

20. By being transparent and accountable, the SIU allows the public to see that justice has been done.

21. Yet effective investigations are the starting point for promoting public confidence. After all, without an effective investigation, justice may not be done in the first place. Then, of course, justice cannot be seen to have been done. Transparent reporting would do little to improve the public's trust in police and police oversight if the investigation itself was flawed.

Effective investigations are the starting point for promoting public confidence.

22. To ensure justice is done, the SIU independently investigates the police. Its investigations, however, are unlike those generally conducted by the police in two main ways.

23. First, they are different because police officers, the subjects of SIU investigations, are trained, equipped and, most distinctly, authorized by law to use force.

24. This means that rather than trying to identify who caused a serious injury or death, the SIU is generally trying to investigate whether an officer's use of force was reasonable, necessary, and proportionate in the circumstances.[219]

25. Second, they are different because the members of a police service, other than a police officer under investigation, must "cooperate fully" with the SIU.[220] That includes the police chief notifying the SIU about an incident, and witness officers providing it with their notes and attending to be interviewed.

26. Such an arrangement sounds simple enough.

27. Throughout its history, however, the SIU has often reported that the police, who say they value its oversight, have been less than fully cooperative.

28. It says that the police have taken strict interpretations of when the SIU is supposed to investigate an incident and how the police are required to cooperate.

29. The police, on the other hand, complain that the SIU pushes the boundaries of its investigative mandate and powers.

30. Such disputes, some more legitimate than others, threaten to undermine the SIU's promise of promoting public confidence in policing.

31. To resolve these disputes and ensure that the SIU can conduct effective investigations, I have been asked to clarify its

mandate and make other recommendations accordingly.

32. I will first address the SIU's mandate as well as the police's duty to notify the SIU. Then I examine the police's duty to cooperate with the SIU during investigations.

5.200 – Mandate and notification

5.210 – Overview

33. A mandate is an order, charge, or commission to perform a task. The SIU's mandate therefore refers to what incidents the unit has been charged with investigating.

34. In the legislation, the SIU's mandate is to investigate incidents involving serious injury or death that may have resulted from criminal offences committed by police officers.[221]

35. This mandate has led to much debate over the years about what is meant by such terms as "serious injury," "resulted from criminal offences," and "committed by police officers."

36. Some of the questions about the meaning of these terms have been clarified by the courts. For example, we now know that "police officers" includes former police officers who were police officers at the time of the conduct at issue.[222] And that is so even if the conduct at issue took place before the SIU came into existence.

37. Still other questions continue to cause problems, with the meaning of the term "serious injury" remaining especially controversial.

This mandate has led to much debate over the years about what is meant by such terms as "serious injury," "resulted from criminal offences," and "committed by police officers."

38. In this section I look at what incidents should trigger the SIU's mandate. This involves clarifying what falls within the current mandate, such as the meaning of "serious injury." It also involves recommending changes to the mandate so that the SIU can more effectively fulfill its purpose of promoting public trust in policing.

39. To that end, I recommend that the mandate should include all discharges of a firearm at a person. Also I say that the mandate should apply to special constables employed by a police force and auxiliary members of a police force.

40. In addition, I recommend that the SIU should have the discretion to investigate any matter when it is in the public interest to do so. And I recommend that the legislation clarify that the SIU may lay charges for any criminal offence or provincial offence, including *Highway Traffic Act* offences, uncovered during an investigation.

41. I also examine when the police have to notify the SIU about potential incidents that call for an SIU investigation.

42. These two issues of mandate and notification are directly linked. The police's duty to notify the SIU is engaged immediately when an incident occurs "that may reasonably be considered to fall within the investigative mandate of the SIU."[223] So having a clear mandate also will lead to a better notification process, a process critical to the SIU's ability to effectively investigate police-civilian interactions resulting in serious injury or death.

43. I first review "what" incidents should be included in the SIU's mandate, followed by "who" should be included within that mandate. Finally, I address the police duty to notify the SIU.

5.220 – Definition of "serious injuries"

44. Over the years, the most controversial part of the SIU's mandate has been what is meant to be included in the term "serious injuries." This has led to disputes over what types of police-involved civilian injuries require an SIU investigation.

45. The legislation establishing the SIU's mandate leaves the term "serious injuries" undefined. That is, it does not explain what exactly a serious injury is.

46. To determine its own mandate, the SIU uses a definition of "serious injury" that was adopted by its first director, Justice John Osler. The "Osler definition," as that definition is referred to, defines serious injuries as follows:

> "Serious injuries" shall include those that are likely to interfere with the health or comfort of the victim and are more than merely transient or trifling in nature and will include serious injury resulting from sexual assault.

47. The Osler definition also provides guidance on when a serious injury should be presumed:

> "Serious Injury" shall initially be presumed when the victim is admitted to hospital, suffers a fracture to a limb, rib or vertebrae or to the skull, suffers

> burns to a major portion of the body or loses any portion of the body or suffers loss of vision or hearing, or alleges sexual assault.

48. That definition also addresses the situation when the police are not able to determine if an injury is serious without a likely prolonged delay:

> Where a prolonged delay is likely before the seriousness of the injury can be assessed, the Unit should be notified so that it can monitor the situation and decide on the extent of its involvement.[224]

49. Although reluctant at first, most police services now use the Osler definition of "serious injuries." Some, however, still apply more restrictive definitions.

50. When police services apply different definitions for a key element of the SIU's mandate, it results in inconsistent SIU referral practices. And for those who do not apply the well-accepted Osler definition, it results in potential underreporting of incidents falling within the SIU's mandate. In turn, the SIU's important oversight role is undermined.

51. Recognizing this problem, past reviewers have recommended that the term "serious injury" be defined in the legislation. Roderick McLeod did so in his report in 1996.[225] So too did Chief Justice LeSage in his 2011 report.[226]

Without a more detailed definition, too much is left to each stakeholder's subjective interpretation of the term.

52. And some other provinces, when subsequently establishing their own oversight bodies, have included definitions of the term "serious injury" in their legislation.[227]

53. In my view, it is time that the legislation defines "serious injuries."

54. Without a more detailed definition, too much is left to each stakeholder's subjective interpretation of the term. As noted above, that leads to inconsistent reporting, and, in some cases, underreporting of the very incidents that the SIU is meant to investigate.

55. Defining "serious injuries" would help to clarify when the SIU's mandate is triggered. This, in turn, would lead to better notification by police services, ensuring that the SIU's important oversight role is not undermined.

56. It also would promote public awareness of the SIU's mandate. By defining what "serious injuries" means, and listing

examples of when "serious injury" will be presumed, the public will be more aware of the types of incidents that the SIU is expected to investigate, including allegations of sexual assault. In section 5.260, I list the types of incidents that should be included, or presumed to be included, in the SIU's mandate.

Recommendation 5.1

"Serious injuries" should be defined in the legislation in accordance with the Osler definition.

5.230 – Discharge of firearms

57. In addition to clarifying the mandate on "serious injuries," I also recommend that the legislation provide that the SIU is to investigate incidents in which a police officer has discharged a firearm at a person.

58. The SIU was established because of public concern for the independent investigation of police shootings in particular.

59. Yet the SIU's mandate, as currently cast, captures police firearm use only when it results in death or serious injury.

60. Any use of a firearm is serious.

61. Under their use of force regulations, police officers are to use their firearms only if they have reasonable grounds to believe that it is necessary to do so to protect against loss of life or serious bodily harm.[228]

62. This reflects the fact that discharging a firearm is the most serious use of force that an officer can use.

63. And I note that any unjustified discharge of a firearm, regardless of the severity of any resulting injury, could constitute a serious criminal offence. For instance, even if a police officer shoots at a person and misses, it could constitute attempted murder.

64. In my view, the SIU should be empowered to investigate whenever a police officer has discharged their firearm at a person, regardless of whether anyone has been seriously injured or dies.

65. As touched on earlier, monitoring such uses of force in police-civilian interactions is at the heart of the SIU's oversight function.

Recommendation 5.2

The mandate of the SIU should include all incidents involving the discharge of a firearm by a police officer at a person.

66. For greater certainty, I wish to point out that I am not recommending that the SIU investigate the situations set out in sections 9.1 and 10 of the use of force regulation.[229]

67. Those excluded situations include when a police officer shoots a firearm as part of a training exercise, target practice, or ordinary weapon maintenance in accordance with the rules of the police force.

68. They also include when an officer discharges a firearm to call for assistance in a critical situation if there is no reasonable alternative, and when an officer discharges a firearm to destroy an animal that is potentially dangerous or is so badly injured that humanity dictates that its suffering be ended.

5.240 – Discretion to investigate and lay charges

69. Finally, in addition to investigating incidents involving serious injury, death, or the discharge of a firearm at a person, I also recommend that the SIU should have the power to investigate any matter when it is in the public interest for it to do so. And I say that the SIU should be able to lay charges for any criminal or provincial offence uncovered during an investigation.

70. During my consultations, many stakeholders said that the SIU's mandate is too restrictive.

71. Other forms of potential criminal conduct raise the same concerns about the police policing themselves that led to the SIU's creation. Such conduct may call for independent civilian oversight because of the strong public interests that are at stake.

72. Other provinces have recognized this as well.

Other forms of potential criminal conduct raise the same concerns about the police policing themselves that led to the SIU's creation.

73. For example, the Alberta Serious Incident Response Team has a mandate to investigate "any matter of a serious or sensitive nature related to the actions of a police officer."[230]

74. By convention, those matters of a serious or sensitive nature include, but are not limited to the following:

- Allegations involving criminal fraudulent activities by a police officer;
- Allegations of serious breach of trust by a police officer;

- Allegations together constituting potential systemic racism or discrimination; and
- Allegations together constituting systemic fraud or corruption.[231]

75. To that list I also would add allegations of crimes against the administration of justice, such as perjury or obstruction of justice.

76. I also heard of another sensitive situation during my consultations: when police officers wish to report incidents of potential criminality by police colleagues. Those officers may be unwilling to report such conduct to their own police service, which may include the subject officers themselves. Yet at the present time, if the conduct in question does not fall within the SIU's mandate, the complaint must be brought to the police. It may be in the public interest for the SIU to investigate such matters, since they may otherwise go unreported.

77. In addition, there may be matters that, in the opinion of the police chief, police services board, Attorney General, or Minister of Community Safety and Correctional Services, would be in the public interest to have investigated by the SIU. For such matters, they should be able to refer them to the SIU, whether or not a serious injury, death, or discharge of firearm occurred.

78. I note that similar practices take place in Alberta, British Columbia, Manitoba, Nova Scotia, and Québec.[232]

79. In my view, the legislation should provide that the SIU may investigate matters when it is in the public interest to do so.

80. Along the same lines, I also say that the SIU should be able to lay charges for any criminal or provincial offence it uncovers during any of its investigations.

81. Currently, it is unclear whether the SIU may do so or not. The legislation says that the SIU director is to lay charges against police officers "in connection with the matters investigated."[233] It should be explicitly set out that this includes any criminal or provincial offence uncovered during an investigation.

82. For example, if a police officer commits perjury or attempts to obstruct justice during an investigation, the SIU should be able to lay charges against that officer. It should not have to refer such serious conduct back to the officer's police service, or another police service.

83. Nor should it have to refer matters back to a police service when its investigation uncovers other criminal offences

or provincial offences, including offences under the *Highway Traffic Act*.[234] Indeed, some police stakeholders pointed out that unfairness resulted from this potential lack of jurisdiction. They suggested that the SIU may sometimes be laying more serious criminal charges than are appropriate because of its inability to lay less serious provincial offence charges.

84. In any event, it hardly makes sense to refer a matter for a second investigation when the first one has already determined that reasonable grounds to charge exist.

85. Some police stakeholders were concerned that the SIU would not have the investigative expertise for investigating and charging such a broad range of offences. After all, they noted, investigating other types of offences requires knowledge of the specific elements involved and may call for specialized investigative techniques.

86. Those concerns, however, do not dissuade me for three reasons.

87. First, as discussed in section 4.720, the SIU employs former police officers, and most likely will continue to do so. One of the justifications for employing former police officers is that they already have the skills and knowledge required to investigate a broad range of criminality.

In any event, it hardly makes sense to refer a matter for a second investigation when the first one has already determined that reasonable grounds to charge exist.

88. Second, there is no reason why investigators that may lack the credentials to investigate such matters could not be trained to do so. This is especially so if they are working together with former police officers that are experienced with such matters.

89. Third, my recommendation is that conducting such investigations and laying such charges would be at the discretion of the SIU. That means that there would be nothing stopping it from declining to investigate, or referring a matter to a police service, if, in its opinion, any investigation was beyond its capacity.

90. Therefore I do not believe that such a discretionary expansion of what the SIU may investigate and lay charges for would lead to low quality investigations or inappropriate charges.

91. In my view, such additional discretionary authority would allow the SIU to deliver better, more efficient police oversight to the people of Ontario.

Recommendation 5.3

The SIU should have the discretion to conduct an investigation into any criminal matter when such an investigation is in the public interest. When deciding whether an investigation is in the public interest, the SIU should consider the following:

(a) If there is a request to investigate from a chief of police, a police services board, the Attorney General, or the Minister of Community Safety and Correctional Services;

(b) If the conduct in question involves allegations of criminal fraud, breach of trust, corruption, obstruction of justice, perjury, or another serious criminal offence; or

(c) If the matter is potentially aggravated by systemic racism or by discrimination.

Recommendation 5.4

The SIU should have the discretion to lay charges for any criminal or provincial offence uncovered during an investigation.

5.250 – Former police officers, special constables, and auxiliary members of a police force

92. Currently, the SIU is limited by its mandate to investigating "police officers."

93. The term "police officer," however, does not include special constables or auxiliary members of a police force.

94. In my view, the SIU also should be able to investigate auxiliary members of a police force and special constables when they are employed by a police force.

95. After all, these special constables and auxiliary members may have significant interactions with the public. And they perform duties that may make them, in the eyes of the public, indistinguishable from police. Finally, they work with the police and, as such, investigations by the police into their conduct may raise similar concerns about independence and bias.

96. Thus, the rationale for independent police oversight applies to them, and they should be included in the SIU's mandate as well.

Recommendation 5.5

The SIU's mandate should include investigations of auxiliary members of a police force and special constables employed by a police force.

97. In addition, the legislation should clarify that the SIU may conduct investigations into conduct by former police officers. As noted in section 5.210, the courts have held that the SIU's mandate currently includes former police officers who were police officers at the time of the conduct at issue.[235] This applies equally if the conduct at issue pre-dates the SIU's existence. And this is even though the legislation does not explicitly say so.

98. For the sake of clarity, however, I think that the legislation should specify this.

Recommendation 5.6

The legislation should explicitly state that the SIU's mandate includes the investigation of former police officers and matters that pre-date the establishment of the SIU.

5.260 – Notification duty

99. In most cases, the SIU depends on the police notifying it of incidents within its mandate. Prompt, thorough police notification is the starting point for effective, efficient SIU investigations. If the police take too long to notify the SIU of an incident, or fail to do so at all, any investigation may be compromised and justice may not ever be done.

100. As noted earlier, the SIU's mandate and the police's duty to notify are strongly linked. The police's duty to notify the SIU is engaged immediately when an incident occurs "that may reasonably be considered to fall within the investigative mandate of the SIU."[236]

101. The public's strong interest in comprehensive fulfilment of the SIU's mandate is best protected when the police err on the side of over-reporting.

102. It should be for the SIU, and not the police, to make the ultimate determination about whether its investigative mandate has been triggered. As Justice Adams noted in his report, transparency is better achieved when the civilian oversight body makes the judgment call about whether or not the incident falls within its mandate, rather than someone within a police service.[237]

The public's strong interest in comprehensive fulfilment of the SIU's mandate is best protected when the police err on the side of over-reporting.

103. Setting out specific kinds of injuries that are presumed to be serious will assist the police in identifying when the SIU must be notified.

104. As noted earlier, the Osler definition provides examples of injuries that "shall initially be presumed" to be serious. This language suggests that such injuries may ultimately be found not to engage the SIU's jurisdiction. Again, this is a decision that is best left with the SIU in keeping with its oversight role.

105. The legislation should stipulate that the injuries specifically mentioned in the Osler definition are non-exhaustive examples. Any injury that may reasonably be considered to interfere with the health or comfort of the victim and is more than merely transient or trifling in nature will qualify.

106. The legislation also should specify that the SIU has sole responsibility for assessing the criminality of incidents involving death or serious injury as a result of contact with police. Spelling this out in the legislation will discourage the police from narrowly interpreting what types of incidents fall within the SIU's mandate, a practice which I heard some police services engage in.

107. During consultations with police stakeholders, I also heard about situations in which police felt compelled to notify the SIU even though the possibility of criminality seemed remote.

108. This was a recurring theme in relation to suicide attempts that involved the attendance of police. For example, in one situation an individual committed suicide by jumping from a balcony before the arrival of the police. When the suicide occurred, the officers were in the apartment building but had yet to enter the deceased's apartment. Because the incident involved a death, the SIU was notified.

109. The stakeholder suggested that the mandate of the SIU should be invoked only if the police have actually engaged with the person who was seriously injured or killed; not simply because the police were in the same area.

110. In my view, such cases are still best referred to the SIU. The SIU should be the one deciding when there is no need to investigate. After all, the SIU

exists because of a lack of public trust in the police.

111. In such cases, however, the SIU should quickly determine whether there is any possibility the matter is within its mandate, and if not, close its file by way of short memorandum. And I note that it generally does so. Of the 253 cases closed by the SIU in 2014-2015, 100 concluded this way.[238]

112. In the end, over-notification leads to more effective and transparent oversight. Over-notification, rather than under-notification, should be encouraged.

Recommendation 5.7

The requirements for police notification of the SIU should be set out in legislation which should provide the following:

(a) The SIU must be notified of all incidents in which death or serious injury to a person may have resulted from the conduct of a police officer;

(b) "Serious injuries" include any injury that is likely to interfere with the health or comfort of the victim and is more than merely transient or trifling in nature, including injuries resulting from sexual assault;

(c) Without limiting the generality of the foregoing, serious injury will be presumed when the victim:

i. is admitted to hospital;

ii. suffers a fracture to a limb, rib, or vertebrae or the skull;

iii. suffers a dislocation;

iv. suffers burns to the body;

v. loses any portion of the body;

vi. suffers temporary or permanent loss of vision or hearing; or

vii. suffers serious soft tissue injuries;

(d) The SIU must be notified of all incidents involving allegations of sexual assault against police officers;

(e) The SIU must be notified of all incidents involving the discharge of a firearm by a police officer at another person; and

(f) Where a prolonged delay is likely before the seriousness of the injury can be assessed, the SIU must be notified so that it can monitor the situation and decide on the extent of its involvement.

5.300 – Duty to cooperate

113. The SIU must be equipped with the tools to effectively conduct its investigations. At the same time, these tools must protect police officers' fundamental legal rights.

114. During my consultations, several stakeholders commented that the police generally support the idea of a special investigations unit, but may withhold assistance if it is not "technically" required.

115. The legislation has always required members of police forces to cooperate fully with the SIU in the conduct of investigations.[239] This broad requirement of *full* police cooperation – which seems plain enough in meaning – was the subject of debate after the SIU was established. This led to government action, with the appointment of Justice Adams to make recommendations to resolve the conflict.[240]

116. Justice Adams' 1998 report was based on negotiations to reach a workable compromise between the investigative interests of the SIU and the legal interests of individual police officers.[241] Its recommendations were given effect through a new regulation on the conduct and duties of police officers in SIU investigations.[242]

117. Five years later, Justice Adams' 2003 report noted that, although progress had been made, the duty to cooperate sometimes remained an issue.[243]

118. Recent police oversight stakeholder consultations indicate that some police resistance against the duty to cooperate persists. One SIU investigator remarked that it is rare for a police service to perform its duty to cooperate, "100 percent."

119. This observation, however, is not an indictment against all police services and members. Many strive admirably to fulfil their essential role in assisting with SIU investigations. Police attitudes toward the SIU have generally improved over the years. Initial skepticism has diminished and confidence has increased. Moreover, police resistance in the past has sometimes been based on uncertainty about the legal parameters of their responsibilities. The duty to cooperate sometimes raises complex issues that are entangled with the legal rights of police officers.

120. It is within this context that I make my recommendations concerning the duty to cooperate and the SIU's investigative tools. In my view, there is a need for further legislative refinement of the meaning of the duty to cooperate and correlative police rights. In particular, the

legislation should clarify the following: the scope of the duty to cooperate; who is bound by it; the sanctions for non-compliance; and the scope of the legal protections provided to police officers in relation to SIU investigations.

5.310 – Scope of the duty to cooperate

121. Police force members must "cooperate fully" with SIU investigations.[244] That duty is clarified further in a regulation.[245] Nevertheless, gaps in the legislation have proven problematic and should be addressed.

122. During my consultations, both policing stakeholders and the SIU raised a number of concerns about the duty to cooperate. When does the duty to cooperate begin? What information or records is the SIU entitled to receive? Can evidence be withheld on the ground that it is not relevant?

123. SIU investigators, for instance, recounted incidents of police notifying the SIU, but then withholding cooperation pending determination of whether its mandate was engaged. Usually this occurred after a hospital admission, while awaiting medical information about the extent of the injury sustained.

124. I also was told about frequent police delays in responding to SIU requests for information. In some cases, police officers have resisted or refused cooperation on the basis that the information being asked for is not relevant to the matter being investigated.

In my view, the conflict between the SIU and police resulting from debate about the duty to cooperate could be addressed by more clearly defining the duty in the legislation.

125. Unfounded delays and baseless refusals to cooperate with the SIU should not be tolerated. They jeopardize the integrity of SIU investigations. Equally troubling, they erode public confidence in the police and civilian police oversight.

126. In my view, the conflict between the SIU and police resulting from debate about the duty to cooperate could be addressed by more clearly defining the duty in the legislation. This would help better equip the SIU with the tools it needs to conduct effective investigations while protecting officers' rights.

127. As a starting point, the current regulation should be strengthened. It was never meant to be exhaustive.[246] It sets out certain aspects of police officers' responsibilities and procedures in an SIU investigation, but does not comprehensively list every component of the duty cooperate.

128. For example, the regulation clarifies issues about police officers' notes on the incident and SIU interviews. It does not and should not be interpreted as qualifying the duty of the police to comply with requests from SIU investigators for the production of other kinds of information.

129. Notably, the regulation requires that witness officers' notes on an incident be given to the SIU, but not the notes of a subject officer.[247] Although the regulation does not claim to be a complete rulebook for what the police must produce or not produce to the SIU, police practices have been uneven.[248] SIU investigators report that requests for the production of records in the possession of the police are sometimes met with resistance. In one case, for instance, a police service refused to comply with a request from the SIU for canine training records.

130. The legislation should clarify that "notes on the incident" means the duty notes written by a police officer during an SIU investigation. This means that *only* a subject officer's notes written during an SIU investigation are automatically non-producible to the SIU.[249] Other types of notes, records, and reports *are* generally producible at the request of the SIU. For example, the SIU should generally have access to occurrence reports, arrest reports, use of force reports, duty reports, scribe notes, warrant cards, canine training records or logs, duty notes unrelated to the incident being investigated by the SIU, communication recordings and electronic messages, and audio or video recordings.

131. The police should not be withholding information based on their own relevance assessments. In their own investigations, the police routinely gather all kinds of information that may or may not be useful in terms of advancing the investigation. Ultimately, if the matter proceeds to a trial, it is for the judge to decide on the relevance and admissibility of evidence.

132. Simply put, the scope of the duty to cooperate should be clarified in the legislation. There should be detailed guidance on the kinds of information and evidence that the police must produce at the request of the SIU. The legislation should

further require that the police cooperate immediately upon SIU involvement and respond to SIU directions and requests forthwith.

Recommendation 5.8

The general requirements of the duty to cooperate with the SIU, as well as the timing of that requirement, should be set out in the legislation. In particular, the legislation should stipulate the following:

(a) The duty to cooperate arises immediately upon SIU involvement; and

(b) The duty to cooperate requires the police to comply forthwith with directions and requests from the SIU.

Recommendation 5.9

The general types of information or evidence that the SIU is normally entitled to receive, as well as any restrictions on the information or evidence the SIU can request, should be set out in the legislation.

Recommendation 5.10

The legislation should clarify that "notes on the incident" means the duty notes written by a police officer during an SIU investigation.

5.320 – Other police personnel

133. The duty to cooperate should not be restricted to police officers. Currently, the duty extends to "members of police forces," which includes employees of a police force.[250]

134. As a result, civilian employees of a police force and employed special constables are already required to cooperate in SIU investigations. I was told, however, that in practice, this has not always occurred because some employees believe that the duty to cooperate only applies to police officers.

135. Moreover, there appears to be some confusion about whether auxiliary members of a police force are required to cooperate with the SIU. These members of a police service are appointed by the police service, wear uniforms, and work with police officers.

136. The legislation should make clear that all civilian employees, special con-

stables employed by the police service, and auxiliary members of a police force must cooperate with the SIU.

Recommendation 5.11

The legislation should explicitly specify that the duty to cooperate with the SIU applies to civilian members of a police force, special constables employed by a police force, and auxiliary members of a police force.

5.330 – Sanctions for failing to cooperate

137. Even though the police are under a duty to cooperate with the SIU, there is little that the SIU can do when they fail to do so.

138. Currently, if police officers do not cooperate with the SIU, they may be charged with "neglect of duty," a form of misconduct under their Code of Conduct.[251] But it is up to the police chief, and not the SIU, to lay such a charge. The SIU is limited to asking the police chief to do so.

139. To me, this arrangement is inconsistent with the SIU's function as an independent police oversight body. Instead, the SIU should be able to charge any member of a police service with a provincial offence if they fail to cooperate. This should be in addition to their ability to refer misconduct complaints to the OIPRD, as I recommend in section 9.241.

140. Other public investigators have a similar sanction at their disposal.

141. The OIPRD currently does, for one. Any person commits an offence if they obstruct an OIPRD investigator or provide them false information.[252] The maximum punishment for such an offence is one year of imprisonment and a $2,000 fine.[253]

142. So too does the Ombudsman. The Ombudsman's legislation has the following sanction:

> Every person who,
>
> (a) without lawful justification or excuse, wilfully obstructs, hinders or resists the Ombudsman or any other person in the performance of his or her functions under this Act; or
>
> (b) without lawful justification or excuse, refuses or wilfully fails to comply with any lawful requirement of the Ombudsman or any other person under this Act; or
>
> (c) wilfully makes any false statement to or misleads or attempts to mislead

> the Ombudsman or any other person in the exercise of his or her functions under this Act,
>
> is guilty of an offence and liable on conviction to a fine of not more than $500 or to imprisonment for a term of not more than three months, or to both.[254]

The SIU should be able to charge any member of a police service with a provincial offence if they fail to cooperate.

143. In my view, if a member of a police service breaches their duty to cooperate with the SIU, then there should be an offence similar to that provided for failing to cooperate with the Ombudsman. This would apply, for example, to a witness officer who fails to answer a question during an SIU interview or to a member of a police service who refuses to provide documents that the SIU is entitled to on request.

144. Consistent with the SIU's independence, the decision to lay such a charge should be at the discretion of the SIU. To be clear, laying that charge should not require consent from the Attorney General, a chief of police, or any other person.

Recommendation 5.12

The legislation should include a provincial offence for failing to cooperate with an SIU investigation punishable by fine, imprisonment, or both.

5.340 – Recordings of witness officer interviews

145. The legislation currently requires a witness officer's consent before the SIU can audio or video record their interview.[255] This requirement reflects one of the many compromises reached through Justice Adams' stakeholder consultations in 1998.[256]

146. In his 2003 review, however, Justice Adams stated that the manual recording of SIU interviews no longer made sense from legal and policy perspectives. He recommended that "appropriate technological recording should be required."[257]

147. The use of audio and video technology ensures that interviews are recorded accurately, comprehensively, and quickly. Police officers are well-aware that an audio or video recording is better than a handwritten recording. From time to time, however, I was informed that witness officers refuse to consent to having

their interviews audio or video recorded.

148. The legislation should be amended to require that witness officer interviews be audio or video recorded unless the SIU believes it would be impracticable to do so.

Recommendation 5.13

SIU interviews of witness officers should be audio or video recorded unless, in the SIU's opinion, it would be impracticable to do so.

5.350 – Witness officers' entitlement to records of their interviews

149. The legislation requires that the SIU provide witness officers with a copy of the record of their interviews.[258] This requirement reflects a recommendation made in Justice Adams' 1998 report.[259] Importantly, Justice Adams recommended that a copy be provided "on appropriate conditions" and suggested that the SIU "may want to impose reasonable conditions" when providing the copy.[260] This caveat did not make its way into the legislation.

150. During my consultations, SIU investigators rightly questioned why police witnesses should be provided with a copy of the record of their interviews. Witnesses in a regular criminal investigation are not, as a matter of course, provided with copies of their police statements. SIU investigators raised legitimate concerns that providing witness officers with copies of their statements could taint their evidence if they are improperly shared.

151. As a result, I recommend that the legislation be amended to more accurately reflect Justice Adams' recommendation.

Recommendation 5.14

The legislation should provide that the SIU may provide a copy of the record of a witness officer's interview to the witness officer if, in the SIU's opinion, it is appropriate to do so and on conditions that the SIU deems to be appropriate.

5.360 – Subject officers' notes

152. All police officers make notes on events that occur during their shift. This includes an incident giving rise to an SIU investigation.

153. The legislation currently requires that subject officers complete their notes at the end of their shift, but protects these

notes from being disclosed to the SIU.[261]

154. The rationale for this protection is the principle against self-incrimination.[262] It is the result of a recommendation in Justice Adams' 1998 report.[263] It is grounded on the premise that a subject officer's duty to make notes arises after an incident when the SIU has invoked its mandate and the officer is in an adversarial relationship with the state.[264]

155. There is a question, however, about how far the protection extends. Criminal acts may evade prompt detection. The victim of a sexual assault committed by a police officer may not make a complaint until days or even years after the incident. Should the officer's notes of the incident written days or years earlier before any SIU involvement be produced to the SIU?

156. In my view, the answer is yes. First, the context is materially different if notes are made at a time when a criminal investigation is not pending. In those cases, there is no adversarial relationship between the police officer and the state. The factors underlying the principle against self-incrimination do not weigh in favour of applying the principle.[265]

157. Second, the prohibition on providing a subject officer's notes to the SIU should not be given an overbroad interpretation because it is an exceptional protection. In ordinary criminal investigations, the police often obtain evidence at the investigative stage that is ultimately inadmissible at trial. Moreover, I was told that in non-SIU criminal investigations involving a police officer, police investigators have access to the officer's notes.

158. As a result, when a subject officer prepares notes on an incident before SIU involvement, the notes should be provided to SIU investigators. While the notes are unlikely to contain an admission of criminality, they may have important corroborative value. They should be produced.

Recommendation 5.15

A subject officer's notes on an incident prepared before SIU involvement should be produced to SIU investigators upon request.

5.370 – The Harnick Directive

159. There is a policy directing Crown counsel in SIU prosecutions to refrain from adducing notes or statements made by subject officers that were compelled during an SIU investigation.[266] Known as

the Harnick Directive,[267] the policy was the result of a recommendation in Justice Adams' 1998 report.[268] Relying again on the principle against self-incrimination, Justice Adams recommended that this evidence not be used in a criminal proceeding to incriminate officers or impeach their credibility.[269]

160. Questions have arisen, however, about whether the Harnick Directive has fallen out of step with subsequent developments in the case law.[270] Without weighing in on this issue, I believe it should be re-examined.

Recommendation 5.16

The Attorney General's directive granting immunity for subject officers' notes and statements in SIU prosecutions should be re-assessed in light of subsequent jurisprudential developments.

CHAPTER 6

Transparent and Accountable Criminal Investigations

6.100 – Introduction

1. Is the SIU transparent and accountable enough? To answer that question, you have to look at why the SIU came into being in the first place.

2. The SIU was created after a public outcry for independent, impartial investigations of police officers. Its purpose was to ensure that police officers were accountable for their actions, and in so doing, to promote public trust in policing.

3. The public got an independent investigation unit. Although not all Ontarians are aware of it, the SIU operates independently of police.

4. The SIU does not answer to a police chief or to the OPP Commissioner. And its leader, the SIU director, cannot have ever been a police officer.

5. In addition, investigators cannot be current police officers. That is, they cannot be police officers who are temporarily transferred to the unit, which is done in other provinces such as Alberta and Nova Scotia (see section 4.724).

6. Yet despite this independence, members of the public question whether their independent investigation unit is impartial. That is, people worry that the SIU may have a pro-police bias. Some people also worry that the SIU may not be all that good at investigating police officers.

7. In my consultations, there was a general public perception of the following:

- The SIU almost never charges officers;
- Almost all of the SIU investigators are former police officers;[271]
- Some SIU investigators appear to be biased because they wear police rings or other items that display their affiliation with being former police officers; and
- The SIU is secretive and unaccountable to the public.

8. Of course, the SIU's charge rate – which in 2014-2015 was 5 percent of investigations closed – does not necessarily prove that the SIU is biased or otherwise ineffective.[272]

9. After all, the SIU investigates incidents that are not necessarily crimes. For example, they investigate car accidents and apparent suicides in which it is not even clear that a police officer contributed in any way to an injury or death. And police officers are justified in using as much force as is necessary for law enforcement purposes.[273]

10. Also, just because someone used to be a police officer, it does not mean that

they cannot possibly investigate a current police officer without bias.

11. The problem, however, is that the public is unable to closely examine whether the SIU is doing its job properly. To many of them, it feels like the SIU is telling them to "just trust us."

12. Without the SIU sharing more information, the public is left to wonder whether each investigation was effective and unbiased or not.

13. As the Ombudsman put it in 2008, such "secrecy only breeds suspicion."[274]

14. This is no small problem. It goes to one of the main purposes for which the SIU was created: to promote public trust in policing.

15. If the public is suspicious of the police, whether rightly or wrongly, the relationship between the police and the public will be damaged.

16. Thus, the SIU must not only be effective at holding police accountable, but it also must be seen to be effective at doing so.

17. And if it is not effective, the public must be able to hold the SIU accountable. The public needs to know whether the SIU is doing the job it is supposed to be doing.

18. For the SIU to fulfill its purposes then, it is crucial that it shares what it has done and how it has made decisions. Transparency and accountability are not just good goals for the SIU, but features essential to its success.

The problem, however, is that the public is unable to closely examine whether the SIU is doing its job properly. To many of them, it feels like the SIU is telling them to "just trust us."

19. Later in this section I explore three specific questions that the government asked me about the transparency and accountability of the SIU. I will answer these in brief now before expanding on them later.

20. First, should more information be released to the public about SIU investigations?

21. My short answer is yes. The SIU needs to release more information so that members of the public can scrutinize the results of investigations. I provide guidelines for how it should do so.

22. Second, should the names of subject officers be released?

23. In my opinion, a subject officer's name should be released in the same circumstances that the name of a civilian under investigation would be released.

24. That is, at the end of an investigation, it should be released if the officer is charged.

25. As I will touch upon later, releasing an officer's name does not make a completed investigation any better. Nor does it do much to help people understand the charging decision.

26. Third, in cases where no police officer was charged, should past reports be released?

27. I recommend that past reports be released, subject to the privacy considerations of affected persons and families, in the following cases:

- In every case involving a death;
- In any case, when requested by the affected person, or if that person is deceased, a family member of the affected person; and
- In any other case, when requested by any individual, if there is a significant public interest.

28. I will first address the "release of names" issue. Next, I discuss public reporting, including interim reporting and the release of the director's final report. Then, I explain my recommendations on the release of past reports. Finally, I touch on two other issues related to transparency and accountability: the timeliness of SIU investigations and coroner's inquests.

6.200 – Release of names

29. The Ontario government asked me whether the names of subject officers, witness officers, or civilian witnesses should be released to the public.

30. Answering this question involves balancing those individuals' privacy interests against the public interest in transparent investigations and police accountability.

31. I will answer the question first for subject officers, followed by witness officers, and then civilian witnesses.

6.210 – Subject officer

32. In my opinion, if an officer has been charged, then that officer's name should be released to the public by the SIU.

33. When police officers are charged by the SIU they formally become accused

persons before the court. Like any other person, they remain presumed innocent. That presumption of innocence stays with them until the very end of the criminal proceedings. They are only found guilty if the Crown can prove the case beyond a reasonable doubt and a finding of guilt is entered by the court.

34. The court system in Canada has always recognized the "open court principle" as a hallmark of a democratic society and the cornerstone of the common law.[275]

35. This means that, with limited exceptions, everything that happens in a court is public and can be published by the media. This includes the accused's name, their charges, evidence entered as exhibits, and the testimony heard in court.

36. An accused police officer before the court does not enjoy any special status or privileges. Like almost every other accused person, the officer's name and their charges are matters of public record.

37. When the SIU charges an officer, the name of the officer will inevitably be made public in court. There is no reason to withhold the officer's name and their charges from the public when it is, as a matter of law, a public fact.

38. The officer's name and charges are also properly the subject matter of a SIU press release since it is the charging body. The charge is the culmination of the SIU's investigation. The SIU should communicate the results of its investigation to the public when charges are laid by releasing the name of the officer and the charges laid against them.

39. In short, the name goes out.

An accused police officer before the court does not enjoy any special status or privileges. Like almost every other accused person, the officer's name and their charges are matters of public record.

40. But should an officer's name be released when they are not charged? In my opinion, the answer is no.

41. Views on this issue are highly polarized.

42. The police strongly oppose the release of subject officers' names when the SIU determines that there has been no criminal wrongdoing. They point out that the police do not generally release the names of citizens who are the subject of investigations unless and until charges

are laid. The police say that it would be unfair to impose a different standard on police officers.

43. The police are also concerned about protecting the privacy interests of subject officers and their families. They submit that despite being cleared of criminal wrongdoing, officers may still be publicly stigmatized, particularly when they live in small communities.

44. The police are also concerned about the risk of retaliatory action by persons who do not accept the SIU's decision, not only to themselves, but also to their families.

This issue is the by-product of a larger problem: a crisis of public confidence in SIU charging decisions. The cause of that problem is a lack of information shared with the public about those decisions.

45. In contrast, many members of the public strongly support the public release of subject officers' names even when they are not charged after SIU investigations. They say that the public has the right to know the name of a police officer who has seriously injured or killed a civilian in the line of duty. They point out that police officers are not like ordinary citizens. That is because they have been granted special authority by the state. They also point out that the use of force by a police officer on a citizen is a very public event, committed by a public servant. It is unreasonable for the officer to expect anonymity.

46. Those who support the release of names also emphasize the importance of permitting the public to probe the officer's past. They argue that this is a valuable safeguard against the danger of repeated misbehaviour passing unnoticed.

47. I am sympathetic to the situation of police officers who must resort to the necessary use of force against civilians in the line of duty. In addition to the strain of a criminal investigation, and other related employment investigations, they must grapple with the emotional fall-out of a traumatic event.

48. Still, if releasing subject officers' names was necessary to uphold important public interests, then the personal interests of officers would have to yield to overriding concerns. It would be an unpleasant but unavoidable consequence of their chosen livelihood. But in my view, this is not the case.

49. This issue is the by-product of a larger problem: a crisis of public confidence in SIU charging decisions. The cause of that problem is a lack of information shared with the public about those decisions.

50. It is a problem that has become deeply entrenched, particularly among members of marginalized communities. The experience of these communities leaves little room for blind optimism about the fairness and efficacy of police oversight. They need solid evidence. But providing officers' names would do little to advance that objective.

51. Releasing the officer's name would not make the SIU investigation any better. And it would not improve transparency in a meaningful way. That is, it would not make it any easier to understand what the SIU did to investigate, or why the SIU did not lay charges.

52. In the next section, I make recommendations that would provide for greater transparency. For example, I recommend that the SIU share with the public the investigative steps taken, all relevant evidence, explanations of legal standards applied, and reasons for the director's conclusion.

53. Those forms of transparency make disclosure of the officer's name unnecessary.

54. As to the public's ability to probe the officer's history, in my view, it is the SIU, and not the public, who should be the one to investigate that.

55. After all, it is the SIU that is tasked with laying criminal charges, not the public. In fact, by the time the public would uncover such information, it would already be too late. And the SIU has more tools than the public to investigate any relevant past conduct.

56. This is yet another concern that is best addressed through thorough investigations and more transparent reporting, which would include reporting about any investigation into the officer's past conduct.

Recommendation 6.1

At the end of an investigation, the SIU should release the name of a subject officer if the officer is charged.

6.220 – Witness officer

57. The public interest in the names of witness officers is lower than that for subject officers.

58. Unlike a subject officer, a witness officer is not under any criminal investigation.

59. Releasing a witness officer's name would add little to the public's understanding of the SIU's investigation.

60. Accordingly, I do not think they should be released.

Recommendation 6.2

The names of witness officers should not be released.

6.230 – Civilian witness

61. No one argued that the names of civilian witnesses should be released.

62. I do not see any reason why they should be. Releasing a civilian witness' name may be an unjustified invasion of their privacy.

63. In addition, if the SIU regularly released the names of its witnesses, without their consent, it may make people less likely to speak to its investigators in the future.

Recommendation 6.3

The names of civilian witnesses should not be released.

6.300 – Public reporting

64. The SIU must be more open, candid, and communicative than it is now.

65. I will first briefly set out the SIU's current reporting practices. Then I will discuss how the SIU should report at the end of an investigation, followed by initial and intermediary reporting.

66. For final reports, I say that the SIU needs to release them to the public in every case in which it does not lay charges.

67. Those reports must allow the public to closely examine the director's decision. That means they should contain summaries of all relevant evidence, including witness statements, unless there is a good reason not to include such evidence. They also need to explain the relevant legal standards applied and how the director made the decision.

68. For interim and intermediary reporting, I say that the SIU needs to provide more context in those reports. This is to ensure that the public appreci-

ates what is going on, and is not unnecessarily alarmed.

6.310 – Current public reporting practices

69. Despite how important it is for the SIU to communicate with the public about its investigations, the SIU is not required by law to do so. Subsection 113(8) of the *Police Services Act* only requires the SIU director to "report the results of investigations to the Attorney General." Instead the SIU reports to the public as a matter of policy.

70. The SIU currently reports to the public in two main ways.

71. First, it generally releases annual reports. These annual reports detail things such as how many incidents it investigated, what types of incidents it investigated, how many of those investigations resulted in criminal charges, and how long investigations took on average.

72. Second, the SIU provides news releases for specific investigations. But it only does so in about one out of four cases. The SIU told me that it cannot report on more cases because of a lack of resources. Instead it focuses on issuing news releases in all firearm cases, death cases, major vehicle incidents, or cases that have a lot of public interest.

73. The SIU puts out three different types of news releases: initial news releases, intermediary news releases, and final news releases.

74. In initial news releases, the SIU alerts the public that it is investigating a matter. It provides details such as the number of investigators assigned, the time and location of the incident being investigated, the police service involved, and a short summary of the incident.

75. In intermediary news releases, the SIU updates the public on details such as the number of officers designated as subjects of the investigation and any change in the condition of the affected person. These news releases are sometimes used to ask for witnesses to come forward as well.

76. In final news releases, the SIU provides the public with a summary of its completed investigation.

77. This summary is based on the director's final report, which is generally not shared with anyone outside the SIU other than the Attorney General.

78. If the officer is charged, the final news release is brief and includes the officer's name, the offence for which

they were charged, and their next court appearance.

79. If the officer is not charged, the final news release is more extensive. It will generally include details such as how many investigators were deployed, the number of civilian witnesses interviewed, the number of witness officers interviewed, and whether the subject officer was interviewed or provided their notes.

80. In these final news releases, the SIU reports on the facts found by the director, but not the evidence on which those findings of fact were made. For example, it does not provide summaries of witness interviews.

81. Sometimes the final news release will then paraphrase the director's reasons for not laying a charge. Other times it quotes parts of the director's reasons from the report.

82. All three news releases conclude with a general description of the SIU.

83. The SIU also uses social media to notify the public that it has issued a news release, and at times to respond to issues that have generated significant public interest.

6.320 – Final reports

84. There is an overwhelming need for greater transparency in cases where the SIU decides not to lay a charge.

85. The public demands it. Members of the public want to be able to decide for themselves whether the SIU conducted a thorough investigation, made appropriate findings of fact, and impartially determined that charges should not be laid.

There is an overwhelming need for greater transparency in cases where the SIU decides not to lay a charge.

86. The current "news release" style of reporting does not allow them to do so.

87. The current style of reporting tells the public that a pellet gun looked like a real gun, rather than showing them a picture of it. The current style reports what the director saw in a video of the incident, rather than sharing the video.

88. And the current style of reporting tells the public what the director thinks happened, but without sharing any witness statements that may support or contradict the director.

89. The current "news release" style of

reporting is not good enough. The public wants the director's report.

90. The police support releasing the director's report too. In fact, they have been saying so since at least as far back as 1998, when Justice Adams did his first review of the SIU.[276] And they said it again for Justice Adams' follow-up report, published in 2003, noting that releasing the final report could "clear the air in respect of their involvement."[277]

91. For his part, Justice Adams recommended that the SIU release its reports to the public.[278] In his 1998 report, he said that "[a] public report seems central to providing accountability and community confidence," and he noted that "[c]oncerns about personal information can be accommodated by judicious editing of the written report."[279]

92. Justice Adams recommended that "[t]he written report of the SIU should be made public where no charges are laid."[280]

93. Ontario's Ombudsman made a similar recommendation in 2008, which was repeated in 2011.[281] The Ombudsman recommended the following:

> The Special Investigations Unit should be legislatively required to publicly disclose director's reports in cases involving decisions not to charge, subject to the director's discretion to withhold information on the basis that disclosure would involve a serious risk of harm.[282]

94. The Ombudsman warned that "the absence of publicly available explanations for the SIU director's decisions only helps feed conspiracy theories by critics who believe the SIU favours or is [in] collusion with police."[283]

95. Given this broad support, why doesn't the SIU already release its final report in cases in which it does not lay charges?

96. The SIU says that its main reason for not doing so is that it believes it will hurt the unit's ability to effectively investigate police. The SIU fears that witnesses will be reluctant to come forward if they know that what they tell investigators will be reported.

97. And it notes that the release of witness evidence would conflict with the confidentiality assurance that it provides to witnesses. That assurance currently provides that "[a]nything you tell us will be kept confidential by the SIU, unless you consent to its release or unless we have to release it by operation of law."

98. Other concerns about releasing more information include the following:

- If people are identified or identifiable, the *Freedom of Information and Protection of Privacy Act* may restrict the release of information about them or the information they provided to the SIU;
- It would be too time-intensive to prepare public reports, given the SIU's resources;
- The affected person, or another witness, may be the subject of a criminal investigation and reporting what they said may compromise their right to silence; and
- The release of the report may otherwise jeopardize the fairness of other legal proceedings that arise out of the same incident.

99. In my view, these concerns do not outweigh the strong public interest in releasing the final report when no charges are laid. The public needs more information about investigations.

100. To fulfill its purpose, the SIU must provide the public with enough information so that members of the public can know the relevant evidence, assess whether it was properly analyzed, and closely examine whether the director's conclusions are sound.

101. Otherwise, the public will remain suspicious of both the SIU and the police, whether investigations are effective or not.

In my view, these concerns do not outweigh the strong public interest in releasing the final report when no charges are laid. The public needs more information about investigations.

102. The SIU could prepare its reports in such a way that minimizes many of the concerns listed above.

103. For example, in jurisdictions such as Manitoba and British Columbia, they summarize what witnesses said. They then draft the final reports without information that would identify the witnesses or other persons involved.[284]

104. This avoids running into personal privacy concerns. Such concerns can generally be avoided so long as the persons involved in the incident are not identified or identifiable.[285] And when drafted in such a fashion, the anonymous summaries would not appear to threaten the fairness of other proceedings.

105. The SIU says that if it releases summaries of witness statements, even ano-

nymized ones, witnesses will be reluctant to come forward in the future.

106. I disagree. This fear appears to be completely speculative. I was informed that it has not been the case in Manitoba and British Columbia, jurisdictions where the oversight bodies generally summarize each witness' evidence in their final reports.

107. After all, these are witnesses to criminal investigations. They are under no illusion that what they say will never be shared. Rather, they know that if the officer is charged they would be expected to testify in open court. And they know that the information may be released by operation of law.

108. Of course, there may be extenuating circumstances. If there is a risk of serious harm to a witness, the director should retain discretion to exclude information. But such a risk would seem to be rare.

109. What I propose then is that the SIU report to the public in the following manner, which I have modelled in part after the practice of British Columbia's Independent Investigations Office.

110. The SIU should report to the public in all cases.

Recommendation 6.4

The legislation should provide that the SIU reports to the public on every investigation.

111. However, the form and the extent of the report to the public at the conclusion of the case would depend on the category of case at issue.

112. The SIU closes cases in three different ways:

- By withdrawing from the case after a preliminary investigation that determined that its mandate was not engaged (see recommendation 6.5);
- By fully investigating and laying criminal charges against the officer (see recommendation 6.6); and
- By fully investigating and determining charges are not appropriate (see recommendations 6.7 to 6.10).

113. First, for cases where the SIU withdraws after a preliminary investigation, the public has an interest in the release of the reasons why the SIU determined not to investigate. But that interest is not acute or urgent.

114. These are cases where the SIU is notified of an incident by a police force and begins to investigate, only to deter-

mine that its mandate is not invoked. This may be because the injury at issue does not meet the definition of serious injury. It also may be because there is not a sufficient connection between the injury or death and the officer's actions.

115. In these cases, the SIU closes the case by memorandum and does not issue a final director's report. The memorandum will specify why it is the SIU mandate was not invoked or was withdrawn.

116. For these cases, the SIU should still report to the public. But it should do so in its annual report by providing a list of the cases where it was notified and then either did not invoke or withdrew its mandate. In doing so, it also should specify the reason for its decision.

Recommendation 6.5

For cases where the SIU is notified but does not invoke or withdraws its mandate, the SIU should report in summary the reasons for its decisions as part of its annual report.

117. Second, if the SIU lays charges, it should continue its current practice and issue a brief bulletin that includes the following:

- The officer's name;
- The offence charged and when charged; and
- Details about the officer's next court appearance.

118. If the officer is charged, public reporting should be minimal. This is to avoid interfering with the integrity of the criminal proceeding.

Recommendation 6.6

For cases that result in a criminal charge, the SIU should release the following information:

(a) The officer's name;

(b) The offence charged and when charged; and

(c) Details about the officer's next court appearance.

119. Third, if the SIU does not lay charges, the SIU should issue the director's report to the public.

Recommendation 6.7

For cases that do not result in a criminal charge, the SIU should release the director's report to the public.

120. While this report may be prepared by a communications team member, to ensure accountability, it should be signed by the ultimate decision-maker, which would be the director or deputy director of investigations.

121. It should include enough information to allow members of the public to closely examine the investigation and the director's decision.

Recommendation 6.8

For cases that do not result in a criminal charge, the director's report should include the following elements:

(a) An explanation why the incident falls under the SIU's mandate;

(b) A summary of the investigative process, including an investigative timeline;

(c) A summary of the relevant evidence considered, including (i) physical evidence, (ii) forensic evidence, (iii) expert evidence, and (iv) witness evidence, which would include any evidence obtained from the subject officer;

(d) Any relevant video, audio, or photographic evidence of the incident in question, modified to the extent necessary to remove identifying information;

(e) An explanation for why any of the evidence listed above was not included in the report;

(f) A detailed narrative of the event;

(g) The reasons for the director's decision, including (i) the reasons for preferring some evidence over other contradictory evidence, (ii) an explanation of any relevant legal standard, and (iii) an explanation why the conduct did not meet the standard for laying charges; and

(h) A statement on whether the matter has been referred to the OIPRD as well as whether there were any issues with cooperation relating to the investigation.

122. Every item of evidence would not necessarily have to be shared or summarized in every case. Rather, what evidence is relevant would depend on the circumstances of each investigation.

123. Also, in light of this recommendation, the SIU should update the confi-

dentiality assurance it provides witnesses. Investigators should tell them that an anonymized summary of their evidence will be released to the public.

124. However, the director's report should not contain certain types of information whose inclusion would do more harm than good. That includes information whose release could lead to a risk of serious harm, an unnecessary invasion of privacy, or a violation of a legal restriction.

Recommendation 6.9

For cases that do not result in a criminal charge, the director's report should not include the following information:

(a) Names of subject officers, witness officers, affected persons, or civilian witnesses (or any other evidence or information identifying them to the public);

(b) Any information that, in the discretion of the director, could lead to a risk of serious harm;

(c) Any information disclosing confidential police investigative techniques and procedures;

(d) Any information whose release is otherwise prohibited or restricted by law; and

(e) Any information that could identify a victim of sexual assault.

125. Finally, the SIU should adopt a release procedure that is accessible to the public and sensitive to the report's impact on persons or organizations affected by its release.

Recommendation 6.10

For cases that do not result in a criminal charge, the director's report should be published online on the SIU website. Copies of the report should be provided to (i) the affected person or their next of kin, (ii) any subject officer, (iii) the chief of any involved police service, and (iv) the Attorney General.

6.330 – Initial and intermediate reports

126. For initial and intermediate reporting, the main concern raised is that the public is not provided with enough information to understand what is happening.

Without context, some cases sound much worse than they actually are.

127. For example, the police often respond to calls when someone is suicidal. Sadly, sometimes they do commit suicide. Because there has been a police-civilian interaction resulting in a civilian death, the SIU is notified and investigates.

128. The SIU initial news release then typically reads something like this:

> The police responded to a call at an apartment building at 150 Main Street. Officers attended a unit on the 14th floor. A short time later, a man fell from the 14th floor balcony to the ground. He was pronounced dead at the scene.

129. The news release then specifies how many investigators have been assigned, urges witnesses to contact the SIU, and describes the general role of the SIU.

130. What is missing is the right amount of contextual information for readers.

131. Instead there is a void created that is all too often filled with public or media speculation – did an officer throw someone off a balcony? Sometimes the lack of context makes that speculative conclusion seem the more likely one.

132. Part of the problem is that both the SIU and police are restricted by law from reporting on incidents under investigation.[286]

133. Generally speaking, the police may only say that the SIU has been notified about an incident and is investigating. The police are not to disclose any further information about the investigation or the incident.

134. And the SIU is generally not allowed to make any public statement about an ongoing investigation either. It may only make a public statement if it is aimed at preserving the integrity of the investigation.

135. The main reason for these restrictions is to avoid tainting witnesses' evidence, which is a legitimate concern.

136. In my opinion though, the SIU also should be allowed to provide information to the public to maintain public confidence, especially when to do so does not threaten the integrity of the investigation. The SIU should not be under-reporting in such a way that it unnecessarily shakes public confidence.

137. In some cases, fixing this could be as simple as explaining that the SIU investigates incidents to see if there is any connection between an officer's conduct and the death or serious injury sustained.

In others, it may involve summarizing the nature of the call that the police were allegedly responding to.

Recommendation 6.11

The legislation should be amended to allow the SIU to make public statements during an investigation when the statement is aimed at preserving public confidence, and the benefit of preserving public confidence clearly outweighs any detriment to the integrity of the investigation.

6.400 – Past reports

138. Ideally, the SIU director's report would have been released at the conclusion of every investigation in the past when no charges were laid.

139. Of course, with very few exceptions, they were not.

140. Instead those reports, often lengthy and detailed, were sent to the Attorney General.

141. Those reports still exist. Both the SIU and the Attorney General have a set.

142. The Ontario government has now asked me whether those past reports should be released. And, if so, what form they should take.

143. This is a complicated question for three reasons.

144. The first reason is that the past reports were not drafted for public consumption. That is, they often contain information that should not be shared with the public. This includes information that, if released, could endanger someone's safety, or information whose public release is prohibited by law.

145. In short, they contain some of the types of information I earlier concluded should not be included (see recommendation 6.9). This means that some careful screening and editing of the past reports would be required.

146. The second reason is that the SIU has given witnesses various confidentiality assurances over the years. Releasing the reports may conflict with those confidentiality assurances.

147. These confidentiality assurances are meant to make witnesses feel comfortable enough to speak to the SIU. Some witnesses worry that speaking to the SIU could lead to retaliation against them. Others worry that the information they give might incriminate them or otherwise get them in trouble with the law.

148. To comfort those witnesses, the SIU assures them that "your information" will be treated as confidential, and only shared in limited circumstances. Public reporting is not one of the limited circumstances under which witnesses are informed their statements may be shared.

149. Thus, if past reports are released, the government will have to be very careful not to include any information that may reveal the identity of those witnesses.

150. The third reason releasing past reports is complicated is that there is a significant backlog of unreleased ones. After all, the SIU has concluded over five thousand investigations in the more than twenty-five years that it has been in operation. With few exceptions, reports have not been publicly released.

151. This backlog would not be a problem if the reports were already in a format suitable for public release. But, as indicated, they are not. This means that it would take a lot of time and a lot of work to prepare all of the past reports for public release.

152. So what should be done?

153. I say that the Ministry of the Attorney General, and not the SIU, should prepare the reports for release. Such a job would place too big a burden on the SIU. And it is fair to ask the Attorney General's ministry to do it, as the Attorney General has been the minister responsible for the SIU for over twenty years.

154. I am not prepared to say that past reports need to be released in every case. Given the significant backlog and the careful review that each report would require, it would be very time-consuming to release each one. Yet there may be little interest in many of those past reports. Preparing reports of little interest would delay the release of reports of greater interest.

155. Instead, past reports should be released in every case in which there is a significant public or private interest, subject to the privacy interests of the affected person or of surviving family members, in cases where the affected person is deceased.

I think the person who was seriously injured, or a surviving family member, always has a significant private interest in knowing why the circumstances of their significant injury did not warrant a criminal charge.

156. First, in my view, there is a significant public interest in any SIU investigation into a person's death. While the public interest is significant in such cases, it should not outweigh all other interests. Rather, that public interest should be balanced against the privacy interests of the affected families. In addition, in some of these cases the public interest may be lower because a coroner's inquest may have been held. Such cases should not have the same priority as other ones where many of the facts remain unknown.

157. Second, I think the person who was seriously injured, or a surviving family member, always has a significant private interest in knowing why the circumstances of their significant injury did not warrant a criminal charge.

158. Third, there are other cases in which the public has a significant interest in knowing about the investigation, but which may not fall into the first two categories. Those cases affect public confidence in policing and police oversight. The Attorney General should thus exercise discretion to release those reports on request of any individual, after considering any privacy interests of the affected person or, if the affected person is deceased, that person's family.

Recommendation 6.12

The Attorney General should release past reports in the following circumstances:

(a) In all incidents in which a person died, prioritizing cases in which there was no coroner's inquest, subject to the privacy interests of the deceased's family;

(b) In any incident on request of the affected person, or if the affected person is deceased, a family member of the affected person; and

(c) On request of any individual, when there is significant public interest in the incident reported on, subject to the privacy interests of the affected person, or if the affected person is deceased, the privacy interests of that person's family.

159. For the reasons set out earlier, past reports will need to be edited to protect sensitive information. Since these reports were not originally drafted for public release, substantial redaction of their contents may sometimes be necessary. This unavoidable reality may give rise to bad optics. People may question

whether relevant information was withheld unnecessarily.

160. We saw this happen recently when the Attorney General released the SIU director's report in the Andrew Loku case.

161. The best way to address this problem is to assist the reader's understanding of why certain information was removed. This could be accomplished by inserting explanatory editorial notes in the body of the report. These notes could describe the nature of the information that was removed and explain why it was necessary to do so.

Recommendation 6.13

Past reports should exclude the information set out in recommendation 6.9. Whenever possible, editorial notes should provide a summary of what the excluded information was about and an explanation for why it was necessary to remove it.

6.500 – Investigative timelines

162. As noted earlier in section 4.710, investigative delay was a major complaint throughout my consultations.

163. Long delays benefit nobody. They are particularly hard on affected persons and the police officers under investigation.

164. Anecdotally, I heard that the SIU would often take twelve to sixteen months to close a file, even for simple investigations.

165. To reduce delay, I earlier recommended that the SIU should have a deputy director of investigations (see recommendation 4.7). That person would share the SIU director's power and responsibility for laying charges.

166. I also recommended that a public accountability office could share the responsibility for drafting reports (see recommendation 4.8). And I said that the SIU should hire more staff for affected persons services, which staff would keep affected persons up to date on the progress of the case (see recommendations 4.9 and 4.10).

167. But in addition, I think there should be a public accountability feature for investigative timeliness.

168. Based on past practice and my discussions with criminal investigators, the SIU should generally be able to close a case within 120 days, including making any final report to the public.

169. If it is unable to do so, then it should have to report to the public on the status of the investigation. The SIU also should provide public updates every sixty days thereafter until the investigation has closed. This could include updating the public that the report's public release is being withheld pending the conclusion of a parallel criminal investigation or trial.

170. This accountability feature should motivate the SIU to conclude investigations in a timely manner, but without forcing it to do so in an irresponsible way.

Recommendation 6.14

The SIU should aim to conclude investigations, including any final reporting to the public, within 120 days. If the SIU has not concluded an investigation within 120 days, it should report to the public on the status of the investigation. The SIU should further report on the status of the investigation every 60 days thereafter, until the investigation has concluded.

6.600 – Coroner's inquests

171. Many of the people I spoke to about police oversight brought up coroner's inquests. In short, they want them to take place more often for deaths involving police interactions. And they want to ensure that affected families are able to meaningfully participate in the inquest process.

172. For families of people who have died in police interactions, a coroner's inquest provides a level of transparency and human interaction that is missing from the SIU process.

173. At coroner's inquests, a coroner runs a public hearing to inquire about the circumstances of a person's death.[287] Witnesses testify. Expert evidence may be presented.

174. Affected family members are thus able to hear directly from witnesses to the event, including the officers involved. And they are generally able to participate in them too. Sometimes they are represented by lawyers who question witnesses on their behalf.

175. At the end of an inquest, a jury determines the circumstances of the death, and, when appropriate, makes recommendations on how to prevent such deaths.

176. But coroner's inquests are not required in all police-involved deaths. Instead the law only requires the coroner

to call an inquest in those cases when a person has died in police custody or while detained.[288] And this terminology can be challenging for the coroner to interpret and apply to specific circumstances, resulting in a lack of consistency when determining if an inquest is mandatory.

177. In all other police-civilian interactions that result in death, the coroner decides whether an inquest would be in the public's interest.[289] When making that decision, the coroner must consider the following:

- Whether an inquest would help determine the circumstances of the death;
- Whether it is desirable to fully inform the public about the circumstances of the death through an inquest; and
- How likely it is that the jury might make recommendations that could prevent deaths in similar circumstances.

178. In my opinion, it is always in the public's interest to hold an inquest for deaths involving a police officer's use of force, including the use of restraint or use of a firearm. The legislation should reflect this.

179. By allowing police officers to have access to firearms and to use force when carrying out their duties, the public entrusts police to use these special powers responsibly. This is much like how the public trusts police to take care of people under their custody, a situation which already calls for a mandatory inquest.

180. That trust is tested when an officer's use of force is a direct contributor to a civilian's death. In such cases, the public desire for a thorough, public examination of the event is strong. So too is the public interest in exploring whether such deaths could be prevented in the future.

By allowing police officers to have access to firearms and to use force when carrying out their duties, the public entrusts police to use these special powers responsibly.

Recommendation 6.15

The *Coroners Act* should be amended to require that the coroner hold an inquest when a police officer's use of force, including use of restraint or use of a firearm, is a direct contributor to the death of an individual.

181. There is, of course, a heightened public interest in knowing more about

all civilian deaths where there is police involvement. But I do not think that police-involved deaths that occur without use of force, such as deaths arising out of motor vehicle accidents, call for mandatory inquests.

182. Rather, those cases should continue to be evaluated on a case-by-case basis.

183. However, because of the heightened public interest in those cases, the coroner should explain to the public why an inquest is not needed. In providing reasons, the coroner should take care to respect the privacy interests of the people involved in the incident.

184. For greater certainty, this discretion is not meant to extend to cases in which an inquest is already mandatory under the *Coroners Act*.

Recommendation 6.16

The coroner should retain discretion to hold an inquest in cases where a police officer is involved in an individual's death, but that police officer's use of force was not a direct contributor to the death. For those cases, the coroner should provide written reasons to the public if the coroner decides not to hold an inquest.

185. Finally, when I spoke to affected families, I often heard that they did not feel adequately supported at coroner's inquests. Some family members pointed out that the police have their own lawyers, yet they are generally expected to pay out of their own pocket if they want one. Many of these family members are simply unable to do so.

186. That is unfortunate since families have a special interest in obtaining a complete understanding of the circumstances of the death. Without legal assistance or representation, they may not ask the right questions, know what arguments to make when issues arise, or understand how the inquest procedures work.

187. To me, those families should be provided with some state-funded legal assistance so that they can meaningfully participate in the inquest.

Recommendation 6.17

The government should provide funding for legal assistance to represent the interests of the spouse, parent, child, brother, sister, or personal representative of the deceased person at the coroner's inquest in SIU cases.

CHAPTER 7

Public Complaint Investigations

7.100 – Introduction

1. The Office of the Independent Police Review Director, or OIPRD, is a civilian oversight body intended to provide impartial, independent, and transparent civilian oversight of public complaints about the police. It receives, manages, and oversees those complaints to ensure they are heard and properly investigated. Through this process, the OIPRD aims to foster and maintain public trust in the police.

2. The OIPRD works in conjunction with the broader police disciplinary system. This system is intended to remediate behaviour, provide public accountability, and ensure police officers act in compliance with professional standards.

3. The dual purpose of the OIPRD, both in overseeing public complaints and contributing to the remediation of police misconduct, must be considered when making recommendations to improve the public complaints process.

I heard over and over again from many people who say they experienced or witnessed police officer misconduct but never made a formal complaint about the matter.

4. The oversight regime in Ontario depends in large measure on individual members of the public making complaints against police officers. Any agency set up to receive and investigate complaints against police will not be effective if potential complainants against police do not come forward.

5. In a complaint-based model of police oversight, the onus is placed on the individual complainant who has witnessed police misconduct or takes issue with a police policy or service to decide to complain, engage the complaints regime, and follow through with the process to completion. This is no easy feat.

6. Over the course of my consultations, I heard over and over again from many people who say they experienced or witnessed police officer misconduct but never made a formal complaint about the matter.

7. The failure of the current regime to encourage and draw out meritorious complaints from the community impacts the legitimacy of the entire system. The public complaints process must be easily accessible so that misconduct surfaces and is investigated, challenged, and remediated.

8. The public complaints process also must be efficient and effective. This

includes having fair and impartial investigations.

9. During my consultations, I heard numerous concerns about the current process for receiving and investigating complaints.

10. At present, the OIPRD faces significant resource constraints that hamper its ability to fairly and effectively administer the public complaints system. This undermines the trust and confidence of both members of the public and policing stakeholders. Going forward, it must be ameliorated.

11. Furthermore, the public complaints process must be more transparent and accountable. This includes sharing information about the OIPRD and investigations with affected parties and the public. And it requires improving the agency's systemic review and monitoring capabilities.

12. In this chapter, I touch on these issues and make recommendations to improve public complaints investigations.

13. I begin by discussing how to make the public complaints process more accessible so that complainants bring forward complaints and are better supported throughout the process.

14. I next make a series of recommendations aimed at making the public complaints process more efficient and effective, including with respect to how complaints are received and investigated.

15. Finally, I address ways to improve the OIPRD's transparency and accountability and its systemic review and monitoring capabilities.

7.200 – Accessibility of the complaints process

16. The complaint process must be easily accessible to all members of the public. In a complaint-based system of police oversight, the effectiveness of the system depends largely upon drawing out meritorious complaints.

17. During my consultations, however, I repeatedly heard from people who had seen or experienced police misconduct, but never filed a complaint with the OIPRD. These conversations revealed that there are a number of inherent barriers to making complaints against police officers.

18. First, a substantial number of people with whom I spoke had never heard of the OIPRD and did not realize they could make a complaint wholly independently of the police.

19. Second, there was a deep mistrust of the public complaints process. Significantly, the fact that most complaints are referred back to the police service for investigation was seen as a major impediment to a good faith and impartial investigation

20. Third, some members of the public told me they would never complain about the police because they were genuinely afraid of reprisals. For example, people living or working at shelters or with people struggling with mental illness worried that if they complained, then their next call for service to the police would go unanswered or be met with abuse, or worse, violence.

21. Fourth, many people did not believe making a complaint was worth the effort. For some, the likely penalties imposed on an officer found guilty of misconduct were often seen as trivial. Others noted that, out of the thousands of complaints the OIPRD receives each year, about half are screened out without investigation and only a handful result in a formal disciplinary hearing.[290] Importantly, even legal professionals who had experiences with the OIPRD were reluctant to complain, believing that the process is often rigged and rarely leads to a positive outcome.

22. Finally, many members of the public told me the lack of strong supports for complainants serves as a deterrent to filing a complaint.

23. These concerns and barriers were shared by many members of the public and were particularly acute for certain communities.

24. For example, given historical events and present realties, some members of Indigenous, Black, and other racialized communities saw voluntarily engaging the state by making a police complaint as a very difficult and unattractive option.

25. Moreover, many of the most vulnerable members of our community, such as children, the homeless, persons with mental health issues, and newcomers, face significant barriers to making complaints and have no meaningful supports to assist them.

26. My recommendations for making the public complaints process more accessible are informed by what I heard through my broad consultations. As explained below, I recommend ensuring that people know about their right to complain to an independent body and that they are provided with assistance to navigate that process.

7.210 – Public awareness

27. Throughout my consultations, I met with many people who did not know about the OIPRD's existence or the process for lodging a complaint.

28. Some people, for example, did not realize that they could make a complaint online and did not have to do so in person at the police station. Others found the name of the OIPRD confusing and did not know that the agency operates independently of the police. Still more concerning, a number of people with legitimate complaints had not even heard of the OIPRD.

29. Some of the barriers that impede access to the public complaints system have to do with larger social issues that are beyond my mandate.

30. Having said that, reforms to the system must be aimed at improving the system's accessibility so that meritorious complaints are encouraged and brought forward into the light. Encouraging complaints benefits the entire policing structure in Ontario by enhancing its accountability and credibility.

31. In this vein, I have two recommendations aimed at improving awareness about the OIPRD and the complaints process.

32. First, consideration should be given to renaming the OIPRD to better reflect the agency's functions.

33. The "Office of the Independent Police Review Director" is an opaque name that is not easily remembered. Despite the OIPRD's efforts to advertise its existence and functions, it appears that the public remains largely unaware of the agency.

34. The OIPRD's name is long, confusing, and unduly complex. It is not conducive to a public understanding of what the OIPRD does. This may impede public accessibility to the complaints system as members of the public are unsure of the agency's functions.

35. I think the OIPRD should be renamed something simpler, easier to remember, and more consistent with its functions, such as the Police Complaints Office.

Recommendation 7.1

The OIPRD should be renamed. The name should be easily understood and better reflect the OIPRD's core functions.

36. Second, the fact that so many members of the public remain unaware

of the OIPRD and what it does must be remedied.

Most members of the public still do not know about the OIPRD. And even people that know of the agency are often operating with misinformation, such as a mistaken belief that complaints have to be made at a police station.

37. Currently, the OIPRD is required by statute to provide publicly accessible information about the public complaints system.[291] Outreach and education support the public complaints process by building awareness and trust in the system.

38. Consistent with its obligation, the OIPRD has made efforts to educate the public about its existence and functions. I was informed that the OIPRD has hired three outreach advisors who give presentations and workshops to community organizations and police groups. It also maintains a website and Twitter account, has resource committees aimed at outreach and education activities, and publishes brochures in eight languages available in police stations, courthouses, and many Service Ontario locations.

39. However, most members of the public still do not know about the OIPRD. And even people that know of the agency are often operating with misinformation, such as a mistaken belief that complaints have to be made at a police station.

40. This serves as a deterrent to filing a complaint. For example, some members of Black and Indigenous communities told me that they experienced racism when dealing with the police. As a result, they do not believe a complaint will be taken seriously or actively processed. And they do not make a complaint, even when a complaint could, and should, be made.

41. Going forward, the OIPRD should engage in a sweeping public education campaign across the province. This public education campaign may include advertisement online, in newspapers, on radio, through social media, and on public transit.

42. The campaign also should include targeted education and training sessions for workers and volunteers in community organizations who regularly meet with and serve vulnerable people. Social workers, community organizers, clinic lawyers, and community volunteers are often the first to hear about police abuse, discourtesy, and violence. The OIPRD should

build linkages with these individuals and community organizations so that they are aware of the OIPRD and can share this knowledge with and assist potential complainants in the complaints process.

Going forward, the OIPRD should engage in a sweeping public education campaign across the province.

43. Also, the OIPRD should reach out to youth in secondary schools and post-secondary institutions. The OIPRD should develop educational resources for teachers and youth, with organizations such as the Ontario Justice Education Network.

44. I recognize that this approach will require resources, time, and effort. It also may result in a bit of a funding dilemma. If an oversight agency barely able to afford to advertise its existence is given slightly better funding to run an advertising campaign, how will it provide the services resulting from additional demand?

45. That said, I believe that it is essential to adequately fund the OIPRD to engage in this outreach and meet this increased demand. The accountability, transparency, and effectiveness of the OIPRD depend on the public being aware of its existence.

Recommendation 7.2

The OIPRD should expand its public outreach program. The program should target both the general public and community organizations that serve vulnerable people.

7.220 – Complainant assistance

46. Navigating the complaints system is often a complex endeavour.

47. Many people, particularly those from vulnerable communities, face significant hurdles when pursuing a complaint.

48. Although the OIPRD is required to arrange for the provision of assistance to members of the public in making a complaint, the methods of providing assistance are not identified.[292]

49. During my consultations, I heard from a number of potential complainants about the obstacles they faced when launching a complaint. In addition to the barriers mentioned in section 7.200, many potential complainants also have to overcome practical obstacles.

50. For example, some complainants may be illiterate, unsophisticated with regard to filling out forms, or unable to speak English or French. In addition, a

number of Ontarians live in rural areas or do not have ready access to computers and internet.

51. These barriers may impede a person both from filing a complaint and seeing it through to its conclusion. The complaint process, however, must be easily accessible to members of the public, no matter what barriers they face or where they live.

52. Those considering making a complaint should be assisted and advised during the initial stages of a complaint.

53. Intake staff over the phone, on the internet, and in person should be carefully trained to provide information to potential complainants about the complaints process and to assist with the filing of the complaint.

54. Intake staff also should have a list of local social agencies around the province that are prepared to provide additional assistance and support to complainants. If, as I recommend above, the OIPRD engages in targeted outreach to community groups and organizations, it should be able to leverage these relationships to assist complainants.

55. These groups and organizations ideally will be able to offer support to complainants, provided they are adequately resourced. They will act as a window to the OIPRD, educating complainants about the complaints process, and assisting them to fill out complaints.

56. After a complaint is received, the OIPRD should review it to ensure that it is complete. If it is not, the OIPRD should reach out to the complainant to obtain any missing information. Intake staff should be prepared to offer complainants additional assistance to complete unfinished complaints and to point them to community resources and support. A complaint should not be screened out or ignored simply because it is incomplete.

57. Once a complaint is complete, assistance and support for complainants should continue. OIPRD staff should keep complainants apprised of developments in their matter and remain available to answer questions about the complaints process. Community groups and organizations should remain engaged to provide further support.

58. In rural and remote areas of the province, the support of community groups and organizations may be especially critical. The *Police Services Act* provides that the OIPRD may set up regional offices.[293] But, to date, the OIPRD has not had the resources to establish a regional presence outside of the Toronto area, either by

launching independent offices or working out of existing government offices such as Service Ontario locations.

59. During my consultations, particularly in northern Ontario, many people did not know about the OIPRD or felt that it was inaccessible to them. To remedy this problem, the OIPRD should seriously consider establishing one or more satellite offices, especially in a community such as Thunder Bay.

60. Even in the absence of regional offices, however, the OIPRD can still engage with local communities across the province. It should develop connections with local community groups and organizations. And it should equip them with the tools to assist complainants navigating the complaints process.

61. Making the complaints process navigable is key to ensuring that the process is accessible and effective. The OIPRD, in concert with community groups and organizations, should provide assistance to complainants to facilitate their navigation of the complaints system.

Recommendation 7.3

The complaint process should be easily accessible to all members of the public wherever they reside in Ontario.

Recommendation 7.4

The OIPRD, together with community groups and organizations, should provide assistance to public complainants to help navigate the complaints process. This assistance should be offered from the initial intake through to final disposition of the complaint.

Recommendation 7.5

Resources should be designated and made available to community groups and organizations to assist complainants through the complaints process.

7.300 – The complaints process

62. An efficient and effective public complaints process is a prerequisite to public and police confidence in civilian police

oversight. It begins with clearly defining the jurisdiction of the body charged with overseeing complaints. And it requires that the body be adequately resourced to oversee a complaint through to its final disposition.

An efficient and effective public complaints process is a prerequisite to public and police confidence in civilian police oversight.

63. In some cases, a public complaint may be expeditiously resolved without the need for an investigation or formal hearing. When there is an investigation, however, an efficient and effective process requires that investigations be fair, impartial, and timely.

64. In this section, I make a series of recommendations aimed at making the public complaint process more efficient and effective. This includes recommendations to redefine the OIPRD's jurisdiction, to promote early resolution in appropriate cases, and to tailor the OIPRD's intake procedures.

65. I conclude this section by recommending that, over time, the OIPRD assume sole investigative responsibility for all public conduct complaints against police in Ontario. This recommendation, however, should not be seen as a critique of the OIPRD as it currently operates. The OIPRD was never intended to be the sole investigative agency for public complaints against the police.

7.310 – Jurisdiction

66. In order to be efficient and effective, the OIPRD's jurisdiction must be clearly defined.

67. The *Police Services Act* currently provides that, subject to certain exceptions, any member of the public may complain to the OIPRD about the conduct of a police officer or the policies or services of a police force.[294]

68. The OIPRD's jurisdictional mandate is fairly straightforward, but several problems were identified during my consultations that should be remedied.

69. As I explain in the next sections, I recommend the following:

- Giving the OIPRD jurisdiction over certain excluded police personnel;
- Clarifying who can and cannot make a complaint; and
- Allowing the OIPRD in limited circumstances to initiate an investigation without a public complainant.

7.311 – Excluded officers

70. Any expansion of the OIPRD's jurisdiction must be handled with caution given the resource constraints the agency faces.

71. As noted above, the OIPRD already has a broad statutory mandate to receive and manage complaints about a police force's policies or services or about a police officer's conduct.[295]

72. The term "police officer" is defined in the *Police Services Act*, and specifically excludes special constables, auxiliary members of a police force, and First Nations Constables.[296] As a result, the OIPRD is not empowered to receive complaints about these officers, even though they perform policing functions.

73. Currently, the OCPC has the authority to investigate special constables and auxiliary members of a police force.[297] This is confusing and unduly complicates the OIPRD's and the OCPC's respective mandates.

74. As I explain in section 9.310, the OCPC is primarily an adjudicative body and should focus on its adjudicative mandate. Its investigative powers over special constables employed by a police force should be transferred to the OIPRD. Similarly, the OIPRD should assume the OCPC's investigative powers over auxiliary members of a police force. This will leave the OIPRD to focus on investigations as its area of expertise.

75. Moreover, to the extent special constables employed by a police force and auxiliary members of a police force are increasingly used to provide traditional police services, allowing the OIPRD to investigate complaints against them is consistent with the OIPRD's mandate to investigate police misconduct. These officers often have significant interactions with the public and perform duties that make them, in the eyes of the public, indistinguishable from regular police officers.

Recommendation 7.6

The OIPRD should receive and investigate public complaints concerning special constables employed by a police force and auxiliary members of a police force.

76. Jurisdiction over First Nations Constables will be discussed in section 10.500.

7.312 – Ineligible complainants

77. Subsection 58(2) of the *Police Services Act* lists persons who cannot make a complaint to the OIPRD.

78. To be consistent with the intent of that provision, the legislation also should prohibit a person from acting simply as a proxy for a person otherwise prohibited from making a complaint.

Recommendation 7.7

A person should be prohibited from making a complaint if it appears that the person is acting as a proxy for a person otherwise prohibited from making a complaint.

79. Notably, the *Police Services Act* bars members of a police force from filing a complaint if it concerns the member's police force or another member of that force.[298] This is because members of a police force have alternative mechanisms to resolve workplace-related disputes.

80. This bar, however, does not currently extend to police associations. It should. Police associations should be prohibited from making a complaint regarding a police force or member of a police force within the association's jurisdiction.

Recommendation 7.8

Police associations should be prohibited from making complaints regarding a police force or member of a police force within the jurisdiction of the police association.

81. During my consultations, several members of the policing community questioned the effectiveness of the internal mechanisms available to an officer who raises concerns about the actions of their co-workers. A member of a police force who complains to their chief about their fellow member's misconduct may be afraid of potential reprisals.

82. To address this situation, the Ministry of Community Safety and Correctional Services should review the process for making internal complaints to ensure there are effective whistleblower protections so that complaints can be made within the chain of command without fear of reprisal.

Recommendation 7.9

The Ministry of Community Safety and Correctional Services should review the process for members of a police service to make internal com-

plaints to ensure there are effective whistleblower protections.

7.313 – Investigations without public complainants

83. There are some limited circumstances when it is desirable for the OIPRD to conduct an investigation even without a member of the public making a complaint. In such circumstances, the OIPRD should have the jurisdiction to initiate an investigation in the absence of a formal complaint.

84. Several other jurisdictions allow their public complaints body to launch an investigation without a formal complaint. For example, in British Columbia, the Office of the Police Complaint Commissioner can order an investigation if information comes to its attention concerning conduct that, if substantiated, would constitute misconduct.[299] Similarly, the Civilian Review and Complaints Commission for the RCMP can initiate its own complaint if there are reasonable grounds to investigate a member's conduct.[300]

85. In Ontario, the OCPC can investigate the conduct of a police officer on its own motion or at the request of the OIPRD, the Minister of Community Safety and Correctional Services, a municipal council, or a police services board.[301] As I explain in section 9.323, this rarely invoked power is inconsistent with the OCPC's adjudicative mandate. Rather, the crucial work of investigating police misconduct on behalf of the public should be housed at the OIPRD, an expert investigative body.

86. In section 9.240, I address the issue of cross-referrals between the oversight agencies and recommend that the SIU director have the authority to refer conduct concerns to the OIPRD and policy and service concerns to the chief of police.

87. There are, however, other situations where it may be beneficial for the OIPRD to conduct an investigation in the absence of a formal public complaint.

88. First, there may be cases where a chief of police considers it advisable for the OIPRD to investigate an internal complaint rather than having an officer from the force's own professional standards unit conduct the investigation. The legislation already allows a chief of police, with board approval, to request that another force's chief conduct an investigation.[302] Chiefs of police also should be able to request that the OIPRD intervene to investigate.

89. Second, a police services board may wish to refer a matter directly to the OIPRD for investigation. This may be especially true if, for instance, the board suspects that the chief or deputy chief has engaged in misconduct. The OIPRD should have the power to conduct an investigation into such cases without a formal complaint.

90. Third, in some cases the OIPRD may investigate a complaint and uncover issues that go beyond the original complaint. In other cases, the complainant may decide to withdraw a complaint even where it appears that the officer committed serious misconduct. In such circumstances, the OIPRD should be authorized to conduct or continue an investigation in the absence of a complaint.

91. Finally, there may be matters where there is a public interest requiring an investigation into an officer's conduct. Information may come to the OIPRD's attention from court proceedings, news reports and, in some cases, community tips, that raises serious concerns warranting investigation. If there is a public interest in launching an investigation, the OIPRD should be authorized to initiate it. For instance, if misconduct is motivated by systemic racism or by discrimination, the OIPRD may wish to exercise its discretion to conduct an investigation.

Recommendation 7.10

A chief of police should be able to request that the OIPRD investigate a complaint, without the approval of the police services board.

Recommendation 7.11

The OIPRD should have the discretion to conduct an investigation without a public complaint in any of the following circumstances:

(a) If the SIU, a chief of police, or a police services board has referred a matter to the OIPRD for investigation;

(b) If a public complaint has been made, and the OIPRD investigation reveals potential misconduct or policy or service issues other than those raised by the complaint itself;

(c) If the complainant has withdrawn a complaint but there is a public interest in continuing the investigation; or

(d) If there is a public interest in initiating an investigation.

7.320 – Alternative dispute resolution

92. Early resolution of complaints through alternative dispute resolution should be encouraged whenever appropriate.

93. Currently, the OIPRD supports public complaint alternative dispute resolution through its customer service resolution, informal resolution, and mediation programs.

94. The OIPRD implemented its customer service resolution program in 2013. It allows the parties to voluntarily resolve less serious complaints before they are even formally screened under the *Police Services Act*. In customer service resolution, an experienced facilitator helps the parties discuss their concerns and exchange their perspectives.

95. Informal resolution occurs after a complaint is screened in. It may be attempted any time during the investigation or at the investigation's conclusion if the complaint is substantiated as less serious. Most commonly, a member of a police service's professional standards unit or a senior officer designated by the police chief is the facilitator. If the OIPRD investigates the complaint, however, the OIPRD investigator facilitates the informal resolution process.

96. Mediation is available as part of either customer service resolution or informal resolution. If customer service resolution is unsuccessful but the parties are still interested in resolving the complaint before it is formally screened, they can request mediation. Similarly, if informal resolution without mediation would likely fail, informal resolution with mediation may be proposed. It also may occur if there are concerns about power imbalances or the complainant is reluctant to accept a process being led by the police service.

97. The OIPRD's mediation program began in 2013. It is a voluntary process that provides an opportunity for complainants and respondent officers to meet with the assistance of a neutral, third-party mediator to discuss their concerns and reach a mutually agreeable resolution.

98. From April 1, 2014 to March 31, 2015, 143 complaints were successfully resolved through customer service resolution and 233 complaints were resolved through informal resolution. There were six requests for mediation between November 6, 2013 (when the program was launched) and March 31, 2015. As of April 1, 2015, mediation was successful in three of those cases and was still ongoing in one other.[303]

Alternative dispute resolution has proven to be a very effective way to resolve some complaints. And it often leads to a high degree of satisfaction for all of those involved. As one stakeholder commented, "alternative dispute resolution is where the healing begins."

99. In his 2005 report, Chief Justice LeSage strongly supported alternative dispute resolution mechanisms. He recommended that the OIPRD review complaints to determine whether they may be "suitably resolved through informal mediative type resolution," bearing in mind the gravity of the allegation, the effect of the alleged conduct on the complainant, and the public interest.[304]

100. Alternative dispute resolution has proven to be a very effective way to resolve some complaints. And it often leads to a high degree of satisfaction for all of those involved. As one stakeholder commented, "alternative dispute resolution is where the healing begins."

101. To be successful, alternative dispute resolution requires neutral and impartial mediators or facilitators. And it requires careful attention to avoiding replication of power imbalances.

102. Alternative dispute resolution provides an opportunity to satisfy and educate both officers and complainants. Many members of the public I met who had negative interactions with the police explained that they were more interested in hearing an explanation and apology from the officers than punishing them. By opening up a dialogue, alternative dispute resolution can help resolve these sorts of cases.

103. Moreover, several policing stakeholders indicated to me that officers who had been through an alternative dispute resolution process were much less likely to be the subject of further complaints. This is a positive result that should be encouraged through support for alternative dispute resolution in the complaints process.

Recommendation 7.12

Early resolution of complaints should be encouraged through the development and operation of alternative dispute resolution programs.

104. The availability of alternative dispute resolution after a disciplinary charge has been laid is discussed in section 8.310.

7.330 – Screening

105. After the OIPRD receives a complaint, it reviews the complaint to determine whether it should be screened in for investigation or screened out. Complaints are presumptively screened in.[305] But the *Police Services Act* enumerates a number of grounds for screening them out.[306]

106. According to OIPRD statistics, approximately half of all complaints are screened out. Some of the most common reasons for screening out complaints are that they are not in the public interest, that they are better dealt with under another act or law, or that they are frivolous.[307] When a complaint is screened out, the OIPRD must provide reasons.[308]

A number of stakeholders expressed dissatisfaction with the current screening process.

107. Throughout my consultations, a number of stakeholders expressed dissatisfaction with the current screening process. Common concerns related to the vagueness of some of the grounds for screening out complaints and certain legislative anomalies and omissions in the screening process. My recommendations to tailor the intake screening process are aimed at addressing these concerns.

108. First, the "public interest" ground for screening out a complaint should be eliminated or better defined.

109. Currently, approximately half of all complaints are screened out, the most common reason being that it is not in the "public interest" to deal with the particular complaint.[309]

110. As a result, many Ontarians who interact with the OIPRD receive a letter informing them that their complaint will not be investigated because, in the OIPRD's view, dealing with it is not in the public interest. In these cases, complainants may reasonably believe that the interests of the police have outweighed their interest in having a complaint investigated. This can cause them to lose faith in the complaints process.

111. While the OIPRD has established rules to help define the "public interest" considerations that apply when determining whether or not to deal with a complaint,[310] the term is especially vague.[311] This leaves complainants questioning the fairness and impartiality of the OIPRD and the transparency of the complaints process more broadly.

112. Notably, a number of other provinces do not have such a broad, undefined ground for screening out a complaint.[312]

113. Consideration should be given to removing the "public interest" ground for screening out a complaint or, at the very least, incorporating some of the factors in the OIPRD's rules into the legislation.

114. Public confidence in the OIPRD may be undermined if reasons for screening out a complaint are not transparent and persuasive.

Recommendation 7.13

The legislative grounds allowing the OIPRD to screen out complaints should be updated to reflect the fact that complaints are presumptively screened in, and that sufficient reasons need to be provided where they are screened out.

Recommendation 7.14

The "public interest" ground for screening out complaints should be removed or, if retained, legislatively defined.

115. Second, the OIPRD should have the discretion to screen out complaints if an investigation is not necessary or reasonably practicable.

116. Sometimes a complainant abandons a complaint after it is filed. Sometimes a complainant makes the same complaint for the same incident twice or alleges conduct that, even if proven, would not constitute misconduct.

117. And sometimes a complaint files a complaint that is incomplete. From time to time, the OIPRD may be unable to get the necessary information to appropriately evaluate the complaint, even after several attempts to follow-up with the complainant.

118. In these sorts of cases, the OIPRD should have the discretion to screen out a complaint.

119. The *National Defence Act*, for example, allows the Provost Marshal to not initiate or to terminate an investigation of a conduct complaint against a military police officer if, having regard to all the circumstances, investigation or further investigation is not necessary or reasonably practicable.[313]

120. Similarly, the Police Complaint Commissioner in British Columbia can discontinue an investigation if they determine that further investigation is neither necessary nor reasonably practicable.[314]

121. A similar provision should be adopted in Ontario. Indeed, if appro-

priate cases are screened out at an early stage, the OIPRD can focus its funding and resources on those remaining cases that are most worthy of investigation.

Recommendation 7.15

The OIPRD should be given discretion to screen out complaints, or terminate the investigation of complaints, when investigation or further investigation is not necessary or reasonably practicable.

122. Third, the legislation should allow for third party complaints.

123. Currently, the screening process has the potential to unduly limit third party complaints. This is particularly true with respect to policy and service complaints.

124. More specifically, although the *Police Services Act* allows a complaint to be made by "any member of the public," it also provides that the OIPRD may screen out a policy or service complaint if the policy or service did not have a direct effect on the complainant.[315]

125. The OIPRD's power to screen out a third party complaint about the conduct of a police officer is narrower. The *Police Services Act* provides that the OIPRD may decide not to deal with a conduct complaint if the complainant is not one of the following:

- A person at whom the conduct was directed;
- A person who saw or heard the conduct or its effects by being physically present at the time;
- A person who was in a personal relationship with the person at whom the conduct was directed and suffered loss, damage, distress, danger, or inconvenience; or
- A person who has knowledge of the conduct or controls or possesses compelling evidence that the conduct constitutes misconduct.[316]

There may be times when third parties have valid conduct, policy, or service complaints. For example, a legal clinic or community group may hear from multiple clients about a particularly troubling police practice.

126. There may be times when third parties have valid conduct, policy, or service complaints. For example, a legal clinic or

community group may hear from multiple clients about a particularly troubling police practice. It should be encouraged to file a complaint about that practice, even though it is not directly affected by the impugned policy or service.

127. These complaints promote effective and accountable policing. They should not be screened out simply because the complainant is not directly affected.

128. Misconduct is misconduct, no matter who reports it. And a policy or service concern should not be minimized simply because the person reporting it was not directly affected by it.

129. In his 2005 report, Chief Justice LeSage supported allowing third party complaints.[317] I agree with his recommendation. Third party individuals or organizations may bring valuable insight and resources into a consideration of police conduct and practices.

Recommendation 7.16

Third party complainants should be allowed to file complaints. The OIPRD's discretionary grounds for not dealing with a third party complaint should be narrow.

130. Fourth, the process for screening complaints against municipal chiefs, deputy chiefs, the OPP Commissioner, and OPP Deputy Commissioners should be simplified.

131. Currently, complaints about the OPP Commissioner or an OPP Deputy Commissioner must be referred to the Minister of Community Safety and Correctional Services. The Minister deals with the complaint as they see fit, with no further involvement from the OIPRD and no obligation to report back to the OIPRD as to how the complaint was addressed.[318]

132. If a complaint concerns a municipal chief or deputy chief, the OIPRD cannot simply undertake an investigation as would be the case with other officers. Instead, the OIPRD must first forward the complaint to the relevant police services board for its review and determination as to whether the OIPRD should investigate.[319]

133. The rationale for having boards effectively screen a complaint against a municipal chief or deputy chief a second time is unclear and leads to the possibility of opposing conclusions.

134. For example, if the OIPRD thinks a complaint should be investigated but the board disagrees, the board can essentially

overrule the OIPRD. Given the close relationship between many boards and chiefs and deputy chiefs, public confidence may be undermined when a board, rather than an independent oversight agency, decides whether a complaint warrants further investigation.

135. Moreover, some police services boards do not meet regularly. This can delay the decision-making process.

136. In addition, during my consultations, a number of boards indicated that they would prefer that the OIPRD have sole responsibility for this function.

The different treatment afforded to the highest ranking members of police services may undermine public trust in the fairness of the system. It also adds unnecessary complexity to the complaints process and weakens the OIPRD's independence.

137. The different treatment afforded to the highest ranking members of police services may undermine public trust in the fairness of the system. It also adds unnecessary complexity to the complaints process and weakens the OIPRD's independence.

138. The OIPRD's role in screening complaints should be the same for all police officers, including municipal police chiefs and deputy chiefs and the OPP Commissioner and OPP Deputy Commissioners.

139. Furthermore, as explained in section 7.341, once screened in, complaints against these officers should be investigated in the same manner as complaints against all other officers.

Recommendation 7.17

The OIPRD should have sole responsibility for screening complaints against a municipal chief of police or a municipal deputy chief of police, and should notify the police services board of its decision.

Recommendation 7.18

The OIPRD should have sole responsibility for screening complaints made against the OPP Commissioner and OPP Deputy Commissioners, and should notify the Minister of Community Safety and Correctional Services of its decision.

140. Finally, the intake and screening process must properly track complaints so the OIPRD can easily identify officers who are the subject of recurrent complaints and people who repeatedly file complaints with no merit.

141. During my consultations, a number of stakeholders expressed concern about so-called 'frequent flyers.' These are officers who are the subject of a much higher level of complaints than other officers in the same police department performing similar functions. A common concern was that such officers may slip under the radar if complaints against them are frequently screened out or resolved informally.

142. I was informed by the OIPRD that its current intake software tracks both the names of complainants and police officers. This software should allow the OIPRD to flag officers who are the subject of repeated complaints to help identify potential systemic issues or patterns of misbehaviour. Similarly, it should indicate to the OIPRD whether a particular complainant has made numerous complaints that had no merit.

Recommendation 7.19

The OIPRD should track complaints to identify officers who are the subject of multiple complaints and complainants who file multiple complaints without merit.

7.340 – Investigations

143. There is broad consensus among members of the public and policing stakeholders that an effective public complaints system depends in part on the integrity of the investigative process. Public and policing confidence requires thorough and competent investigations, conducted with fairness and impartiality.

There is broad consensus among members of the public and policing stakeholders that an effective public complaints system depends in part on the integrity of the investigative process.

144. As I explain below, I recommend that, over time, the OIPRD investigate all public conduct complaints against police in Ontario. This will require ensuring that

the OIPRD has strong evidence collection tools and capacity to conduct investigations in a timely manner. Following its investigation, the OIPRD should determine whether or not to lay disciplinary charges.

145. Expanding the OIPRD's investigative responsibilities will undoubtedly require time and a significant infusion of resources. That said, I believe that independent investigation will help foster trust and support in the public complaints process.

146. Moreover, there are numerous practical benefits to having a high-quality public complaints system, including high-quality investigations. If problematic officers and behaviours are identified early, they can be addressed before they become a bigger and more costly issue. This will help to avoid more police complaints, civil litigation, and human rights complaints.

If problematic officers and behaviours are identified early, they can be addressed before they become a bigger and more costly issue. This will help to avoid more police complaints, civil litigation, and human rights complaints.

7.341 – Investigative responsibility

147. Currently, when a conduct complaint involves a police officer other than a municipal chief, the OPP Commissioner, or their deputies, the OIPRD may retain the complaint and conduct its own investigation, or refer the matter to the officer's police service or a different police service for investigation.[320]

148. In practice, the OIPRD refers the vast majority of public complaints to the officer's police service for investigation. By way of example, from April 1, 2014 to March 31, 2015, the OIPRD referred 950 conduct complaints to the officer's police service, 7 to another police service, and retained 161.[321]

149. The fact that so few complaints are independently investigated by the OIPRD erodes public confidence in the complaints process. During my consultations, many members of the public were surprised to learn that a complaint made to an independent body about a police officer's conduct could be referred back to that same officer's police force for investigation.

150. A commonly expressed view at my consultations was that "the police should not be investigating police." Nonetheless that is the current state of affairs. The

OIPRD is largely a screening body and not an investigative one.

151. As I indicated in my introductory comments to section 7.300, this is not a failure of the function of the OIPRD, but a failure of its form. The OIPRD was not created to be the sole investigative agency for public complaints against police, but rather to review complaints and oversee the complaints process.

152. The OIPRD, as currently constituted, is not adequately resourced to investigate all public conduct complaints. Fiscal and geographical constraints compel the OIPRD to refer many complaints back to police services even when the circumstances of a particular complaint may justify independent investigation.

153. In my view, the preferred approach is for all public conduct complaints to be received, reviewed, and investigated by the OIPRD. Independent and impartial investigation of complaints will help foster public trust in not only the complaints system, but policing more generally.

154. Many of the people with whom I spoke expressed a strong desire to have an independent, civilian body investigating police misconduct rather than police services themselves. Irrespective of issues of actual bias, they noted the potential for a perception of bias when police officers investigate other police officers in their same force.

155. I recognize that having the OIPRD conduct all public conduct complaint investigations will require a commitment of time and resources. Nonetheless, I believe it is an achievable goal toward which the OIPRD can work over time.

156. Beginning immediately, the OIPRD should be infused with sufficient resources to hire and train competent investigators. The selection of these investigators and the skills they should develop are discussed in section 4.730. Like the SIU, the OIPRD may wish to explore hiring some part-time and on-call investigators, particularly to service rural or remote locations. The increased workload may necessitate the creation of a new senior-level position, such as a deputy director of investigations.

157. Within five years, the OIPRD should have built enough capacity to independently investigate all public conduct complaints. In the interim, the OIPRD should retain its discretion to refer some cases back to police services for investigation.

158. For referred cases, the service should investigate on the OIPRD's behalf

and submit the investigative report to the OIPRD. The OIPRD should review the report and make the charging decision. If the OIPRD believes that the investigative report is incomplete or additional investigation is otherwise needed, it should direct the service to further investigate or undertake its own investigation. Following that further investigation, the OIPRD should decide whether or not to lay any charges.

Recommendation 7.20

Within five years, the OIPRD should be the sole body to investigate public conduct complaints.

Recommendation 7.21

The OIPRD should receive funding and resources commensurate with its new responsibility to investigate all public conduct complaints.

Recommendation 7.22

Over the next five years, until the OIPRD is able to conduct all public conduct complaint investigations, the OIPRD should be able to refer complaints to police forces for investigation. During this interim period, the OIPRD should be solely responsible for laying disciplinary charges and should have the authority to order further investigation or to take over an investigation conducted by a police force.

159. Furthermore, as I alluded to in section 7.330, the OIPRD's responsibility to investigate all public conduct complaints should extend to all police officers, including a municipal chief, the OPP Commissioner, and their deputies.

160. Currently, the OIPRD already conducts all investigations involving municipal police chiefs and deputies.[322] This practice should continue.

161. Complaints involving the OPP Commissioner and OPP Deputy Commissioners are referred to the Minister of Community Safety and Correctional Services.[323] They should instead be investigated by the OIPRD and treated like any other conduct complaint involving any other officer.

Recommendation 7.23

The OIPRD should be solely responsible for investigating complaints against municipal chiefs of police, the OPP Commissioner, and their deputies.

162. For the sake of clarity, I should note that the OIPRD's expanded mandate to investigate all public conduct complaints should not extend to all service and policy complaints.

163. Under the current legislation, complaints involving the services and policies of a municipal police force or the OPP cannot be retained by the OIPRD. Rather, they must be referred to the municipal chief of police, OPP Commissioner, or OPP detachment commander, as appropriate.[324]

164. These policy and service complaints make up a very small number of the total number of complaints screened in each year.[325] The OIPRD does not currently have the capacity to deal with policy or service matters. That said, in some rare cases, the OIPRD may be well positioned to consider a policy or service complaint, if properly resourced.

165. For example, sometimes a public complaint raises not only conduct issues, but also policy or service issues. In such cases, it may make little sense to have the OIPRD investigate the conduct of the officer while the police force conducts its own concurrent examination of the policy or service. Similarly, a policy or service complaint may raise sensitive issues about a police force better considered by an independent, external body.

166. Provided the OIPRD is properly resourced, it should have the discretion to retain policy or service complaints in appropriate circumstances. As part of its review of these complaints, it should work with the local professional standards unit to the extent doing so is feasible and advisable. Its report should be shared with the chief and police services board for further action.

167. I anticipate that the OIPRD will continue to refer the vast majority of policy and service complaints back to police forces. That said, I believe the absolute prohibition on the OIPRD retaining service or policy complaints should be removed. This more measured and flexible approach will help the OIPRD to advance the goals of effective policing and policing oversight.

Recommendation 7.24

The OIPRD should have the discretion to retain service or policy complaints in appropriate circumstances.

7.342 – Disciplinary charges

168. The current scheme for laying disciplinary charges is unduly complex and should be simplified.

169. Currently, when the OIPRD refers a conduct complaint to the police chief for investigation, the chief may or may not substantiate it. If the chief substantiates the complaint but believes the misconduct or unsatisfactory work performance is "not of a serious nature," they may settle the matter informally without holding a hearing. If the misconduct or unsatisfactory work performance is serious, the matter proceeds to a disciplinary hearing.[326]

170. A complainant may request that the OIPRD review the chief's decision to not substantiate a complaint or to determine that the misconduct or unsatisfactory work performance is not of a serious nature. The OIPRD will review the chief's decision and may reverse it.[327]

171. In addition, on its own initiative, the OIPRD may at any time take over an investigation referred to a police chief or direct the chief to deal with the complaint as it specifies.[328]

172. For OIPRD-retained investigations, the OIPRD determines whether to substantiate the complaint. If the complaint is substantiated, the OIPRD refers the matter to the chief indicating whether or not it believes that the misconduct or unsatisfactory work performance is of a serious nature. If the chief of police believes that the misconduct or unsatisfactory work performance is not of a serious nature, the matter may be resolved informally. For serious misconduct or unsatisfactory work performance, the chief will hold a hearing.[329]

173. In the new complaints system, I have recommended that the OIPRD conduct all investigations from conduct complaints. Building on this, the OIPRD also should have sole authority to lay charges. This will ensure that the decision to charge or not to charge will be truly independent, thereby enhancing public confidence in the system.

174. Following its investigation, if the OIPRD has reasonable grounds to believe that the officer's conduct constitutes misconduct or unsatisfactory work performance, the OIPRD should charge the

officer. As discussed more fully in section 8.210, an independent public complaints prosecutor will then be given carriage of the file.

175. The prosecutor will review the investigative report and may decide to settle the complaint or withdraw the charge. Otherwise, the prosecutor will serve a notice of disciplinary hearing on the officer and the matter will be heard before an independent adjudicator, namely a renewed OCPC.

176. In deciding whether to charge an officer, the OIPRD should not be confined to laying charges as described in the complaint itself.

177. The OIPRD investigation may indicate that an officer's actions constitute misconduct that was not specifically alleged by the complainant. For example, a complainant in a use of force incident may complain about alleged discreditable conduct because the officer used profane and abusive language, but the OIPRD investigation reveals that neglect of duty charges are also appropriate because the officer failed to comply with an applicable order. Moreover, an officer may engage in misconduct during the OIPRD investigation, such as intentionally obstructing it.

178. In some cases, the OIPRD may wish to refer a concern to the chief of police. In others, it may want to launch a new investigation, consistent with my recommendation in section 7.313. Still in others, it may wish to proceed directly with laying a disciplinary charge.

179. Ultimately, the OIPRD should have the authority to lay disciplinary charges. This includes charges that come to light during or in connection with its investigation.

Recommendation 7.25

The OIPRD should be vested with the power to lay disciplinary charges against police officers.

180. During my consultations, several stakeholders expressed concern that the *Police Services Act* currently contains unfortunate wording with regard to those complaints that will result in disciplinary charges and proceed to a hearing.

181. First, the *Police Services Act* draws a distinction between "substantiated" and "unsubstantiated" complaints. This language is essentially used to describe whether there are reasonable grounds to believe the conduct of the officer constitutes misconduct.

182. Unfortunately, when complainants are told at the conclusion of an investigation that their complaint has been substantiated, it creates a great deal of confusion. That language conveys a finality that is misleading. In reality, the matter may be resolved informally or proceed to a disciplinary hearing where the officer is cleared.

183. It is immensely dissatisfying to a complainant to be informed that their complaint is substantiated, only to have the complaint dismissed at a disciplinary hearing. The fact that the complaint was initially "substantiated" suggested that it was already proven.

184. Second, the *Police Services Act* draws a distinction between serious misconduct and misconduct that is "not of a serious nature." It does not, however, explain the basis upon which the distinction is made.

185. Not only does this distinction add further complexity to an already complex complaints process, but it undermines complainant confidence in and satisfaction with civilian police oversight. Some complainants, for example, believe that the characterization of their complaint as being not serious means that their complaint is not important.

186. In my view, the "substantiated/unsubstantiated" and "serious/not serious" terminology should be removed from the legislation. Instead, the OIPRD should communicate the results of an investigation by indicating whether or not there were reasonable grounds to lay a charge.

187. Under the new complaints model, officers should be charged in all cases where there are reasonable grounds to believe that they committed misconduct or unsatisfactory work performance. As discussed in section 8.210, following that charge, the independent public complaints prosecutor will evaluate the case and may decide to settle or withdraw the charge. If the case does not settle or the charge is not withdrawn, the officer will be served with a notice of disciplinary hearing.

It is immensely dissatisfying to a complainant to be informed that their complaint is substantiated, only to have the complaint dismissed at a disciplinary hearing. The fact that the complaint was initially "substantiated" suggested that it was already proven.

Recommendation 7.26

The "serious/not serious" and "substantiated/unsubstantiated" terminology for public complaints should be abolished.

7.343 – Duty to cooperate

188. To effectively investigate complaints, the OIPRD must be equipped with robust evidence collection tools. In section 5.300, I discussed the need for strong evidence collection tools in SIU investigations. The same is true for the OIPRD.

189. Currently, there is no clear legislated duty on police services, police officers, and other police personnel to cooperate with an OIPRD investigation. That said, I have been advised that, in practice, the police and the OIPRD generally have a good working relationship and manage to work together appropriately during the course of an investigation.

190. Under the *Police Services Act*, the OIPRD has extensive regulatory search and seizure powers.[330] It also has all the powers provided in section 33 of the *Public Inquiries Act, 2009*, such as the power to summons witnesses and evidence.[331] This is sometimes an awkward arrangement, however, and can lead to significant delays in an investigation.

191. In my view, while these powers should be maintained, the duty to cooperate with the OIPRD also should be set out and specified in the legislation. Consistent with my recommendations for the SIU, this duty should extend beyond just police officers to include other police employees.

Recommendation 7.27

The general requirements of the duty to cooperate with the OIPRD, as well as the timing of that requirement, should be set out in the legislation. In particular, the legislation should stipulate the following:

(a) The duty to cooperate arises immediately upon OIPRD involvement; and

(b) The duty to cooperate requires the police to comply forthwith with directions and requests from the OIPRD.

Recommendation 7.28

The general types of information or evidence that the OIPRD is normally entitled to receive, as well as any restrictions on the information or evidence the OIPRD can request, should be set out in the legislation.

Recommendation 7.29

The duty to cooperate with the OIPRD should specifically extend to civilian members of a police force, special constables employed by a police force, and auxiliary members of a police force.

192. As I suggested in section 5.330 with respect to the SIU, to be effective, the duty to cooperate must be enforceable. Currently, section 79 of the *Police Services Act* makes it an offence to harass, coerce, or intimidate a complainant; or to hinder, obstruct, or provide false information to the OIPRD. The consent of the Attorney General is required before a person can be prosecuted under the provision.[332]

193. This provision should be updated in the new legislation to be consistent with the offence for failing to cooperate with the SIU, discussed in section 5.330. The decision to lay a charge should be at the discretion of the OIPRD and not require consent.

Recommendation 7.30

The legislation should include a provincial offence for failing to cooperate with the OIPRD punishable by fine, imprisonment, or both.

194. Finally, maintaining effective evidence collection tools in cases involving the SIU or youth may create unique challenges.

195. First, in some cases, an officer's conduct may attract the scrutiny of both the SIU and OIPRD. In section 9.200, I discuss the issue of concurrent investigations and recommend that criminal investigations have priority over civil complaints. I also recommend that the SIU provide a copy of its investigative file to the OIPRD at the end of the SIU's case, at the request of the OIPRD, and subject to any privacy and confidentiality conditions.

196. Second, complaints to the OIPRD are often made by, or on behalf of, a young person. Often that young person was involved in an interaction with the police. The police records of that interaction become youth records under the

Youth Criminal Justice Act.[333]

197. I was informed that, until May 2016, the OIPRD was required to apply to a youth court in order to access youth records for its investigations and reviews. In May 2016, an Order-in-Council granted the OIPRD access to these records in certain circumstances.[334] Notably, those circumstances do not include retained investigations regarding interactions with a young person that result in extrajudicial measures.

198. Furthermore, if the complainant is a victim of a crime committed by another young person, the Order-in-Council does not allow production of the records of that other person without their consent. This consent is unlikely to be provided.

199. Records otherwise protected by the *Youth Criminal Justice Act* may be highly relevant to OIPRD investigations. For example, they may be pertinent to an examination of the underlying facts of a complaint or to the credibility of a witness or complainant. Production of these records to the OIPRD, with proper restrictions, could assist with the administration of justice and the proper resolution of complaints.

Recommendation 7.31

The provincial government should request that the federal government amend the *Youth Criminal Justice Act* to permit the OIPRD to access records.

7.344 – Limitations

200. A fair and effective complaints process requires timely investigations.

201. At present, there is a six-month limitation period for serving a notice of disciplinary hearing on a police officer. For rank and file officers, the clock starts running from the day on which the OIPRD retains the investigation or refers it to the police force. For chiefs of police and deputy chiefs of police, the clock starts running when the OIPRD refers the complaint to the police services board.[335]

202. If more than six months have elapsed, subsection 83(17) of the *Police Services Act* provides that a notice of disciplinary hearing may not be served unless the police services board (in the case of municipal officers) or the OPP Commissioner (in the case of members of the OPP) believes the delay was reasonable.[336]

203. With respect to municipal officers, the chief of police – not the OIPRD – is

responsible for bringing the application before the board for permission to serve the notice of hearing beyond the six-month limitation period. This is the case even if the OIPRD retained the investigation. The OIPRD does not have legislated standing to be heard on the application, even when the timeliness of its investigation is under scrutiny. Rather, the OIPRD's explanation for the delay is placed before the board indirectly through the chief.

204. In some cases, the chief of police may be in a conflict of interest or poorly situated to explain the delay. For example, the chief may be the subject of the complaint or an SIU investigation may have delayed the OIPRD investigation.

205. Finally, many police services board members with whom I spoke also acknowledged that they lack the knowledge and training to effectively address these applications.

206. It is troublesome that a board or the OPP Commissioner can effectively stay disciplinary charges if six months have passed without holding an evidentiary hearing or being restricted by the jurisprudence governing stays for unreasonable delay or an abuse of process.[337]

207. Investigative delay into police misconduct should not be treated any differently from investigative delay in other professional misconduct contexts, where it may be raised at the hearing and addressed in accordance with administrative law and natural justice principles.

208. Eliminating the time limit for serving a notice of hearing will help streamline the complaints process and reinforce the OIPRD's independence.

209. Moreover, as I noted in section 7.342 and explain more fully in section 8.210, under the new complaints regime, the public complaints prosecutor, not the OIPRD, will have responsibility for serving the notice of hearing on the officer. After the OIPRD lays a disciplinary charge, the public complaints prosecutor will be given carriage of the file. The prosecutor may attempt to settle the case before serving the officer with a notice of hearing. Imposing a six-month deadline for serving a notice of hearing could hamper the investigation or the prosecutor's capacity to settle a matter without the need for a formal hearing.

It is troublesome that a board or the OPP Commissioner can effectively stay disciplinary charges if six months have passed.

210. Finally, I hasten to add that, if the OIPRD were properly funded, then it would rarely take longer than six months to complete a conduct investigation. The OIPRD should work towards improving its performance targets to ensure timely completion of investigations. There should not, however, be an arbitrary six-month limitation period for completing an investigation and serving a notice of disciplinary hearing.

211. I recommend the elimination of the six-month limitation period altogether. At a minimum, the public complaints prosecutor should not have to rely on police chiefs, boards, and the OPP Commissioner for the extension. This intermingling of roles and responsibilities hampers the appearance and actual independence of the OIPRD and the public complaints prosecutor.

212. Concerns regarding inordinately long or delayed investigations should be addressed at the disciplinary hearing in accordance with administrative law and natural justice principles.

Recommendation 7.32

The six-month limitation period for serving a notice of hearing for disciplinary matters should be eliminated for public complaints.

7.400 – Transparency and accountability

213. A transparent and accountable public complaints process is crucial to public and police confidence in civilian police oversight.

214. In this section, I make recommendations to improve the transparency and accountability of the OIPRD.

215. First, I make recommendations about how the OIPRD should share the results of its investigations with the involved parties and the public at large.

216. Second, I discuss how the OIPRD can improve its transparency and accountability by providing timely information about the status of complaints to public complainants, police officers, and police forces.

7.410 – Results of investigations

217. Transparency and accountability in OIPRD decision-making depends in part on the OIPRD sharing the results of its investigations.

218. What information should the OIPRD share about its investigations? With whom should this information be shared? These are important considerations when assessing the agency's transparency and accountability.

219. Currently, when the OIPRD screens out a complaint, it must notify the complainant and chief of police of the police force to which the matter relates in writing, with reasons.[338] For conduct complaints, the chief of police, in turn, informs the relevant officer.[339]

220. When a conduct complaint is screened in but not substantiated, the investigative report is provided to the complainant, chief of police, and police officer.[340]

221. For substantiated complaints, the chief of police receives the investigative report.[341] The *Police Services Act* is silent, however, about whether the complainant and police officer also should receive the report.

222. As a matter of practice, the OIPRD currently requires that the investigative report be provided to complainants in both unsubstantiated and substantiated cases. It may, however, minimally redact certain private information, such as home addresses or telephone numbers.

223. The OIPRD noted that there may be circumstances where it should be allowed to delay releasing the investigative report or require undertakings to be signed before the report is released. For example, if a complaint proceeds to a hearing, the dissemination of the investigative report prior to the hearing could taint witnesses.

224. In my view, OIPRD decisions must be transparent to complainants, police officers, and police chiefs.

225. When the OIPRD screens out a complaint, it should provide reasons explaining its decision.

In my view, OIPRD decisions must be transparent to complainants, police officers, and police chiefs.

226. When a complaint is screened in and investigated, the OIPRD should explain whether it has decided to lay a charge and, if not, why not. The OIPRD should generally share the investigative report with the complainant, police officer, and police chief. That report, however, may need to be redacted in part. The OIPRD also may need to delay sharing the report or require undertakings to accommodate administration of justice concerns.

Recommendation 7.33

Decisions of the OIPRD should be transparent to complainants, police officers who are the subject of a complaint, and police chiefs of the forces to which the complaint relates.

227. Beyond the parties with an immediate interest in a particular complaint, there is also a broader public interest in complaints made to the OIPRD and their outcomes.

228. On the one hand, the public wants to make sure that the OIPRD is accountable for the decisions it makes and that it is fulfilling its duty to oversee the public complaints system fairly and effectively.

229. On the other hand, complainants and officers who are the subject of complaints may want to maintain a certain level of privacy.

230. For example, complainants may be deterred from filing legitimate complaints if they are concerned that their names and information about their complaints will be widely publicized.

231. Officers, too, may have genuine reservations about making all complaints public. During my consultations, for instance, some officers suggested that they could face potential prejudice if detailed information about each public complaint was widely available. They noted that, if a complaint is screened out or does not proceed to a disciplinary hearing, the public interest in having full details about the complaint is diminished.

232. I recognize that the need for public transparency and accountability must be balanced with the rights and interests of complainants and police officers.

233. Currently, the OIPRD publishes yearly statistical information about the complaints it receives. This includes the number of complaints that are screened in and screened out, including the number of complaints screened out under each ground. It also includes the number of substantiated and unsubstantiated complaints. And it breaks down the number of substantiated complaints that are serious and those that are not.

234. In addition, the OIPRD publishes statistics on its customer service resolution and informal resolution programs, requests for review, and performance measures. In some cases, anonymized summaries of a few cases accompany statistics to serve as examples.

235. Besides publishing statistics, the OIPRD also makes public all hearing deci-

sions from disciplinary hearings resulting from public complaints.

236. In my view, disciplinary hearing decisions should continue to be made public. As I explain in section 8.320, disciplinary hearing decisions should be released as soon as practicable and made available to the public (see recommendation 8.8).

237. Public trust and confidence in civilian oversight and the integrity of the disciplinary process is fostered by openness and publicity of disciplinary hearings. There is a heightened public interest in knowing about these cases and a correspondingly lower expectation from complainants and officers that information about these complaints will be shielded from public scrutiny.

238. But even when complaints do not culminate in a disciplinary hearing, there is still a public interest in knowing that complaints were made and their outcomes. In these cases, the public desire to have full information, such as an investigative report or the reasons for screening out a particular complaint, must be considered against complainants' and officers' legitimate expectations of privacy and the potential impact release of such information would have on the public complaints system.

239. In the absence of a disciplinary hearing, the desire for public transparency and accountability is met by having the OIPRD publish summary statistics, disaggregated by outcome type, together with anonymized summaries of example cases. This will allow the public to scrutinize OIPRD decision-making, identify trends, and ensure that the OIPRD is working effectively in the public interest.

Recommendation 7.34

The OIPRD should collect and publish summary information on the outcomes of all public complaints.

7.420 – Communication

240. During my consultations, I heard a number of complaints about communication and delay in the OIPRD process. Public complainants and policing stakeholders both voiced their concerns that, like the SIU, the OIPRD sometimes fails to effectively communicate with parties and resolve cases.

241. The OIPRD has developed a series of performance targets. They are an important tool for monitoring, evaluating, and improving the OIPRD's processes and

accountability. The OIPRD should continue to work towards improving these targets such that cases are resolved in a timely manner and parties remain informed.

242. In addition, in individual cases, the OIPRD should periodically report to the complainant, police officer, and police force about the status of its investigation and the reasons for any delay. It could, for example, provide an update within thirty days from the filing of the complaint and at least every ninety days thereafter, explaining whether the investigation is ongoing and how much longer it will take.

243. The transparency and accountability of the public complaints process is enhanced through keeping parties apprised as to the status of complaints and their disposition.

Recommendation 7.35

The OIPRD should work towards performance metrics, reportable to the public, to ensure timely completion of its work.

Recommendation 7.36

The OIPRD should communicate periodically with involved parties about the status of a complaint and inform them of its outcome as soon as is practicable.

7.500 – Systemic review and monitoring

244. The OIPRD must have the proper tools and resources to engage in systemic reviews and monitor complaints. This will allow the OIPRD to be an effective, transparent, and accountable oversight agency.

245. Currently, the OIPRD may examine and review issues of a systemic nature regarding complaints made by members of the public. It also may make recommendations respecting such issues.[342]

246. Below, I recommend providing for heightened accountability in these systemic reviews. I also make recommendations aimed at improving the OIPRD's monitoring capabilities.

7.510 – Systemic reviews

247. The OIPRD has the power to conduct reviews on systemic issues regarding public complaints. As part of its review,

it also may make recommendations on these issues to the Minister of Community Safety and Correctional Services, the Attorney General, chiefs of police, boards, or any other person or body.[343]

248. These reviews generally look beyond any particular complaint to examine whether systemic failings have occurred. They make recommendations to address these failings and promote public trust and confidence in policing.

249. In recent years, there has been widespread community interest and complaints around certain policing issues. These issues often merit deep and sensitive inquiry into the policing rationale for certain policies and practices as well as the real-life impact of these policies and practices on the public. This is true for the systemic investigations already undertaken by the OIPRD including strip searches, DNA sweeps, the G20 protests, and the practices for policing Indigenous peoples in Thunder Bay. It is also true for systemic issues that the OIPRD has not specifically addressed, such as the police response to systemic racism or domestic violence and sexual assault reporting.

250. There is demonstrable public interest with respect to a number of policing issues that would greatly benefit from independent civilian inquiry. These issues should not be wholly left to the Ministry of Community Safety and Correctional Services and the whim of the government of the day. Nor should they be left to the individual police services and boards to craft a patchwork response across the province. Instead, the OIPRD should be properly resourced and funded to study and report on systemic issues in policing.

251. Any serious investment into systemic investigation requires building institutional expertise in disciplines that are relevant to the modern-day policing context. This means hiring and empowering investigators and researchers with training and experience in areas such as anti-racism and human rights.

There is demonstrable public interest with respect to a number of policing issues that would greatly benefit from independent civilian inquiry.

252. The effectiveness of the OIPRD's systemic reviews further turns in part on ensuring that there is accountability once a review is completed.

253. Currently, the *Police Services Act* does not require that the OIPRD publish

a written report of its reviews. Nor does it give the OIPRD the power to compel a police force to implement a recommendation. Indeed, the legislation contains no requirement for follow up of any kind to the recommendations made by the OIPRD.

254. At the very least, there should be a requirement that the OIPRD make its recommendations in the form of a written report. This report should be made public, with copies provided to the relevant police chiefs and police services boards.

255. The OIPRD also should be able to direct a chief of police to report back to the OIPRD explaining if the OIPRD's recommendations were accepted and, if not accepted, the reasons why not. Where the recommendations relate to a specific police force or forces, the OIPRD should designate the chiefs from those forces to respond. Where the recommendations relate more generally to police forces in Ontario, the OIPRD should have the authority to designate one or more chiefs of police required to provide a response. This response should be provided as soon as is feasible, but in any event within six months.

Recommendation 7.37

The OIPRD should make the results and recommendations of systemic reviews in the form of a written report. The report should be available to the public.

Recommendation 7.38

The OIPRD should have the authority to designate in writing one or more chiefs of police to respond to recommendations from a systemic review. The designated chief of police or chiefs of police should be required to respond in writing to the OIPRD as soon as is feasible, but in any event within six months.

7.520 – Monitoring

256. Public trust and confidence in civilian police oversight is enhanced by equipping the civilian oversight bodies with the tools to monitor and respond to issues of concern in policing and policing oversight.

257. As I explain more fully in chapter 11, there is a benefit to collecting demographic data which can be used to

improve police services and the oversight bodies. My recommendations in chapter 11, however, should not be read to the exclusion of collecting data on non-demographic matters.

258. Collecting and analyzing non-demographic data can help to identify individually problematic behaviour. It also can be used to uncover matters of broad concern, such as trends and deficiencies in officer training.

259. As a result, I recommend that the OIPRD collect data on public complaints to identify potential patterns with respect to individual officers and forces, systemic and policy issues, and disciplinary outcomes.

260. Notably, the OIPRD should track and publish the general nature and outcomes of public complaints. This should include the number of hearings resulting from public complaints, the number of convictions, and the penalties imposed. Where disciplinary charges are laid but resolved prior to a hearing, the OIPRD should track how many charges were withdrawn or settled and the terms of the penalties imposed.

261. Tracking and publishing data on public complaints may help to identify potential patterns and issues in the public complaints process.

Recommendation 7.39

The OIPRD should monitor complaints and publish the results of disciplinary charges, including the outcomes and penalties imposed.

CHAPTER 8

Public Complaint Adjudications

8.100 – Introduction

1. Who should prosecute and adjudicate public complaints? The answer to this question is fundamental to public and police confidence in civilian oversight. Trust in the public complaints process requires that public complaints be fairly prosecuted and adjudicated.

2. During my consultations, virtually all stakeholders – including complainants, front-line police officers, police chiefs, and members of the public – agreed that the current system for prosecuting and adjudicating public complaints is not working and fails to promote trust and confidence.

3. There are serious concerns about real or apparent bias when public complaints are prosecuted and adjudicated by people selected by the chief of police. A fair and effective public complaints adjudication system demands greater independence and impartiality.

4. In this chapter, I make recommendations to improve public complaint adjudications. As I explain, accountability and transparency are best served by having an open and timely public complaints adjudication model.

5. First, I recommend that public complaints be prosecuted by independent public complaints prosecutors before independent adjudicators, namely a renewed OCPC.

6. Second, I recommend that public complaints be resolved expeditiously, with timely decisions shared with the public at large.

8.200 – Independent adjudications

7. The issue of who prosecutes and adjudicates public complaints about potential police misconduct is critical to confidence in police oversight. The prosecution and adjudication of complaints must be, and must be seen to be, fair and unbiased, both by the public and policing stakeholders.

8. Under the current system, a disciplinary hearing must be held when an investigation has substantiated an allegation that a police officer engaged in serious misconduct. It also may be required in some cases of substantiated, but not serious misconduct.[344]

9. At the hearing, the prosecutor is selected by the chief of police. The prosecutor can be another police officer or a person authorized under the *Law Society Act*.[345]

10. In addition, the chief of police may delegate the conduct of the hearing to a police officer or judge.[346] During my consultations, I heard that chiefs often ask retired or current senior police officers to take on this role.

11. As a result, both the prosecutor and hearing officer may be senior police officers. I am told that this is, in fact, a commonplace practice across the province, whether a disciplinary hearing results from a public or internal complaint.

12. There is nothing necessarily nefarious about this. The chief *is* the disciplinarian in the employment context. The problem though is that this arrangement does not keep pace with expectations of adjudicative fairness. The role of the adjudicator today is seen as more in the nature of a neutral arbiter, regardless of how it was historically conceived.

13. There is broad consensus from both the public and the police that an adjudicative process where the chief of police chooses both the adjudicator and the prosecutor is not fair and does not meet the appearance of fairness test. Although the Divisional Court has said the existing regime complies with the *Canadian Charter of Rights and Freedoms*, it is not ideal.[347] There can be no serious argument that the current process appears free from bias and completely impartial.

There is broad consensus from both the public and the police that an adjudicative process where the chief of police chooses both the adjudicator and the prosecutor is not fair and does not meet the appearance of fairness test.

14. I have heard from the police who potentially stand accused that they have no confidence in the fair adjudication of their matters. Members of the public have also told me that the internal prosecution and adjudication of complaints about police *by police* is one of the main reasons they would not make a complaint. Both police and potential complainants see the process as "rigged."

15. The current system should not continue. Rather, as I explain below, I believe that independent prosecutors should prosecute public complaints before a completely independent adjudicative body, a reformed OCPC.

8.210 – Independent prosecutors

16. The current system for prosecuting public complaints has lost the confidence of many members of the public and police officers.

17. Irrespective of whether a complaint is initiated by a member of the public or a chief of police, the chief designates the prosecutor at the disciplinary hearing.[348] This prosecutor may be either a police officer from any force of a rank equal to or higher than the officer who is subject to the hearing, or a person authorized under the *Law Society Act*.[349] Their selection is within the sole discretion of the chief.

Reasonable members of the public worry that officers are not being vigorously or fairly prosecuted when their peers and co-workers are managing the prosecutions.

18. Some members of the public noted that having the chief of police choose the prosecutor created a perception of bias. They believed that prosecutors may be unduly influenced by chiefs to produce certain results because they serve at their request.

19. For example, public complainants may have concerns about a potential conflict of interest if the OIPRD directs the chief to hold a hearing, even after the chief decided that a hearing was not warranted. In such cases, the prosecution of the public complaint could be undermined by the chief's power to control the selection of the person filling the key prosecutorial role.

20. Reasonable members of the public worry that officers are not being vigorously or fairly prosecuted when the officers' peers and co-workers are managing the prosecutions.

21. As we move to a more independent and fair public complaints system, independent public complaints prosecutors should be charged with prosecuting all public complaints. The establishment of independent public complaints prosecutors will help avoid the appearance of bias. It also will increase confidence in the fairness and transparency of prosecutions in the public complaints system.

22. Following the OIPRD's decision to lay misconduct charges, the OIPRD should turn carriage of the file over to a public complaints prosecutor.

23. These public complaints prosecutors should be legally trained and have the

skills and knowledge to effectively prosecute police disciplinary cases. They should be selected and employed by the Ministry of the Attorney General, thereby enhancing their independence from the chief of police.

24. The public complaints prosecutor will review the file and decide how to proceed. Similar to Crown attorneys, they will have broad discretion and decision-making authority to carry out their functions.

25. This may include settling the matter, as I will discuss more fully in section 8.310.

26. It also may include withdrawing the charges, much like a Crown prosecutor has the discretion to withdraw criminal charges. If there is no reasonable prospect of success or it is not otherwise in the public interest to proceed, there is no point in continuing a prosecution. The public complaints prosecutor should have an absolute discretion to withdraw charges in appropriate cases.

27. If a case is not settled and the charges are not withdrawn, the public complaints prosecutor will serve a notice of disciplinary hearing on the police officer. This should be done within forty-five days of the OIPRD turning carriage of the matter over to the prosecutor. Responsibility for the prosecution at the hearing will then fall to the public complaints prosecutor, not a prosecutor appointed by the chief.

28. Under this new adjudicative model, a charged officer will be the respondent. The officer will be entitled to all of the administrative and natural justice protections afforded in other professional discipline realms.

29. The OIPRD will not have standing at the disciplinary hearing. The public complaints prosecutor will prosecute the case and act in the public interest. This will preserve the OIPRD's role as an impartial and independent investigative body.

30. Similarly, public complainants will not have standing at the disciplinary hearing. That said, they will be stakeholders in the overall process and likely be witnesses. Moreover, their views on resolution and appropriate sanction will be considered by the prosecutor.

31. In my view, it asks too much of individual citizens to expect them to place themselves in such stark opposition to a police officer. The public interest will be represented by the public complaints prosecutor. It is unnecessary to have the complainants bear the weight and cost of full party participation.

32. From time to time, certain cases may attract intervener applications from a public complainant or the OIPRD. Other interested parties also may seek leave to intervene. These can be dealt with on a case-by-case basis according to the relevant jurisprudence.

33. In general, however, there should be two parties to any disciplinary hearing against an officer: the public complaints prosecutor and the officer.

Recommendation 8.1

Independent public complaints prosecutors who work at the Ministry of the Attorney should prosecute public complaints. After the OIPRD lays a disciplinary charge, the independent public complaints prosecutor should be given carriage of the file.

Recommendation 8.2

The OIPRD and public complainants should not have standing at disciplinary hearings, but may seek leave to intervene. Other interested parties also may seek leave to intervene.

8.220 – Independent adjudicators

34. There is almost universal agreement that the current system for adjudicating disciplinary matters is broken and does not have the confidence of either the public or the police. Because disciplinary hearings are currently conducted by chiefs or their delegates,[350] many members of the public and police officers believe the process is unfair.

35. In my consultations, for example, several members of the public suggested that allowing a chief of police to select the hearing officer may result in bias. They reasoned that, because hearing officers are selected by the chief, they may feel pressured to rule in the chief's favour.

36. Police associations shared similar concerns. They noted that hearing officers may be tempted to make decisions to appease the chief because they depend upon the chief's favour for continued employment as a hearing officer.

37. Police associations also remarked that hearing officers sometimes lack the legal training and knowledge necessary to conduct disciplinary hearings in a fair and impartial manner.

38. Chiefs of police echoed these concerns. They explained that hearing officers drawn from the ranks of current or retired

senior officers possess ample policing experience, but often are ill-equipped to decide complex legal issues. Such issues now arise with increasing frequency during disciplinary hearings.

39. According to the chiefs, the lack of legal experience may complicate the hearing process because hearing officers are left to sort out difficult legal issues beyond their expertise. Moreover, appeals to correct legal errors consume resources and delay finality in the case.

40. There was thus widespread support for greater institutional independence and impartiality of hearing officers.

41. As part of his 2005 review on the police complaints system, Chief Justice LeSage recommended that the Ontario government create a roster of independent adjudicators to preside over disciplinary hearings.[351]

42. Part of the rationale for Chief Justice LeSage's recommendation was that police-appointed adjudicators may lack credibility because they are in the employ of the police services. Despite the merits of the recommendation, however, it was never acted on.

43. Confidence in the disciplinary process would undoubtedly improve if the current system for adjudicating complaints was modified to require independent, legally-trained adjudicators for disciplinary hearings resulting from public complaints.

44. The perception that a hearing officer is beholden to a chief would disappear.

45. Moreover, such adjudicators would bring valuable legal knowledge and experience, benefitting the hearing and decision-making processes.

There is almost universal agreement that the current system for adjudicating disciplinary matters is broken and does not have the confidence of either the public or the police.

46. The OCPC is already an expert body of independent adjudicators with legal training and police knowledge. The OCPC has developed this expertise and knowledge primarily through its adjudication of disciplinary appeals from hearings conducted by police services in relation to both public and internal complaints.

47. In addition, the OCPC is clustered within the Safety, Licensing Appeals and Standards Tribunals Ontario, a group of administrative tribunals. Most members of the OCPC are cross-appointed to

other tribunals where they conduct first instance hearings and apply administrative law principles. Since clustering took place, there has been a focus on ensuring high-quality adjudication, member training, and open, merit-based recruitment of members.

48. In my view, concerns about the adjudication of public complaints could be addressed by having the OCPC, rather than chief-appointed hearing officers, conduct first instance hearings of all public complaints.

49. Indeed, the OCPC submitted that responsibility for all first instance disciplinary hearings should be moved away from police services to the OCPC and that the right to appeal disciplinary decisions to the OCPC should be eliminated.

50. Moving first instance disciplinary hearings for public complaints away from police services to the OCPC will help foster confidence in the disciplinary system.

51. Members of the public have legitimate concerns about the current system. They are baffled by an independent civilian agency that turns public complaints over to the police service being complained about, to be adjudicated by an individual selected by the police chief. Independent adjudication of public complaints by the OCPC will eliminate these bad optics and promote a fairer, more transparent process.

52. The OCPC is confident that it could efficiently handle public complaint adjudications if properly resourced. It is worth noting that currently only a small number of public complaints result in hearings each year.[352]

53. Moreover, as I discuss in section 8.230, if the OCPC conducts first instance disciplinary hearings for public complaints, its authority to hear appeals from such decisions should be eliminated. This would free up resources and abbreviate the disciplinary process.

54. Finally, in order to further economize resources, first instance hearings resulting from public complaints could be heard by a single member of the OCPC. Currently appeals are typically (although not required to be) heard by multi-member panels.[353]

55. The case for independent adjudication of public complaints by the OCPC is clear.

Recommendation 8.3

The OCPC should conduct all first instance hearings of public complaints.

56. I recognize that many stakeholders, including several police associations, have suggested that independent adjudication outside the chiefs' purview also should be available for disciplinary hearings resulting from internal chiefs' complaints.

57. My mandate is focused on the police oversight bodies and, by implication, public complaints. That said, public and internal complaints are both currently subject to the same model of disciplinary proceedings under part V of the *Police Services Act*. Disciplinary hearing decisions resulting from either type of complaint also are subject presently to an appeal to the OCPC.[354] Therefore, changes to the model for adjudicating public complaints and to the mandate of the OCPC may have implications for how internal complaints are handled.

58. Throughout my consultations, a number of police associations, chiefs of police, and police services boards expressed frustration with the current adjudicative model for internal complaints. They noted that the quasi-judicial hearings under part V have become too formal, complex, and adversarial.

59. Although the most appropriate model for addressing internal complaints is beyond the scope of this review, it bears noting that such complaints are essentially employment matters and should be treated as such under the *Police Services Act*.

There is wide agreement that the paramilitary disciplinary process that has developed for adjudicating internal complaints is out of step with labour relations, frustrating policing stakeholders.

60. Many chiefs of police emphasized their desire for greater autonomy to manage discipline within their services, consistent with their statutory duty to ensure that police officers carry out their duties in accordance with the legislation.[355]

61. At the same time, several police associations stressed the need for a more fair and independent adjudicative process, with impartial, legally-trained, and skilled adjudicators.

62. There is wide agreement that the paramilitary disciplinary process that has

developed for adjudicating internal complaints is out of step with labour relations, frustrating policing stakeholders. Public confidence in the disciplinary process has been undermined as a result.

63. In my view, serious consideration should be given to the appropriate model for adjudicating internal complaints and what role, if any, the OCPC should play in that process.

64. In any event, attention should be given to the interaction between the public and internal complaints systems. If the current disciplinary model for internal complaints is maintained, then an officer could conceivably be disciplined for the same misconduct twice: once through the internal disciplinary process and once through the public complaints process.

65. I understand that changes to the internal disciplinary process are currently under consideration and thus believe that making definitive recommendations about the interaction between the two systems is premature. I will, however, make two observations.

66. First, it is not uncommon for the same incident of professional misconduct to be scrutinized through more than one process. Lawyers and doctors, for example, who engage in professional misconduct may be disciplined by their employers and subject to proceedings before their professional regulatory bodies.

67. Second, if a police officer's misconduct has already been the subject of a prior proceeding, the chief of police, public complaints prosecutor, and OCPC could take into account any prior conviction and sentence in any subsequent proceedings. The public complaints prosecutor in the subsequent proceeding may, for example, decide to withdraw certain charges or to recommend a reduced sentence in light of a previous conviction and sentence.

68. Clearly, there is a need for the internal and public complaints systems to effectively work together to ensure fairness, accountability, and trust for all stakeholders.

Recommendation 8.4

Internal complaints should be governed by the *Police Services Act*. Consideration should be given to what role, if any, the OCPC should have in the internal disciplinary process and how the internal and public disciplinary processes interact.

8.230 – Judicial review

69. If the OCPC conducts first instance disciplinary hearings of public complaints, its authority to hear appeals from such decisions should be eliminated. Instead, the OCPC's decisions should be subject to judicial review under the *Judicial Review Procedure Act* before the Divisional Court.

70. Under the current regime, chiefs of police or their delegates normally conduct first instance disciplinary hearings resulting from public complaints.[356] The OCPC hears appeals from these decisions.[357] The OCPC's decisions may in turn be judicially reviewed by the Divisional Court.[358]

71. As I recommend in section 8.220, the OCPC should be transformed into a first instance hearing tribunal for public complaints.

72. A police officer or public complaints prosecutor dissatisfied with the outcome of the OCPC's decision should be able to seek judicial review of the decision in the Divisional Court.

73. Confining review of the OCPC's decision to judicial review before the Divisional Court will reduce litigation, save public resources, and streamline the disciplinary process by eliminating an intermediate level of appeal to the OCPC, while still protecting the litigants' rights and interests.

74. This process of judicial review in the Divisional Court should be adopted as the review procedure available after an OCPC hearing and disposition.

Recommendation 8.5

Rights of review of a decision of the OCPC from a first instance hearing of a public complaint should be confined to the right of judicial review by the litigants in the Divisional Court.

8.300 – Resolutions and decisions

75. To be effective and accountable, the public complaints process must ensure that complaints are resolved in a transparent, timely, and fair manner. As I explain below, resolving complaints without the need for a formal hearing and releasing timely decisions will help to achieve this objective.

8.310 – Resolutions without a hearing

76. An efficient and effective public complaints system should embrace the resolution of appropriate cases without the need for formal hearings.

77. Sometimes public complaints result from misunderstandings or differences of opinion about how a police officer behaved or should have behaved. In some of those cases, giving the parties an opportunity to discuss their concerns and explain their actions allows them to reach a mutually agreeable resolution.

78. As I explained in section 7.320, early informal resolution of public complaints at the OIPRD should be encouraged. The laying of a disciplinary charge, however, should not foreclose the possibility that a complaint may be resolved without the need for a formal hearing before the OCPC.

79. Rather, after a disciplinary charge is laid, the public complaints prosecutor should review the investigative report. Before proceeding to serve an officer with a notice of disciplinary hearing, the prosecutor should consider whether a case may be suitable for resolution without a formal hearing.

80. It may, for example, be in the public interest for the prosecutor to agree to settle a case and have an officer apologize to the complainant for their conduct and undertake to participate in certain professional development courses. In cases involving relatively minor misconduct, settlement may be especially appropriate.

81. Given the advanced stage of the proceedings, the parties to the settlement negotiations will be the officer and the public complaints prosecutor.

82. The prosecutor should, of course, consult with the complainant and give due weight to their input when determining whether it is in the public interest to settle a case. And the prosecutor should take the complainant's views into account in determining the appropriate resolution and sanction. That said, the prosecutor's discretion to settle should be absolute.

83. Settlement discussions should take place in confidence and without prejudice. If the parties so wish, a neutral third-party mediator or facilitator could facilitate the discussions.

Recommendation 8.6

After the OIPRD lays a disciplinary charge, the independent public complaints prosecutor should have the power to settle the complaint.

84. Absent the charges being withdrawn, if settlement fails or is deemed not appropriate, then the public complaints prose-

cutor should serve a notice of disciplinary hearing on the officer.

85. From time to time, however, there may be a case best resolved outside of a formal hearing that, for whatever reason, failed to be resolved earlier in the complaints process.

86. If the OCPC is of the opinion that a matter may be suitably resolved through alternative dispute resolution, it should have the power to direct the prosecutor and officer to engage in an alternative dispute resolution process. In making that determination, the OCPC should take into account the public interest, including the gravity of the allegations and the value of having them aired in a public hearing.

87. If alternative dispute resolution proves to be successful, the matter will be resolved without the need for a hearing before the OCPC. If, however, alternative dispute resolution fails, the matter will proceed to a hearing.

Recommendation 8.7

Prior to holding a disciplinary hearing, the OCPC should have the authority to direct that the parties engage in alternative dispute resolution.

8.320 – Release of decisions

88. An effective, open, and transparent complaints process requires making and releasing timely decisions.

89. At present, the OCPC has published a series of service standard performance measures. All of its decisions released on or after January 1, 2015, are made available to the public on the website of the Canadian Legal Information Institute. In addition, the OIPRD posts the results of disciplinary hearings resulting from public complaints on its website. These practices should continue, with disciplinary hearing decisions being posted as soon as practicable.

Recommendation 8.8

Disciplinary hearing decisions from the OCPC should be released as soon as practicable and made available to the public.

CHAPTER 9

Coordinating Oversight and Removing Inefficiencies

9.100 – Introduction

1. Part of my mandate is to make recommendations about how to reduce overlap and inefficiencies between the SIU, OIPRD, and OCPC. Many of the recommendations in the preceding chapters will help to achieve this objective. In this chapter, I make further recommendations in this regard.

2. This chapter is divided into two parts.

3. The first part of the chapter addresses overlap and existing inefficiencies by making recommendations with respect to the coordination of investigations, including parallel investigations and cross-referrals.

4. In the second part of the chapter, I make a series of recommendations to reduce overlap and inefficiencies by focusing the OCPC on its core adjudicative mandate.

9.200 – Coordination of investigations

5. Officers, police forces, and the civilian oversight bodies are subject to a web of intersecting legislation that ascribes duties, responsibilities, and liabilities to each.

6. A single use of force incident, such as a police shooting, may be investigated by the SIU for criminality, by the chief of police for potential misconduct or service and policy issues, and by the OIPRD if a public complaint is launched. The very same facts – what happened and why – will be addressed by all the various investigations from different angles. Moreover, the police force itself may be conducting its own investigation into an incident that preceded the use of force, such as a robbery before the shooting.

7. The message clearly delivered during my consultations was that confusion, inefficient overlap, and turf disputes often arise at the point of intersection in these cases. Which investigation takes priority? Can one investigative body raise issues of concern with another? Can the various investigations efficiently share information?

8. The current legislation does not do enough to iron out these issues to promote efficiency and coordination. In this section, I make recommendations to resolve these inefficiencies.

9.210 – Investigative priority

9. Criminal investigations should sit at the top of the investigative hierarchy. This means that the SIU investigation should take priority over an investigation by the chief or the OIPRD into the officer's

conduct or service or policy issues. It also means that criminal investigations by a police service should take priority over the chief's and OIPRD's investigations and may run parallel to the SIU investigation.

10. Why should criminal investigations have priority? First, determining whether someone has engaged in alleged criminal conduct is the most important determination to be made from a public safety and public interest perspective.

11. Second, a criminal investigation, unlike the chief's or OIPRD's investigation, can lead to criminal charges. An officer's or citizen's constitutional rights are engaged. They may be jailed. They are entitled to a fair and untainted investigation into the facts of their case.

12. Third, parallel investigations by the OIPRD or chief may interfere with ongoing SIU investigations and prosecutions. Late disclosure of new evidence may delay the criminal proceeding.

13. Evidence, both real and witness, is best collected when it is fresh. Delays in accessing evidence can lead to questions about its purity. Concerns about the quality of evidence can undermine investigative conclusions and criminal prosecutions.

14. The legislation already recognizes that the SIU will be the lead investigator into an incident.[359] This makes sense, given the SIU's criminal focus and the strong public interest in having a police-involved death or serious injury thoroughly and promptly investigated.

15. During my consultations, however, I heard complaints from some police services that sometimes their efforts to conduct a pressing criminal investigation were hampered by the SIU. For example, a suspect in a criminal investigation may have killed someone before they were seriously injured by the police. I was told that the SIU sometimes keeps evidence that has little relation to the SIU investigation, but is highly relevant to the ongoing police investigation.

16. As a general matter, the SIU investigation should continue to have priority over all other investigations. That said, the SIU should develop a memorandum of understanding with police services to address parallel criminal investigations.

17. Currently, the SIU has an operations policy on cooperation between the SIU and police services. That policy, last revised in 2010, addresses circumstances where a police service has a legitimate and continuing investigative interest in an incident that is the subject of an SIU investigation.[360]

Preserving the integrity of both the SIU investigation and the police service's criminal investigation is of vital importance.

18. That policy may serve as a useful springboard for discussions with police services about how to deal with parallel criminal investigations.

19. In British Columbia, for example, the Independent Investigations Office has a memorandum of understanding with police services respecting investigations, including a brief discussion of parallel investigations.[361]

20. A similar approach, with a memorandum of understanding setting out the parties' roles and expectations, should be adopted in Ontario.

21. Preserving the integrity of *both* the SIU investigation and the police service's criminal investigation is of vital importance. In cases where a suspect is killed, the police force should generally stand down so the SIU can conduct its investigation. In cases where a suspect is seriously injured and the police force's criminal investigation is still ongoing, the memorandum of understanding should spell out how the parallel investigations should be conducted, bearing in mind the SIU's investigative priority.

22. In practice, this means that the SIU should continue to have priority and immediate access to the scene, any real evidence, and all witnesses. Once the SIU has invoked its mandate, officers and investigators from other investigative bodies should generally stand down until directed by the SIU.

23. When there is a parallel criminal investigation, the memorandum of understanding should address the respective roles and responsibilities of the SIU and the police service.

24. When there is no parallel criminal investigation, the chief and OIPRD should await further direction from the SIU. In some cases, the SIU may determine that the chief and OIPRD cannot begin their investigations until after the SIU has concluded its criminal investigation or the prosecution is terminated. In other cases, the SIU may determine fairly early that criminal charges are unlikely and that parallel investigations by the chief and OIPRD may start prior to the SIU issuing its final report. Ultimately, the SIU should determine the timing of when the chief and OIPRD begin their investigations.

25. Adopting this approach will streamline and clarify the roles of the investigative bodies at each stage of the process. It should be set out in the legislation and a memorandum of understanding.

Recommendation 9.1

The SIU investigation should take priority over all other investigations. When there is a parallel criminal investigation, a memorandum of understanding between the SIU and the police services should set out the mechanics of the investigations. When there is a parallel civil investigation, the investigation should stand down at the discretion of the SIU.

9.220 – Information sharing in SIU incidents

26. When there is a police-involved incident of death or serious injury, the SIU and OIPRD need to adopt a coordinated approach to their investigations. Though their lenses are different, the facts at issue in each investigation are frequently the same. An efficient way to deal with the investigative overlap is to share information.

27. When the SIU launches an investigation, it should notify the OIPRD. If the OIPRD has received a public complaint about the same incident, it should advise the SIU. As I suggested in section 9.210, the OIPRD should then stand down its investigation until the SIU directs that it can begin its work.

28. I recommend that, after an SIU investigation is complete, the SIU deliver its investigative file to the OIPRD, on request, and subject to any privacy and confidentiality conditions. This way, if there is a public complaint, the OIPRD can begin its investigation by reviewing the SIU file to determine what, if any, further investigation is required. If other witnesses need to be interviewed or if more information is required, the OIPRD can supplement the SIU investigation through further interviews and investigative steps.

29. Currently, the OIPRD can summon the SIU's investigative file,[362] but I was told that this process can delay the OIPRD investigation. The automatic provision of the SIU's investigative file to the OIPRD on request will allow the OIPRD a 'running start' to its investigation.

Recommendation 9.2

At the conclusion of the SIU's case, the SIU should deliver a copy of its investigative file to the OIPRD on request, subject to any privacy and confidentiality conditions.

9.230 – Section 11 investigations

30. Currently, the process of reviewing a case for conduct, policy, and service issues after the completion of the SIU investigation falls on the chief of police of the relevant police service.

31. Section 11 of the regulation governing the conduct and duties of police officers in SIU investigations requires that the chief conduct an investigation into any incident with respect to which the SIU has been notified.[363]

32. The purpose of the section 11 investigation is to review the policies and services of the police force and the conduct of its officers.

33. Municipal chiefs are required to report the findings of the investigation to their police services board and the board may make the report public. The OPP Commissioner must prepare a report, and has the discretion to make it available to the public.[364]

34. My consultations confirm that a patchwork system for section 11 investigations exists across the province. Police services and boards are exercising varying levels of diligence and transparency in the completion of these reviews. This is troubling.

35. In most cases, the SIU does not lay criminal charges, but there remains a genuine public interest in a deep inquiry into remaining policy, service, and conduct issues. In particular, the public deserves to know that someone in authority has considered how similar situations can be avoided in the future and whether changes need to be made.

36. Some members of the public suggested that these section 11 investigations should not be conducted by the police services, but by an outside agency. I certainly understand the merit of having an independent agency perform the section 11 investigation. I also note, however, the particular expertise and knowledge of police services in dealing with policy and service issues.

37. Moreover, section 11 investigations, when done properly, can trigger a pro-

cess of internal reckoning for the police service and lead to positive change. This process promotes accountability between the service and the public. The benefits of that process should not be overlooked.

38. Ultimately, I therefore recommend that police services continue to conduct section 11 investigations, but that greater transparency and accountability be built into the process.

39. More specifically, the police services should conduct section 11 investigations and make their report public, subject to the same considerations for SIU director's reports set out in recommendation 6.9.

40. In addition, the police services should provide their section 11 reports to the OIPRD. In the case of a municipal police service, the report also should continue to be provided to the police services board. And in the case of the OPP, the report should be given to the Minister of Community Safety and Correctional Services.

41. After receipt of the police service's section 11 report, the OIPRD should review it. The OIPRD should have the discretion to publicly comment on the report and the authority to do the following:

- Direct the chief to conduct further investigation into any relevant matter in the report;
- Require further explanation and amplification of the report where, in the OIPRD's discretion, more information is required in the public interest; and
- Lay conduct charges where there are reasonable grounds to do so on the basis of the section 11 report and when the chief of police has declined to do so.

Recommendation 9.3

Section 11 reports should be made public, subject to the same considerations for SIU director's reports set out in recommendation 6.9.

Recommendation 9.4

Police services should provide section 11 reports to the OIPRD for review. The OIPRD should have the discretion to publicly comment on a section 11 report and the authority to direct further investigation, require further explanation or amplification, and lay conduct charges.

42. Currently, section 11 investigations must be commenced "forthwith" after the SIU is notified of an incident. And they

must be completed within thirty days after the SIU advises the chief that the SIU has reported the results of its investigation to the Attorney General.[365]

43. Throughout my consultations, many policing stakeholders raised concerns about these time frames and suggested they should be amended.

44. The requirement that section 11 investigations be commenced forthwith and reported within thirty days may be problematic because the SIU investigation takes precedence over the section 11 investigation.

45. The use of the word "forthwith" creates a level of uncertainty as to whether the section 11 investigation should proceed during the SIU investigation. As I discussed in section 9.210, the SIU investigation should occur first. The section 11 investigation should stand down unless and until directed by the SIU.

46. A concurrent section 11 investigation could interfere with the SIU's investigation. New evidence genereated through the section 11 investigation could create disclosure obligations if the SIU's investigation results in criminal charges. It is therefore generally preferable that the section 11 investigation be conducted only after the decision is made not to lay a criminal charge, or where the criminal proceedings are concluded in those cases where a charge is laid.

47. That said, delaying the section 11 report should not delay necessary action to address issues for the police force arising in connection with the SIU incident. I have been told, for example, that sometimes a policy issue may require urgent attention. It is not uncommon for chiefs to proactively take immediate action, such as implementing a new policy, long before the SIU case or section 11 investigation have concluded. The public interest is well served by this practice.

Recommendation 9.5

The requirement to commence a section 11 investigation "forthwith" should be eliminated. The section 11 investigation and report should be completed as soon as reasonably practicable.

9.240 – Cross-referrals

48. As I explain below, the SIU should be allowed to refer conduct, policy, and service matters to the OIPRD or a chief of police in appropriate cases.

49. If the OIPRD receives a complaint involving conduct that may fall within the SIU's jurisdiction, the OIPRD should similarly be allowed to refer the case to the SIU.

9.241 – Referrals from the SIU

50. SIU investigations delve deeply into what happened, why it happened, and what motivated each party to act in the way they did. The focus of the investigation is whether reasonable grounds exist to lay criminal charges.

51. But SIU investigators may uncover other matters which raise conduct, policy, or service issues more properly the subject of an investigation by the OIPRD or the chief of police.

52. For example, suppose the SIU is investigating an officer's use of force when arresting a suspect. The SIU may determine that the officer's use of force was justified, but that they did not follow an applicable policy. Moreover, it is equally possible that the SIU may determine that an officer complied with the policy, but that the policy is deficient in some way.

53. Historically, SIU directors have dealt with this sort of situation in several ways. Often, they have written to the chief of the relevant police service to alert them to non-criminal problems. In other cases, they have noted the non-criminal issues in their report to the Attorney General.

54. Under the current legislation, matters relating to the officer's non-criminal conduct and service or policy issues are not strictly within the mandate of the SIU. Critics of the SIU accuse it of "mandate creep" when it strays into such matters. There is no explicit authority for the SIU director to comment on any potential misconduct, policy, or service issue noted during an investigation.

55. I appreciate the focus of the SIU should remain firmly on determining whether there are reasonable grounds to lay criminal charges. That said, I also believe it is a waste of investigative and intellectual resources to bar the SIU from raising matters of concern with the OIPRD or police services simply because they do not fall squarely within the SIU's core function.

56. To that end, I recommend that if the SIU identifies conduct issues during its investigation, it should have the discretion to refer the matter to the OIPRD for independent screening and investigation.

57. Further, if the SIU uncovers potential policy or service issues, it should have

the discretion to notify the chief of its concerns.

58. Any of these cross-referrals should be explicitly noted in the SIU's public report.

59. The jurisdiction of the SIU to note and comment on issues related to the conduct of officers as well as policy and service matters should be made clear in the legislation. Explicitly authorizing the SIU to refer these matters should eliminate complaints about the SIU straying beyond its mandate.

Recommendation 9.6

The legislation should authorize the SIU to comment on and refer conduct matters to the OIPRD and policy and service matters to the chief of police of the relevant force. Any cross-referral should be noted in the SIU's public report.

9.242 – Referrals from the OIPRD

60. Occasionally, the OIPRD may receive a complaint where a person was seriously injured or died during a police interaction. The OIPRD intake staff should be trained to spot complaints that may fall under the SIU's jurisdiction and refer them directly to the SIU for investigation.

61. I recognize that it may be frustrating for a complainant to be told to redirect their complaint to the SIU. To minimize this frustration, the OIPRD should assist the complainant by liaising directly with the SIU.

62. Consistent with my recommendation in section 9.210 that the SIU investigation should have priority over the OIPRD investigation, the OIPRD should then stand down its investigation until directed otherwise by the SIU.

Recommendation 9.7

The legislation should authorize the OIPRD to refer matters potentially falling within the SIU's jurisdiction to the SIU.

9.300 – The OCPC's functions

63. Beyond coordinating investigations, inefficiencies in civilian police oversight can be addressed by having the OCPC focus on adjudicative functions.

64. As discussed in section 3.330, the OCPC presently has a multi-function statutory mandate. While the bulk of the OCPC's activities currently involve

adjudicating disciplinary appeals, the OCPC also has the power to engage in a number of other activities. These activities include conducting different kinds of first instance hearings relating to police matters, investigating and inquiring into police misconduct and matters of crime and law enforcement, and performing various regulatory functions relating to the provision of police services.

Most stakeholders viewed the OCPC's extensive mandate as being inefficient.

65. The OCPC's current mandate is a product of its history.[366] When the predecessor to the OCPC was first created in the early 1960s, it was the first and only civilian oversight agency in Ontario. As a result, it had wide-ranging authority.

66. Today, however, there are two other oversight agencies, the Ministry of Community Safety and Correctional Services, and a number of other bodies involved in police oversight. This has resulted in some overlap and misalignment of functions.

67. Most stakeholders viewed the OCPC's extensive mandate as being inefficient. This inefficiency results largely from three related concerns that some aspects of the OCPC's mandate

- duplicate or detract from other parts of the civilian oversight system;
- conflict with the OCPC's core adjudicative function; or
- do not relate to any particular expertise of the OCPC.

68. For example, the investigative functions of the OCPC overlap to some extent with those of the OIPRD and are inconsistent with the OCPC's core adjudicative function. Notably, like the OIPRD, the OCPC can conduct investigations into police officer conduct. The overlap leads to confusion and the possibility of parallel investigations and contradictory determinations.

69. Furthermore, although multi-function regulatory bodies are legally permissible, having the OCPC carry out both investigative and adjudicative functions may lead to a reasonable apprehension of bias.[367]

70. In my view, the overlapping investigative authority between the OCPC and the OIPRD is unnecessary and should be eliminated. Each oversight body should be expert in its own area.

71. The OIPRD has both greater experience and ability to conduct investigations than the OCPC.

72. The OCPC, in contrast, is an expert adjudicative body primarily structured to adjudicate disciplinary matters.

73. Going forward, the OCPC should shed its investigative and regulatory powers to focus on its core adjudicative functions.

9.310 – Adjudicative functions

74. The OCPC is part of the Safety, Licensing Appeals and Standards Tribunals Ontario, a cluster of adjudicative tribunals focused on public safety and community standards.[368]

75. However, despite having a predominantly adjudicative focus centred on police disciplinary matters, the OCPC also engages in a number of non-adjudicative activities. It also has some adjudicative responsibilities for which it has no particular expertise.

76. As a result, the OCPC's current mandate sometimes leads to confusion, the potential for the appearance of bias, and decision-making outside the OCPC's core expertise.

77. In my view, the OCPC will be more effective and instill greater public confidence in civilian police oversight if it instead focuses on an adjudicative role within its expertise.

The OCPC's current mandate sometimes leads to confusion, the potential for the appearance of bias, and decision-making outside the OCPC's core expertise.

78. Most importantly, as discussed in section 8.220, the OCPC should be transformed into the tribunal of first instance for disciplinary hearings resulting from public complaints.

79. Members of the public and police stakeholders almost universally agreed that the current system for adjudicating public complaints is ineffective. Having the chief of police select the hearing officer undermines public and police confidence and trust in the disciplinary process.

80. For the reasons explained in section 8.220, I believe that the OCPC should conduct all first instance disciplinary hearings of public complaints. The right to appeal a first instance disciplinary hearing decision to the OCPC should be eliminated and replaced with a right of judicial review to the Divisional Court (see recommendations 8.3 and 8.4).

81. Whether the OCPC should have adjudicative authority over other

matters is best left for further study and determination by the Ministry of Community Safety and Correctional Services and the Ministry of the Attorney General. As an independent tribunal with expertise in police disciplinary matters, the OCPC may be well positioned to adjudicate certain matters beyond public complaints.

82. My recommendation that the OCPC conduct first instance hearings from public complaints should not foreclose the tribunal from completing additional adjudicative functions when appropriate.

83. The Ministry of the Attorney General and the Ministry of Community Safety and Correctional Services should determine what additional adjudicative functions, if any, the OCPC should complete. The OCPC is accountable to the Ministry of the Attorney General, which is responsible for administrative law and tribunal policy in the province. And the Ministry of Community Safety and Correctional Services is the ministry responsible for policing services. It makes sense that these two ministries determine any future roles for the OCPC.

84. To the extent the OCPC is vested with adjudicative functions beyond conducting first instance disciplinary hearings of public complaints, this should be reflected in legislation.

Recommendation 9.8

In addition to conducting all first instance hearings from public complaints, the OCPC should adjudicate any other proceeding as directed by the Ministry of Community Safety and Correctional Services and the Ministry of the Attorney General.

9.320 – Other functions

85. The OCPC is mandated to perform a number of non-adjudicative functions and some adjudicative functions for which it has no particular expertise. These functions should be removed from the OCPC's mandate so that it can focus on its core adjudicative role.

9.321 – Municipal detention facilities

86. Section 16.1 of the *Police Services Act* provides that the OCPC has the authority to approve the establishment, maintenance, and regulation of municipal detention facilities.[369]

87. The rationale for having the OCPC continue to perform this function is

unknown. It does not fall within any particular expertise of the OCPC.

88. These approvals are essentially an operational and regulatory function. They should be performed by a body with experience in this area, namely the Ministry of Community Safety and Correctional Services.

Recommendation 9.9

The OCPC's authority to approve the establishment, maintenance, and regulation of municipal detention facilities under section 16.1 of the *Police Services Act* should be eliminated.

9.322 – Adequacy of police services and enforcement of police service standards

89. Sections 9, 23, and 24 of the *Police Services Act* confer various powers on the OCPC if a municipality, police service, or police services board fails to comply with policing standards or to provide adequate and effective policing services.[370] These powers include the following:

- If a municipality is not providing police services, the OCPC may request the OPP provide assistance (subsection 9(1));
- If a municipal police force is not providing adequate and effective police services or is not complying with the *Police Services Act* or its regulations, the OCPC may direct the police services board to take the measures it considers necessary. If the board fails to comply with the direction, the OCPC may request the OPP provide assistance (subsections 9(2) and (3)); and
- If a police services board or municipal police force has flagrantly and repeatedly failed to comply with prescribed standards of police services, the OCPC may
  - suspend or remove the chief of police or one or more members of the board;[371]
  - disband the police force and require the OPP to provide police services for the municipality; and/or
  - appoint an administrator to perform specified functions with respect to police matters in the municipality for a specified period (section 23).[372]

90. The OCPC submitted that these regulatory functions are more appropriately performed by the Ministry of Community Safety and Correctional Services. There is no need to insert an independent adjudicative agency, namely the OCPC, between the ministry responsible

for policing and the police services and boards.

91. The determination whether adequate police services are being provided and prescribed standards of police services are being met is fundamentally one of policy and resource allocation. It also implicates operational considerations. It does not relate to the expertise of the OCPC and could interfere with the tribunal's priority to remain impartial in its adjudicative role.

There is no need to insert an independent adjudicative agency, namely the OCPC, between the ministry responsible for policing and the police services and boards.

Recommendation 9.10

The OCPC's powers relating to the adequacy and standards of police services under sections 9, 23, and 24 of the *Police Services Act* should be eliminated.

9.323 – Investigative powers and inquiries

92. Section 25 of the *Police Services Act* provides the OCPC with significant powers of investigation into police matters.[373] This authority allows the OCPC to investigate, inquire into, and report on the following:

- The conduct or the performance of duties of a police officer, municipal chief of police, auxiliary police officer, special constable, municipal law enforcement officer, or police services board member;
- The performance of duties of an appointing official under the *Interprovincial Policing Act, 2009*;[374]
- The administration of a municipal police force;
- The manner in which police services are provided for a municipality; and
- The police needs of a municipality.

93. Investigations and inquiries under section 25 may be initiated by the OCPC or at the request of the Independent Police Review Director, the Minister of Community Safety and Correctional Services, a municipal council, or a police services board.[375] Following the investigation or inquiry, the OCPC is vested with various remedial powers.[376]

94. This scheme is confusing and inefficient. Notably, even though the OIPRD is an investigative body and the OCPC has limited investigative capability, the OIPRD cannot investigate certain officials who have law enforcement duties because they are not "police officers" under the *Police Services Act*. This includes auxiliary members of a police force and special constables. Instead, the OIPRD has to request that the OCPC conduct an investigation.

95. Section 26 of the *Police Services Act* further authorizes the OCPC, at the direction of the Lieutenant Governor in Council, to inquire into and report on matters relating to crime and law enforcement.[377] According to the OCPC, this provision dates to the 1960s and was likely introduced to address concerns at that time about organized crime and corruption. It has not, however, been used in recent years.

96. The OCPC's powers under both sections 25 and 26 of the *Police Services Act* do not fall within the OCPC's expertise and could be better performed in other manners.

97. The OCPC lacks the resources and expertise to best conduct these investigations and inquiries.

98. Moreover, the overlapping investigative roles of the OCPC and the OIPRD confuse the public and can lead to inconsistent results.

99. Finally, a potential appearance of bias is created by having the OCPC engage in investigative and adjudicative functions.

100. As a result, the OCPC's powers under sections 25 and 26 of the *Police Services Act* should be removed from its mandate.

101. As I explained in section 7.311, the OIPRD already has jurisdiction to receive and investigate public complaints concerning police officers. As set out in recommendation 7.6, the OIPRD's investigative mandate should extend to include auxiliary members of a police force and special constables employed by a police force. Consistent with the new public complaints regime, if a matter involving one of these officers proceeds to a hearing, then the OCPC should conduct the first instance hearing.

102. Some special constables, however, are not employed by a police force. Instead they work directly for another entity, such as a university or government agency. Oversight for these special constables should be transferred to the

Ministry of Community Safety and Correctional Services given its responsibility over law enforcement and public safety systems.

103. For police services board members and appointing officials under the *Interprovincial Policing Act, 2009*, alternative oversight mechanisms also should be put in place. More specifically, responsibility for board members and appointing officials should fall to the Ministry of Community Safety and Correctional Services as the overseer of policing services in the province.

104. Similarly, complaints concerning municipal law enforcement officers should be dealt with through alternative oversight mechanisms, namely with the relevant municipal authority.

105. Finally, investigations, inquiries, and reports on the administration of a municipal police force, the manner in which police services are provided for a municipality, the police needs of a municipality, and matters relating to crime or law enforcement, should be conducted by the Ministry of Community Safety and Correctional Services or an outside police service, or otherwise dealt with under the *Public Inquiries Act, 2009*.[378]

Recommendation 9.11

The OCPC's investigative, inquiry, and reporting powers under sections 25 and 26 of the *Police Services Act* should be eliminated.

9.324 – Police services' budgets and structures

106. Sections 5(1)(6), 6, 8, 39, and 40 of the *Police Services Act* confer additional authority on the OCPC with regard to budgetary disputes and the structure of police services.[379] More specifically, these powers include the following:

- Approving a municipal council's decision to adopt a different method of providing police services (subsection 5(1)(6));
- Approving any agreement between two or more municipalities to amalgamate their police forces (subsection 6(3));
- Approving the creation of a new police force in a municipality not obligated to provide police services (subsection 8(1));
- Resolving budgetary disputes between police services boards and municipalities (subsection 39(5)); and

- Consenting to terminating a member of a police force's employment for the purpose of abolishing the force or reducing its size (subsection 40(1)).

107. These are essentially policy-making functions and may impede the OCPC's ability to appear impartial in its adjudicative role. The Ministry of Community Safety and Correctional Services has responsibility for policing in Ontario and should be the body determining policy issues in that regard.

108. Moreover, determinations about the structure and budgets of police forces are policy and operational matters in which the OCPC lacks specific expertise. They are often political decisions. It is not appropriate for an adjudicative tribunal like the OCPC to be interjected between municipalities and local police services boards.

Recommendation 9.12

The OCPC's powers regarding budgetary disputes and the structure of police services under sections 5(1)(6), 6, 8, 9, and 40 of the *Police Services Act* should be eliminated.

9.325 – Appeals from employees who become disabled

109. Section 47 of the *Police Services Act* provides that the OCPC will hear appeals from employees of a police force who are discharged or retired because they have become mentally or physically disabled and cannot be accommodated without undue hardship.[380]

110. The rationale for assigning this power to the OCPC is not clear. The OCPC, by its own admission, is not an expert in human rights law.

111. Such appeals would be better heard by a specialized tribunal with expertise in the area, such as the Human Rights Tribunal of Ontario.

Recommendation 9.13

The OCPC's power to hear appeals from employees of a police force discharged or retired for becoming disabled under section 47 of the *Police Services Act* should be eliminated.

9.326 – First Nations Constables

112. Section 54 of the *Police Services Act* requires that the OCPC approve the OPP Commissioner's appointment of all First

Nations Constables. The OCPC also may suspend or terminate a First Nations Constable on its own motion and is to receive notice if the OPP Commissioner does so.[381]

113. The appointment, suspension, and termination powers are essentially employment-related functions outside the expertise of the OCPC. The OCPC has indicated that it is not clear what it is supposed to do in approving appointments or how it would initiate a suspension or termination.

114. To better focus on its adjudicative functions, the OCPC's power to oversee the appointment, suspension, and termination of First Nations Constables should be eliminated from its mandate.

Recommendation 9.14

The OCPC's appointment, suspension, and termination powers with respect to First Nations Constables under section 54 of the *Police Services Act* should be eliminated.

9.327 – Internal complaints

115. Section 78 of the *Police Services Act* authorizes the OCPC to direct internal complaints made by a chief of police or police services board under sections 76 and 77.[382]

116. This regulatory function is inconsistent with the role of the OCPC as an adjudicative body.

117. Moreover, the OCPC noted that its efforts to exercise the function are hampered by the fact that there is no legislation requiring the police services notify the OCPC about internal complaints and provide it with information about such complaints. If the OCPC otherwise happens to find out about a complaint, perhaps through a media report, there is no legislated ability to compel the production of information, and the limitation period already may have tolled.

118. Irrespective of the internal complaints model, the OCPC should not have the authority to direct internal complaints. These are internal matters inconsistent with the OCPC's renewed focus on conducting first instance disciplinary hearings of public complaints.

Recommendation 9.15

The OCPC's power to direct internal complaints under section 78 of the *Police Services Act* should be eliminated.

9.328 – Employment status hearings and bargaining units

119. Part VIII of the *Police Services Act* concerns labour relations and confers two additional employment-related powers on the OCPC.

120. First, section 116 provides that the OCPC will hear disputes as to whether a person is a regular member of a police force or a senior officer.[383]

121. Second, section 118 requires that the OCPC approve the creation of different categories of members within a police force for the purpose of collective bargaining.[384]

122. Again, the OCPC should not be conducting employment status hearings and approving the creation of bargaining units. These are not functions within the OCPC's expertise. They are specialized labour relations functions that could be performed better in another matter by another organization. They should be exercised through arbitration or before the Ontario Labour Relations Board.

Recommendation 9.16

The OCPC's powers to conduct employment status hearings and approve the creation of different bargaining units under sections 116 and 118 of the *Police Services Act* should be eliminated.

9.329 – Pre-2009 complaints

123. The OCPC retains residual authority to review police decisions for complaints relating to incidents which occurred before 2009, when the OIPRD began operations.[385]

124. The OCPC recommended that this residual authority be foreclosed within a reasonable period, noting that these complaints have reduced over time and are unlikely to still be viable.

Recommendation 9.17

Requests to the OCPC for review of decisions concerning complaints relating to incidents which occurred before 2009 must be made to the OCPC within the next two years, after which time they can no longer be made.

CHAPTER 10

Indigenous Peoples and Police Oversight

10.100 – Introduction

1. As part of my mandate, I was asked to make recommendations on how to enhance cultural competency in the SIU, OIPRD, and OCPC in relation to their interactions with Indigenous peoples.

2. My consultations with Indigenous communities across the province have confirmed the need for greater dialogue and respectful engagement between the oversight bodies and Indigenous peoples.

3. In this chapter, I begin by providing background about the history of Indigenous engagement with the police and police oversight bodies. I discuss how Indigenous peoples were policed historically and how they are policed today.

4. I then provide an overview of some of the concerns Indigenous peoples shared with me about the civilian police oversight bodies.

5. Finally, I make recommendations to enhance the cultural competency of the oversight bodies and to strengthen the oversight system for First Nations policing.

10.200 – Background

6. Understanding the context of Indigenous-police relations is essential to understanding my recommendations in this chapter.

7. In this section, I provide background about Canada's Indigenous peoples and the policing of Indigenous peoples both historically and today.

10.210 – Indigenous peoples in Canada

8. Who are the Indigenous peoples of Canada? In this report, I use the term "Indigenous peoples" as a collective name for First Nations, the Inuit, and the Métis. Indigenous peoples also are sometimes referred to as "Aboriginal peoples." The Constitution, for example, recognizes and affirms the rights of the "Aboriginal peoples of Canada," namely the "Indian, Inuit and Métis peoples of Canada."[386]

9. Ontario is home to the largest number of people with Indigenous ancestry in Canada. In 2011, 301,425 people in Ontario identified as Aboriginal, nearly one quarter of all Aboriginal peoples in Canada.[387] Indigenous peoples live across Ontario, in remote, rural, and urban areas, with major urban Aboriginal populations in Thunder Bay, Sudbury, Sault Ste. Marie, Ottawa, and Toronto.[388] There are over twenty-three thousand speakers of Aboriginal languages in the province.[389]

10. First Nations or "Indian" peoples are one of three Aboriginal peoples identified in the Constitution. The term "Indian" is sometimes used for legal reasons. In 2011, 201,100 people identified as First Nations in Ontario, including 125,560 status Indians, 37 percent of whom lived on reserves.[390] There are 207 First Nations reserves and settlements across the province and 126 bands.[391] Five of the twenty largest bands in Canada are located in Ontario.[392] One in four Ontario First Nations is a small, remote community, accessible only by air year-round or by ice road in the winter.[393]

11. The Inuit also are recognized as Aboriginal peoples in the Constitution. They are the Indigenous people of Arctic Canada, living primarily in Nunavut, the Northwest Territories, Northern Quebec, and Northern Labrador. Today, there are an estimated 3,500 Inuit living in Ontario, a marked increase from the less than 100 in 1987.[394] The majority of the Inuit population live in the Ottawa area, making it the largest Inuit community outside of northern Canada.[395]

12. Finally, the Métis are Aboriginal peoples recognized in the Constitution. The Métis are generally understood to be people with mixed First Nations and European heritage.[396] In 2011, 86,015 people in Ontario identified as Métis.[397]

13. Together, First Nations, the Inuit, and the Métis make up the province's Indigenous peoples.

10.220 – Historic and current Indigenous-police relations

14. History is vital to understanding the current relationship between Indigenous peoples and the police oversight bodies. The negative legacy of historic Indigenous-police interactions has greatly affected Indigenous peoples' trust and confidence in policing today and, by extension, police oversight.

15. Historically, Canada's Indigenous peoples generally have had negative relationships with the police. There is a history of distrust and abuse, rooted in the fact that police have been used in efforts to colonize and assimilate Indigenous peoples.

16. The historical role of police as agents of colonization responsible for controlling Indigenous peoples must be acknowledged. Many Canadians do not realize, for example, that the North-West Mounted Police (the forerunner of the RCMP) was established in 1873 primarily as a means to control Indigenous peoples in Canada's expanding western territories.[398]

There is a history of distrust and abuse, rooted in the fact that police have been used in efforts to colonize and assimilate Indigenous peoples.

17. Police across the country have played a crucial role in enforcing government laws and policies against Indigenous peoples, including those aimed at assimilating Indigenous peoples and limiting their rights. They have been responsible for moving Indigenous peoples to reserves and keeping them there; apprehending Indigenous children and sending them to Indian Residential Schools; and arresting Indigenous peoples attempting to exercise their rights.[399]

18. Indigenous peoples have suffered systemic, institutional, and personal racism for generations. For example, the *Indian Act*, a piece of federal legislation enacted 140 years ago, institutionalized Indian reserves, made it virtually impossible for First Nations to form political organizations or hire lawyers, and took away First Nations status from individuals who went to university. While the legislation has been amended over the years, the effects of this legislated discrimination continue to be felt today.[400]

19. Indian Residential Schools, a network of boarding schools operating across Canada for over one hundred years, also systemically attempted to assimilate Indigenous peoples by separating Indigenous children from their families. Now closed, these schools caused intergenerational trauma and forever fractured communal and familial ties that are still healing today.[401]

20. Similarly, the killing of qimmiit, or Inuit sled dogs, has had an enduring and profound impact on the Inuit. Beginning in the 1950s, the RCMP and other authorities killed hundreds, and perhaps even thousands, of qimmiit. The loss of qimmiit deeply affected Inuit culture, health, and well-being. And it continues to be a flash point for Inuit memories of the changes imposed on them by outsiders, including police.[402]

21. Given the role of police in enforcing laws and policies of control and assimilation against Indigenous peoples, it is not surprising that the relationships between Indigenous peoples and the police have been poor. These negative tensions have persisted, despite more recent efforts to more actively engage and collaborate with Indigenous peoples on policing issues.[403]

22. Indeed, over the past several decades,

a number of reports, inquiries, and commissions have highlighted the troubled relationship between Indigenous peoples and the police. They have generally been critical of the police, noting the police's insensitivity to cultural considerations when working with Indigenous peoples, lack of engagement with Indigenous communities, and alienation of Indigenous peoples from policing and the justice system.[404]

23. The systemic under- and over-policing of Indigenous peoples historically and today has caused a deep sense of mistrust and stigmatization in Indigenous communities. The overrepresentation of Indigenous peoples in the criminal justice system, both as victims and offenders, has further strained the already damaged relationship between Indigenous peoples and the police. The treatment of Indigenous peoples by the police has contributed to a sense of distrust and estrangement from the police and criminal justice system as a whole.[405]

24. During my consultations, for example, a number of Indigenous peoples expressed an honest and deeply troubling fear of the police. They shared experiences where they felt they were arrested, assaulted, or insulted by the police for no other reason than being Indigenous. They told me about the police's continued apprehension of Indigenous children, exploitation of Indigenous women, and harassment of Indigenous men.

The systemic under- and over-policing of Indigenous peoples historically and today has caused a deep sense of mistrust and stigmatization in Indigenous communities.

25. There is a widely held lack of trust and confidence in the police shared by Indigenous peoples. For many, the police continue to be seen as colonial oppressors. These experiences and perceptions influence Indigenous peoples' interactions with the police and, by extension, the police oversight bodies.

10.230 – Jurisdiction of the police in relation to Indigenous peoples

26. The framework governing the policing of Indigenous peoples in Ontario is complex. Indigenous peoples live in urban, rural, and remote areas. Some live in First Nations communities, while others do not. As a result, Indigenous peoples are subject to a myriad of different policing arrangements. These generally

include: (1) First Nations police services; (2) the OPP; and (3) municipal police services.

27. First, some First Nations have their own First Nations police service. These police services are the product of tripartite agreements negotiated between First Nations and the federal and provincial governments as part of the First Nations Policing Program.

28. Under the First Nations Policing Program, the First Nations police services are funded jointly by the federal and provincial governments. They are staffed by First Nations Constables. These First Nations Constables are appointed by the OPP Commissioner, with the approval of the OCPC and the First Nation community's police governing authority or Chief and Council.[406] They generally work in First Nations communities, but are authorized to perform policing duties anywhere in the province.[407] That said, they are not "police officers" within the meaning of the *Police Services Act*.[408] They do not need to be Indigenous. In fact, during my consultations I heard that the majority of these constables are not from any First Nations community.

29. There are nine self-administered First Nations police services in Ontario. They work in a number of First Nations communities throughout the province. They are standalone police services, operating independently of the OPP and municipal police services.[409] That said, other police services may provide assistance to the self-administered First Nations police services, as they would to any other police service.

30. The self-administered First Nations police services are governed by First Nations or band councils, typically through a police commission. They operate pursuant to nine tripartite policing agreements between the First Nations and the federal and provincial governments.

31. Also, some First Nations communities have their own police services, but they are not self-administered. Rather, they are supported by the OPP under the tripartite Ontario First Nations Policing Agreement. The OPP administers funding under the agreement and provides administrative support to these First Nations communities.[410]

32. In addition, the OPP provides police services directly to some Indigenous peoples. Notably, one First Nation community has signed a community tripartite agreement with the federal and provincial

governments to have the OPP provide dedicated policing services to the community. In addition, several First Nations communities are served directly by the OPP. Moreover, the OPP provides policing services in many rural areas and other parts of the province to all Ontarians, including Indigenous peoples.

33. Finally, some Indigenous peoples receive police services directly from municipal police forces. This includes Indigenous peoples living in urban areas, such as Toronto or Thunder Bay. It also includes those living in First Nations communities that receive policing directly from a municipal police service.

10.240 – Jurisdiction of the oversight bodies in relation to Indigenous peoples

34. Given the complex framework governing the policing of Indigenous peoples in Ontario, it is not surprising that the jurisdiction of the oversight bodies in relation to Indigenous peoples is also complex.

35. Notably, the jurisdiction of the SIU and OIPRD is limited to "police officers" and "police forces." First Nations Constables are *not* "police officers" within the meaning of the *Police Services Act*. And First Nations police services are *not* included in the definition of "police forces" in the *Police Services Act*.[411]

36. As a result, the SIU does not have the jurisdiction to investigate a serious injury, death, or allegation of sexual assault caused by a First Nations Constable. This means that the SIU cannot usually conduct investigations in many First Nations communities.

37. That said, some First Nations communities are served directly by police officers working for the OPP or a municipal police service. In addition, First Nations police services occasionally work in conjunction with OPP and municipal police officers. This means that sometimes incidents of serious injury, death, or allegations of sexual assault in First Nations communities fall within the SIU's jurisdiction.

38. For example, suppose a First Nations Constable in a First Nation community is present when an OPP officer shoots a person or assists the OPP officer during an arrest. If there is a serious injury, death, or allegation of sexual assault, the SIU's jurisdiction to investigate would be invoked. The SIU's jurisdiction, however, would not extend to investigating or laying a charge against the First Nations Constable.

39. In addition, outside First Nations communities, the SIU has jurisdiction to conduct investigations into incidents involving the OPP or a municipal police service where an Indigenous person is seriously injured, dies, or alleges sexual assault. For example, if an Indigenous person in Ottawa is seriously injured at the hands of the municipal police, then the SIU would have jurisdiction to investigate the incident.

40. Similar rules apply with respect to the OIPRD. Because First Nations Constables are not "police officers" and First Nations police services are not "police forces" under the *Police Services Act*, the OIPRD does not have jurisdiction to receive complaints involving these officers and police services. It does, however, have jurisdiction to receive complaints about police officers working for the OPP and municipal police forces from Indigenous complainants. It also can receive service and policy complaints involving the OPP and municipal police services.

41. For example, if an Indigenous person was mistreated by a First Nations Constable working for a First Nations police service, then the OIPRD would not have jurisdiction over the complaint. In contrast, if the Indigenous person was mistreated by a police officer working for a municipal police service or the OPP, the OIPRD's mandate would be invoked.

42. Finally, many of the OCPC's powers and responsibilities are similarly restricted to "police officers" and "police services." That said, as I noted in section 9.326, the OCPC must approve the OPP Commissioner's appointment of all First Nations Constables. It also has the power to suspend or terminate a First Nations Constable and must receive notice if the OPP Commissioner does so.[412]

10.300 – Experiences of Indigenous peoples with the oversight bodies

43. During my consultations, I engaged with Indigenous peoples across the province. Their perceptions of the police and the police oversight bodies were mostly negative. Many Indigenous peoples were critical of the justice system in general, and the police and the police oversight bodies in particular.

44. Several key themes emerged in the submissions I received about Indigenous peoples' experiences with, and perceptions of, the police oversight bodies.

45. First, almost everyone I heard from felt that the current police oversight

system is unknown to them and Indigenous communities. With few exceptions, no one had heard of the OCPC. A very small number of people were aware of the OIPRD, but it was generally not well known. More had heard of the SIU through mainstream media or personal experiences, but there was confusion about what the SIU does and how the oversight bodies differ from one another.

46. Second, many Indigenous peoples told me that they felt targeted by law enforcement and subjected to negative stereotypes by OPP and municipal police officers. I heard complaints about Indigenous peoples being charged with offences and held in custody more than their non-Indigenous counterparts. Despite the feelings of being singled out, however, very few Indigenous peoples knew that they could file a complaint with the OIPRD.

47. Third, there was a general sense that complaining to the OIPRD about police officer misconduct was pointless. There was no confidence that once a complaint was filed, anything would be done to address or rectify the situation. Indeed, I was informed by one legal clinic working with Indigenous peoples that they have not had a single successful complaint with the OIPRD or a response that would be satisfactory to their clients or legal staff. This was despite the fact that clinic lawyers vetted complaints to weed out meritless ones and provided assistance with the actual complaint.

48. Fourth, some Indigenous peoples told me they feared retribution if they filed a complaint with the OIPRD. This concern was particularly acute for First Nations communities served by the OPP. Members of these communities told me that if they raised their concerns about the OPP, then their communities may suffer.

The oversight bodies have chronically failed to engage with Indigenous communities.

49. Fifth, the oversight bodies have chronically failed to engage with Indigenous communities. This is especially true in rural and northern communities. It also extends to OPP officers working in many First Nations communities, who often rotate through postings for only a few weeks at a time and are sometimes seen as not making an effort to engage with the community.

50. Sixth, a number of people expressed concern about the overrepresentation

of Indigenous peoples in the criminal justice system and SIU investigations in particular. This concern is borne out in the research. Notably, according to one 2006 study, Indigenous peoples represented 7.1 percent of all civilians involved in SIU investigations, despite comprising only 1.7 percent of the provincial population.[413]

51. Seventh, I heard from many people about the lack of diversity within the police oversight bodies, particularly with respect to Indigenous peoples. The staff and leadership at the bodies were not seen to reflect the province's Indigenous communities.

52. Eighth, I was repeatedly told that the oversight bodies are inaccessible to many Indigenous peoples. This applies, in particular, to Indigenous peoples living in rural and remote communities. It also includes Indigenous peoples who do not speak English or French.

53. Ninth, there was general consensus that the oversight bodies lack cultural sensitivity and often are disrespectful of Indigenous peoples. For example, I heard of several instances where an SIU investigator arrived in a First Nations community following an incident, spoke briefly with someone from the community, and had no contact with them thereafter. Equally troubling, some First Nations communities in the north described having to wait days for SIU investigators to arrive on scene. In some cases, matters were closed without talking to members of the community and the leadership. In others, they were investigated without any meaningful engagement with the local First Nations police service.

54. Separate from the SIU's lack of communication and engagement, I also was told about the SIU failing to respect, include, or follow local Indigenous cultural customs and protocols. Several people felt that the SIU does not have the linguistic capability and cultural competency to work with Indigenous peoples.

55. Similar concerns about cultural insensitivity and disrespect of Indigenous peoples were raised in relation to the OIPRD. For example, some Indigenous peoples told me that the OIPRD and police services investigating complaints are prone to assess an Indigenous complainant's credibility on false assumptions and negative stereotypes about Indigenous peoples.

56. Finally, a number of people expressed concern about the lack of effective oversight mechanisms for First Nations

policing. The legislative gap created by excluding First Nations Constables from the definition of "police officer" and First Nations police services from the definition of "police force" was seen as potentially problematic. This exclusion from the legal framework governing most other officers and forces in Ontario was seen as discriminatory and thought to further marginalize First Nations communities.

10.400 – Indigenous cultural competency

57. The oversight bodies' need for cultural competency when interacting with Indigenous peoples cannot be disputed. The more difficult question is determining how to best develop cultural competency.

58. In this section, I make recommendations to enhance the cultural competency of the SIU, OIPRD, and OCPC when interacting with Indigenous peoples. I begin by providing some background about the value of developing cultural competency. I then discuss the oversight bodies' current efforts to improve their cultural competency and engage with Indigenous communities. Finally, I explain how Indigenous cultural competency can be enhanced at the oversight bodies.

10.410 – The value of cultural competency

59. In recent years, enhanced cultural competency has been identified repeatedly as an important tool to renew the government's relationship with Indigenous peoples.

60. In 2013, for instance, Justice Iacobucci recommended that government officials working in the justice system who have contact with First Nations peoples undergo mandatory cultural competency training.[414]

Developing cultural competency is crucial to address systemic issues that have hindered positive Indigenous engagement with the oversight bodies. Cultural competency is an essential skill if the oversight bodies are to provide culturally-appropriate services to Indigenous peoples.

61. Two years later, the Truth and Reconciliation Commission called on all levels of government to provide education to public servants on the history of Indigenous peoples, the *United Nations*

Declaration on the Rights of Indigenous Peoples, treaties and Indigenous rights, Indigenous law, and Indigenous-Crown relations.[415]

62. And in 2016, Premier Kathleen Wynne announced that the provincial government will implement cultural competency training for all public servants on Indigenous issues.[416]

63. Developing cultural competency is crucial to address systemic issues that have hindered positive Indigenous engagement with the oversight bodies. Cultural competency is an essential skill if the oversight bodies are to provide culturally-appropriate services to Indigenous peoples.

10.420 – Current efforts to improve cultural competency

64. I was informed by each of the oversight bodies that they have made efforts to improve their cultural competency and engagement with Indigenous communities. In this section, I summarize those efforts.

65. First, the SIU has adopted a protocol for investigations involving First Nations peoples and communities. In addition, it has developed a First Nations Liaison Program to help foster positive relationships with First Nations communities. Seven investigators have been designated as First Nations Liaisons, including one investigator of First Nations background. Whenever possible, a First Nations Liaison leads or participates in an investigation involving First Nations peoples or communities.

66. The First Nations Liaisons receive ongoing training on Indigenous cultural competency. All SIU investigators receive training once per year. The SIU also is working to develop cultural competency training for all staff.

67. Furthermore, the SIU has participated recently in a number of outreach events with urban Indigenous communities. These events have taken place in the Toronto, Hamilton, and Ottawa areas, and are scheduled to take place in the north later this year. The First Nations Liaisons also have been involved in outreach events at First Nations.

68. Second, the OIPRD has offered three multi-day Indigenous cultural competency sessions and several other sessions to staff over the past two years.

69. The OIPRD's outreach advisors have increased efforts to engage Indigenous communities. For example, the OIPRD is currently conducting a systemic review

of Thunder Bay Police Service practices for policing Indigenous peoples. As a result, it has undertaken outreach and relationship-building with Indigenous communities in the Thunder Bay area.

70. Third, the OCPC is part of the Safety, Licensing Appeals and Standards Tribunals Ontario, a cluster of administrative tribunals which is making efforts to increase its members' cultural competency when interacting with Indigenous peoples. In 2015, an Indigenous woman was appointed to the cluster and now acts as its Indigenous lead. Cross-appointed to the OCPC, she is leading the process to ensure that Indigenous issues and cultural competency continue to be part of the orientation and ongoing professional development for cluster members. Notably, the Indigenous lead recently provided training for cluster members as part of its professional development program.

71. In addition, the cluster has begun work reviewing how its tribunals address the needs of Indigenous peoples. It has sought to recruit Indigenous members and has sent staff and members to visit Indigenous communities and participate in an Indigenous summit.

72. The development and delivery of these cultural competency programs by all the oversight bodies is encouraging. As I explain below, however, further steps should be taken to enhance the oversight bodies' cultural competency.

10.430 – Enhancing cultural competency with Indigenous communities

73. To work respectfully with Indigenous communities, the oversight bodies must be culturally competent. Cultural competency goes beyond simply training staff about Indigenous issues to creating an environment where Indigenous peoples feel included and valued. In this section, I make specific recommendations to enhance the Indigenous cultural competency of the oversight bodies.

Cultural competency goes beyond simply training staff about Indigenous issues to creating an environment where Indigenous peoples feel included and valued.

74. Broadly speaking, Indigenous cultural competency will require developing the knowledge, self-awareness, and skills to engage respectfully and effectively with Indigenous peoples.

75. By knowledge, I mean information about Indigenous peoples, their histories, and cultures. Equally important, however, I also mean an understanding of the context and legacy of colonization and Indigenous-police relations.

76. By self-awareness, I mean examining and challenging cultural assumptions and attitudes about Indigenous peoples. This requires that people think about and question their own beliefs. It involves consideration of how a person's perceptions of Indigenous peoples may influence their interactions when working with Indigenous communities.

77. Finally, by skills, I mean creating and equipping people with the tools and strategies to positively engage with Indigenous peoples. This includes developing techniques to better integrate knowledge about Indigenous peoples and their experiences into the oversight bodies' work to provide respectful and culturally-appropriate services.

78. Successful cultural competency at the oversight bodies should, at a minimum, do the following:

- Enable staff and the oversight bodies to foster a deeper awareness and understanding of the historically-rooted social context as it pertains to the experiences of Indigenous communities;
- Provide an opportunity for staff and the oversight bodies to critically reflect on their policies, practices, and work processes when interacting with Indigenous communities, and how these can be enhanced to better reflect their new or enriched awareness of this unique, complex, and dynamic social context; and
- Encourage staff and the oversight bodies to improve their practice models and tools by using knowledge and perspectives enhanced by Indigenous values to be more responsive to the cultural context and unique needs of Indigenous communities.

79. The desired result of enhanced cultural competency will be a transformative change for the oversight bodies and their staff. This includes staff at all levels of the organizations and the organizations themselves.

80. More specifically, transformative change for individual staff members will include a better understanding of Indigenous issues and the need for and value of dialogue, consultation, and engagement with Indigenous communities. Staff will develop the tools to better interact

with and serve Indigenous peoples in a respectful and meaningful way.

81. The success of cultural competency training will depend on a person's awareness of their own biases and how they influence interactions with others. This awareness should be contrasted with learning about the diversity of Indigenous cultural practices and nations' worldviews. Self-awareness and learning about Indigenous peoples are *both* important parts of becoming a more culturally-competent person.

82. Once this is done, a person should appreciate the concept of culture and its role in shaping their experiences and the experiences of others. Next, efforts should focus on developing skill sets to successfully navigate situations where cultural differences may be a factor. The optimal result will be developing cultural competency in an individual's ability to understand, communicate with, and effectively interact with people across cultures, including Indigenous peoples.

83. Cultural competency, however, does not stop at the individual level. Rather, there must be transformative change at the organizational level of the oversight bodies as well. This will require that the oversight bodies critically assess their policies, programs, and operations to include a more respectful, culturally-competent approach. They must understand how assumptions and attitudes have informed their decision-making to date and how a more culturally-competent approach can be incorporated into their ongoing work.

Cultural competency, however, does not stop at the individual level. Rather, there must be transformative change at the organizational level of the oversight bodies as well.

84. To enhance Indigenous cultural competency at the oversight bodies, all staff should receive further training on cultural competency, sensitivity, diversity, inclusion, and accessibility. Working with Indigenous communities, the oversight bodies should develop a mandatory and ongoing cultural competency training program. The program should include a mix of training tools aimed at developing more culturally-competent staff and oversight bodies. It should track and reward staff outcomes and be a permanent part of each oversight body.

Recommendation 10.1

The oversight bodies should develop and deliver in partnership with Indigenous persons and communities mandatory Indigenous cultural competency training for their staff. This training should be a permanent and ongoing commitment within each organization, and include the following:

(a) A substantial course about Canada's Indigenous communities, with a focus on Ontario's Indigenous communities, including, but not limited to their history, culture, spirituality, language, and current issues. This training must be consistent, comprehensive, and available to all staff, especially those coming into contact or working with Indigenous peoples; and

(b) Key performance indicators to track outcomes and success.

85. Crucially, respectful relationships with Indigenous peoples cannot be built at a time of crisis or incident. Sustained, proactive outreach and relationship-building are key components of cultural competency.

86. Any action to meaningfully develop Indigenous cultural competency must therefore include an open dialogue and partnerships with Ontario's Indigenous communities. Consideration must be given to the fact that Ontario's Indigenous peoples are diverse. This includes remote, rural, and urban experiences, coupled with First Nations, Inuit, and Métis perspectives. Each community faces different challenges and has different priorities. These depend on a number of factors, such as location, resources, population, and culture. Developing more culturally-competent police oversight must recognize the diversity of the province's Indigenous peoples and better engage them in the process.

87. The oversight bodies should therefore take steps to develop meaningful and equitable partnerships with Ontario's Indigenous communities. They should, for example, engage with Indigenous communities, Friendship Centres, and other Indigenous organizations. These relationships are vital for building cultural competency and strong connections with Indigenous communities. They also can serve as an important bridge for providing services to Indigenous communities, particularly in the north or when working in Indigenous languages.

88. In addition, the oversight bodies should consider establishing Indigenous advisory groups to provide ongoing advice on cultural competency and outreach to Indigenous communities. These advisory groups would ideally include First Nations, Inuit, and Métis representatives, including youth and Elders.

The oversight bodies should therefore take steps to develop meaningful and equitable partnerships with Ontario's Indigenous communities.

89. Partnerships with Indigenous communities and organizations will provide an important mechanism for Indigenous peoples to provide guidance and feedback to the oversight bodies on their efforts to enhance their cultural competency and improve their Indigenous outreach.

Recommendation 10.2

The oversight bodies should increase outreach to Indigenous communities and establish meaningful and equitable partnerships with Indigenous organizations.

90. Furthermore, cultural competency may be enhanced by taking steps to increase Indigenous representation and promotion at each of the oversight bodies.

91. In section 4.400, I discussed the need for the oversight bodies to better reflect Ontario's diversity. Given the mandate and purpose of civilian oversight, it is reasonable to expect that the civilian oversight bodies represent the civilian population of Ontario.

92. Throughout my consultations, however, I heard repeatedly that the oversight bodies do not include or reflect the province's Indigenous peoples. This contributed to a perception that the bodies do not meaningfully understand nor embrace Indigenous cultures, realities, and experiences.

93. To combat this perception, the oversight bodies should actively recruit and promote Indigenous peoples at all levels of staff. This means increasing the number of Indigenous staff working at the oversight bodies. It also means mentoring Indigenous staff and supporting them to reach positions of leadership.

94. Selection criteria for hiring and promoting staff should reflect skills, knowledge, and experience in working with Indigenous communities. Similarly,

management's performance evaluations should include assessments of how well they promote, support, and include diversity, inclusion, and accessibility in their areas of responsibility.

95. Creating a supportive and inclusive work environment that better reflects Indigenous peoples and experiences is a crucial step to improving Indigenous cultural competency. Moreover, it is an important tool for better serving Indigenous communities.

Recommendation 10.3

There should be ongoing recruitment and development of Indigenous persons at the oversight bodies, including in senior and leadership positions.

96. Cultural competency is not limited to learning about Indigenous peoples and recruiting Indigenous staff. It is about applying a culturally-competent approach to service delivery.

97. The oversight bodies must ensure that they are providing culturally-competent services to Indigenous peoples. This may include, but is not limited to, the following:

- Acknowledging and including Indigenous communities when delivering services;
- Acknowledging the traditional territory of Indigenous peoples when possible and including that acknowledgment in the work being done;
- Ensuring that staff are aware of Indigenous organizations and service providers so they can meaningfully refer people there when needed;
- Providing alternative ways for Indigenous peoples to access services, such as with the assistance of a Friendship Centre or legal aid clinic;
- Providing program and service information and communication materials in Indigenous languages;
- Offering interpretive services in Indigenous languages at no extra cost or delay;
- Adopting protocols in consultation with Indigenous groups for working with Indigenous communities and peoples;
- Knowing, understanding, and respecting Indigenous cultural and spiritual protocols and religious requirements and beliefs; and
- Meeting with Indigenous communities to assess service delivery, effectiveness, and accountability.

98. The value of developing the oversight bodies' cultural competency ultimately turns on how they apply that new knowledge, self-awareness, and skill set on the ground.

Recommendation 10.4

The oversight bodies should implement a culturally-competent approach to service delivery.

99. Finally, cultural competency must be seen as an ongoing priority for the oversight bodies and the subject of continued assessment. This means supporting and recognizing staff who adopt a culturally-competent approach. It also means constant evaluation to ensure that cultural competency programs are meeting their goals. And it requires allocating proper resources to cultural competency efforts to support their success.

100. More specifically, staff should feel supported and encouraged to implement policies and provide services in ways to ensure greater equity and inclusiveness for Indigenous peoples. This includes providing staff with the tools to better serve Indigenous peoples. It also means recognizing staff successes and including them in performance assessments.

101. The oversight bodies also should evaluate their cultural competency programs on an ongoing basis. This will require developing an assessment plan. This plan, developed in consultation with Indigenous peoples, should incorporate tools to identify both achievements and areas for improvement.

102. Finally, adequate resources must be allocated to making the oversight bodies more culturally competent with Indigenous peoples. Robust cultural training, outreach, and service delivery must be treated as a priority. How resources are allocated must be assessed to ensure that cultural competency is being implemented effectively.

103. Simply put, cultural competency is an ongoing responsibility. It requires participation, support, and promotion by individuals and the oversight bodies as a whole. To be successful, its implementation and effectiveness must be evaluated on a continuing basis.

Recommendation 10.5

The oversight bodies should develop an ongoing audit process to assess the implementation and effectiveness of cultural competency and institutional change.

10.500 – Oversight of First Nations policing

104. Effective civilian oversight of policing in First Nations communities is needed. As I explained in section 10.230, however, First Nations Constables are not "police officers" within the meaning of the *Police Services Act*. Similarly, First Nations police services are not "police forces." As a result, the oversight processes largely exclude First Nations police and communities.[417]

105. The gaps in the legislative foundation governing First Nations policing are problematic. First Nations policing is not set up, funded, or legislated in the same way as other policing in this province. Rather, pursuant to the tripartite agreements discussed in section 10.230, First Nations police services are treated as a funded program, not an essential service. Furthermore, First Nations Constables are peace officers, but not police officers. They thus do not fall within the jurisdiction of the SIU and OIPRD.

106. During my consultations, I heard repeatedly about the value of First Nations policing in First Nations communities. First Nations Constables have continually served in often isolating and challenging environments. I was told that they have been chronically underfunded and understaffed. I saw firsthand that they often lack community infrastructure, such as proper buildings, cells, and support services. And I was informed that their hard work has not always earned them much respect or appreciation from other policing colleagues.

The desire for appropriate civilian oversight of First Nations policing is clear.

107. The desire for appropriate civilian oversight of First Nations policing is clear. For example, a recent report from the federal government's engagement sessions on policing Indigenous communities noted a demand for effective and legally binding procedures for civilian oversight.[418] Similarly, a report from the Office of the Provincial Advocate for Children and Youth recommended that the OIPRD's powers be expanded to include First Nations police services and the policing of Indigenous people so individuals on-reserve have access to an independent complaint and appeal mechanism.[419] And First Nations policing stakeholders told me during my consultations that they support civilian oversight.

108. The exclusion of First Nations policing from civilian oversight results in many First Nations communities not having access to the same oversight mechanisms as other Ontarians. This gap further exacerbates the distinction between policing for First Nations and policing for all other Ontarians.

The exclusion of First Nations policing from civilian oversight results in many First Nations communities not having access to the same oversight mechanisms as other Ontarians. This gap further exacerbates the distinction between policing for First Nations and policing for all other Ontarians.

109. I therefore recommend that consideration be given to bringing First Nations policing within the province's civilian police oversight mechanisms. This will require collaboration with First Nations and the federal and provincial governments.

110. Ultimately, individual First Nations should decide whether they wish to opt in or not. In other words, the legislation should be permissive, not mandatory. Chief Justice LeSage made a similar recommendation in 2005, suggesting that the law not preclude First Nations that wish to have their police service fall under the provincial complaints system from being able to do so.[420] I agree and believe the recommendation should extend to all oversight bodies.

111. Of course, if the oversight bodies assume jurisdiction over First Nations policing, the need to enhance their Indigenous cultural competency will be especially crucial.

Recommendation 10.6

Consideration should be given to expanding the mandates of the oversight bodies to include First Nations policing, subject to the opting in of individual First Nations.

CHAPTER 11

Demographic Data Collection

11.100 – Introduction

1. Should the police oversight bodies in Ontario collect demographic data?

2. In my view, they should. And the demographic data they collect should include gender, age, race, religion, ethnicity, mental health status, disability, and Indigenous status.

3. Data collection offers many benefits. It supports evidence-based public policy and decision-making, promotes accountability and transparency, and, if used properly, may build public confidence in policing and police oversight.

4. Currently, with one minor exception, the SIU, OIPRD, and OCPC do not systematically collect demographic data on the race, religion, age, mental health status, disability, or Indigenous status of complainants and alleged victims.

5. That minor exception is the SIU's collection of gender data, which information it shares in annual reports.

6. Apart from this very limited collection of data, the police oversight system in Ontario has no data infrastructure in place to understand the make-up of complainants and alleged victims of police conduct.

7. On this issue, the police oversight system lags behind the United States, the United Kingdom, and other public sectors in Ontario.

8. Data collection raises a number of complicated issues. Because of that, I also recommend creating an advisory committee to work with the oversight bodies to set up best practices. This includes practices relating to the collection, management, analysis, and disclosure of the data.

9. Stakeholders such as community representatives, advocacy groups, law enforcement representatives, and academics could work with the Ontario Human Rights Commission, the Anti-Racism Directorate, and the Information and Privacy Commissioner to design a demographic data regime.

11.200 – The case for demographic data collection

10. I will touch briefly here on the benefits of data collection, concerns about it, and the use of it in other jurisdictions and public sectors.

11.210 – Benefits of data collection

11. The wisdom and value of collecting demographic data was once controversial

in academic and policy circles. Some were concerned about the potential invasion of privacy. Others were concerned about the risk for the misuse of statistics to reinforce discriminatory beliefs and practices.

12. Academics and policy makers are now nearly unanimous in their support for the collection of demographic data.

13. The broad consensus is that more and better data leads to better policy decision-making. This was clearly reflected in both my public and targeted stakeholder meetings.

14. I will discuss three main benefits to data collection that became obvious during my consultations. They are interrelated.

15. First, without data and research, the conversation about police violence and racial profiling is dominated by allegations and anecdotes. People are more likely to pay attention to research.

16. For systemic issues, groups need research to support their claims, and the police and policy-makers need official data to identify problem-areas and develop programs.

17. How can we fully understand what the relationship is between race and police violence without data? How can we identify any possible causes? How can we assess whether programs or policies are effective in addressing these issues?

Academics and policy makers are now nearly unanimous in their support for the collection of demographic data.

18. Data collection and evidence-based research is the only way to "confront these issues with honesty and objectivity."[421]

19. Second, the police and police oversight bodies need data and the scientific evaluation of facts to develop policy, better manage programs, and evaluate the progress of strategies put in place.

20. Governments and police chiefs agree that research data serves as "a base for problem-solving, planning, and community dialogues."[422]

21. For example, Canadian police services have introduced anti-racism initiatives and have sought to improve relationships with racialized communities.

22. A police chief told me that his police service greatly appreciates the potential value in using statistical analysis. They use it to measure the effectiveness of various bias-free policing and anti-discrimination initiatives. He said statistical analysis also would help the police service determine

whether those initiatives need to be improved.

During my consultations, the message I received was clear: the public and police oversight bodies need to understand how the police are functioning, how the use of force is being deployed, and what the impact is on the community.

23. Information also can help police services identify patterns that otherwise would go unnoticed.

24. During Ottawa's Traffic Stop Race Data Collection Project, for example, many were surprised to see evidence of a disproportionately high incidence of traffic stops for members of Middle Eastern communities.

25. Similarly, police oversight bodies need demographic data to assess if their processes are functioning properly. For example, the OIPRD could use demographic data to evaluate whether certain segments of the population are not engaging in its process. If so, it could then develop strategies to address such a problem accordingly.

26. Third, data collection is an important step toward greater accountability and transparency.

27. During my consultations, the message I received was clear: the public and police oversight bodies need to understand how the police are functioning, how the use of force is being deployed, and what the impact is on the community.

28. The current lack of transparency is problematic.

29. Instead of the oversight bodies providing such data themselves, it is left to journalists and academics to dig it up.

30. When the uncovering of crucial facts is left to those outside parties, the oversight bodies do not benefit from the goodwill and public trust that normally accompanies an act of transparency. Instead, the oversight bodies, and the police by association, appear unwilling to expose themselves.

31. The data collection I am recommending allows the oversight bodies and the public to check on what the police and police oversight bodies are doing. In so doing, data collection goes to a core purpose of civilian police oversight: promoting public confidence in policing.

11.220 – Concerns about data collection

32. Not all stakeholders supported data collection.

33. One concern that was raised was cost. To me, this concern is short-sighted.

34. There may be initial start-up costs for things such as developing standardized software. But otherwise data collection should be relatively inexpensive. For example, with the OIPRD it may be as simple as including more categories on the standard complaint form.

35. I also note that the cost of making use of collected data has not deterred other jurisdictions from doing so, even ones that employ a more extensive system than what I am proposing.

36. Some police stakeholders have said that it may undermine police and public safety if data is collected because officers may become hesitant to police effectively and, in some cases, fail to use force when necessary.

37. This to me is speculative and unconvincing. There does not appear to be any evidence to support this claim.

38. To the contrary, in the United States and the United Kingdom, where data has been collected for many years, police are still effective and violent crime rates have generally been falling.

39. I note that similar concerns were raised when use of force regulations were implemented in the United States. Research, however, suggests that the number of police officers seriously injured in the line of duty actually declined, as did the number of civilians injured or killed.[423]

40. Others were concerned that race-based data collection would reinforce socially constructed ideas of race. In turn, they said, collecting such data itself promoted racism.

41. But refusing to collect statistics means less insight into the relationship between race and policing. In its report "The Importance of Collecting Data and Doing Social Scientific Research on Race," the American Sociological Association strongly rejected this perspective and encouraged the collection and analysis of racial data:

> Sociological scholarship on "race" provides scientific evidence in the current scientific and civic debate over the social consequences of the existing categorizations and perceptions of race; allows scholars to document

> how race shapes social ranking, access to resources, and life experiences; and advances understanding of this important dimension of social life, which in turn advances social justice. Refusing to acknowledge the fact of racial classification, feelings and actions, and refusing to measure their consequences will not eliminate racial inequalities. At best, it will preserve the status quo... The continuation of the collection and scholarly analysis of racial data serves both science and the public interest.[424]

42. Finally, I accept that some are worried about the frailties of statistical collection and analysis. Misleading or inaccurate conclusions could be drawn from data.

43. Involving researchers in the design process – and in the advisory committee that I discuss in section 11.300 – will help collect information in a way most conducive to independent, expert scientific analysis. Their involvement adds legitimacy and objectivity to the process. I agree with the many stakeholders who emphasized that independent analysis is crucial.

44. In all, though I respect the concerns raised by some stakeholders, the benefits of data collection are too strong to be ignored.

11.230 – Practices in other jurisdictions and the public sector

45. Ontario's police oversight bodies have fallen behind the practices of other countries, countries that have been doing more widespread demographic data collection than what I am recommending.

46. Those countries have recognized the significant value of demographic data collection and benefitted from it in turn.

47. For example, the United States and United Kingdom have recognized the benefits of demographic data collection for many years.

48. In the United States, almost all police forces collect data. A researcher told me the concept is "beyond debate."

49. American federal and state authorities collect extensive demographic data through a variety of different strategies. Police stops are one example for which, by 2005, an estimated four thousand agencies were collecting racial and ethnic information.[425]

50. Examples of specific programs put in place by cities after beginning data collection and analysis are encouraging. Phoenix, for example, found that their biggest issue was the use of force. The response was to create a citizen's forum,

develop a model policy for the entire state, institute training on bias-based policing, and create advisory groups with racialized communities that meet monthly.[426]

In short, for policing and other public sectors, demographic data collection is becoming the norm, not the exception.

51. I also learned from various researchers that the United Kingdom has strong national standards on data collection, preventing the misuse of data, interpreting data, and the release of data to the public.

52. There, official statistics are produced and published that deal with race and other demographic information in the employment, education, health, and criminal justice spheres.

53. Other public sectors have embraced the value of data in shaping policy and improving public confidence.

54. In Ontario, public sector health and education agencies collect demographic data on their clients, patients, and students.

55. In the education sector, the Toronto District School Board collects race data in student profile surveys. The Peel District School Board, Durham District School Board, and the University of Toronto have made announcements that they also will begin collecting race-based data.[427]

56. In the health sector, there are many instances of race-data collection and ethno-cultural data collection. Such data then contributes to research on the social determinants of health.

57. In short, for policing and other public sectors, demographic data collection is becoming the norm, not the exception.

Recommendation 11.1

Ontario's police oversight bodies should collect demographic data on matters falling within their respective mandates. Relevant demographic data should include gender, age, race, religion, ethnicity, mental health status, disability, and Indigenous status.

11.300 – Advisory committee on best practices

58. To achieve a well-functioning data collection system, there remain many questions that will need to be answered. For example, who owns the data? Who holds or stores it? Who can access it? Who studies it? How is it to be shared?

59. During my consultations I was presented with different views on collection methods, management, analysis, and disclosure.

60. These questions require more attention than I am able to give them within the context of this Review. Nor does answering any of them other than ones about data collection fit within the terms of my mandate.

61. This is in part why I recommend forming an advisory committee to establish further guidelines on data collection.

62. An advisory committee can bring together stakeholders with different perspectives and representing different interests.

63. Representatives from civil-rights organizations, community groups, members of law enforcement, and academics should be involved. The Human Rights Commission, the Anti-Racism Directorate, and the Information and Privacy Commissioner also could offer valuable expertise.

64. Members of the advisory committee could then cooperate in designing the parameters of demographic data collection.

65. Involving all stakeholders promotes buy-in, accountability, and legitimacy. An advisory committee also serves to incorporate diverse opinions and helps build relationships.

66. The objective is to develop a data collection process that will become a routine institutional practice. Decisions will need to be made about design, management, and technology, among other issues.

67. Some issues should be straightforward though.

68. For example, experts generally agree that demographic details on gender, age, race, religion, ethnicity, mental health status, disability, and Indigenous status should be collected.

69. There also is generally consensus that self-identification is the best method to record race and other demographic indicators.

70. In addition, when information is requested from individuals, including mental health information, they should be told the following:

- That the data is being collected on a voluntary basis;
- Why the data is being collected;
- How the data will be used;
- The benefits of volunteering data; and
- The privacy and confidentiality steps

that will be taken to protect their information.

71. Moreover, any data collection should be minimally intrusive to protect the privacy and dignity of the individual. For example, this would involve asking a yes or no question about whether someone has a mental health disability, rather than asking for a specific diagnosis or symptoms.

72. When deciding who will own the data, how it will be stored, and how it is to be disclosed to the public, examples from the United States and the United Kingdom may further guide us. In the end, however, our own process must incorporate local context.

73. An advisory committee would be best suited to do this.

Recommendation 11.2

An advisory committee should be established to develop best practices on the collection, management, and analysis of relevant demographic data.

CHAPTER 12

Other Forms of Police Oversight

12.100 – Introduction

1. My Review has focused on improving the transparency, accountability, and effectiveness of the SIU, OIPRD, and OCPC. These bodies, however, are part of the broader police oversight system.

2. During my consultations, I heard about a number of police oversight issues that did not relate directly to the three bodies or fall squarely within the terms of my mandate. Given the oversight bodies' role within the broader system, I wish to comment on two.

3. First, police services boards are a vital component of the civilian police oversight system in Ontario. As I explain below, the system would be strengthened by establishing consistent selection criteria for board members and providing them with mandatory training on their roles and responsibilities.

4. Second, there is merit to considering the establishment of a professional regulatory body for police officers, namely a College of Policing. The further professionalization of police officer training, recruitment, and standards will help garner public trust and respect for policing.

12.200 – Police services boards

5. The first level of oversight for policing is the police services board. As I discussed in section 3.270, every municipality that has a police service, or is policed by the OPP under contract, must have a police services board.

6. Boards set objectives and priorities for police services, and provide independent civilian governance. They work together with the oversight bodies to hold police accountable within the communities they serve.

7. During my consultations, I met with the Ontario Association of Police Services Boards, individual police services boards, and other policing stakeholders. While these discussions focused on the three police oversight bodies, I also heard some concerns about the police services boards. These concerns focused mainly on the selection and training of board members.

8. Municipal police services boards consist of either three, five, or seven members, depending on municipality size. They always include the mayor of the municipality (or another council member appointed by the council) and a municipal appointee who is neither a municipal

councillor nor a municipal employee. The remainder of the board is filled by:

- One provincial appointee for three-member boards;
- Two provincial appointees and one municipal councillor for five-member boards; or
- Three provincial appointees and two municipal councillors for seven-member boards.[428]

9. The legislation does not currently set out the selection criteria for appointed board members. I was told that this sometimes leads to gaps in addressing the boards' governance needs.

10. To remedy this issue, I recommend that the Ministry of Community Safety and Correctional Services establish selection criteria through legislation or regulation for board appointees. These selection criteria should not be overly prescriptive, to ensure that individuals from diverse professional and personal backgrounds are attracted to apply. But they should take into consideration core competencies of board members, such as strategic planning and analysis, critical thinking, performance evaluation, and financial literacy. Efforts also should be made to recruit applicants who reflect the diversity of the communities they serve.

Recommendation 12.1

The Ministry of Community Safety and Correctional Services should establish selection criteria for police services board appointees.

11. While selecting qualified members will contribute to making the police services boards effective, training is also crucial to enhancing the capacity of boards.

12. Currently, the legislation provides that the Minister of Community Safety and Correctional Services may set training requirements for board members.[429] Throughout my consultations, however, I discovered that training practices vary widely.

Without the appropriate skills, knowledge, and understanding, they may lack confidence to govern independently from the police service.

13. First, in some cases, new board members depend on the local police service that they govern to provide training. In my view, there is a natural conflict of interest when an organization subject

to oversight is responsible for training and mentoring its overseers. Effective oversight requires confident, independent, and knowledgeable police services boards.

14. Second, training of police services board members is not currently mandatory.[430] This may result in board members not receiving any form of training. These members may not have a full understanding of their roles. And without the appropriate skills, knowledge, and understanding, they may lack confidence to govern independently from the police service.

15. I was informed that the Ministry of Community Safety and Correctional Services provides training to police services boards on request. This training, however, is focused largely on boards' legislative and regulatory responsibilities. It is not compulsory and does not cover all the skills needed to be an effective board member.

16. I also was told that the Ontario Association of Police Services Boards provides governance training online and through its conferences, but is not funded to deliver ongoing, province-wide training. Some individual police services boards have organized training for members, in partnership with post-secondary institutions. However, there is no mandatory province-wide training to build governance capacity of board members.

17. To address this gap, the Ministry of Community Safety and Correctional Services should develop a mandatory training program and curriculum for police services board members. This training should be developed in partnership with the Ontario Association of Police Services Boards and post-secondary institutions with expertise in the areas of public sector and not-for-profit governance. Training should be provided independently of the local police service.

18. Board members should receive mandatory core training soon after appointment and ongoing training throughout their tenures to refresh and update knowledge and skills. Training should apply adult education principles. It should include a range of topics, such as an overview of the legislation, police governance essentials, strategic planning, hiring, performance management, performance measurement, financial literacy, stakeholder relations and community engagement, risk management, and crisis management.

19. Ensuring that every police services board member receives such training will

raise the capacity of boards to govern independently and hold police accountable within the communities they serve.

Recommendation 12.2

The Ministry of Community Safety and Correctional Services should develop mandatory training for police services board members. This training should be developed in partnership with the Ontario Association of Police Services Boards and post-secondary institutions with expertise in the areas of public sector and not-for-profit governance.

12.300 – College of Policing

20. Serious consideration should be given to establishing a College of Policing in Ontario as the professional body for policing.

21. A College of Policing would be a valuable addition to the existing oversight regime in the province. It would not eliminate the SIU, OIPRD, or OCPC. Rather, it would complement the civilian oversight system by developing a culture of professionalization through a more regulated body that specializes in enhancing policing standards and service.

22. For many people, policing is a calling in the same way many doctors are called to medicine and teachers are called to teaching. Policing should be seen as a distinguished profession.

23. The profession of policing is changing, as is the face of policing. Crimes are becoming increasingly technical and sophisticated, particularly in the area of cyber-crime.[431] More women have entered the profession, as have more members of marginalized groups.[432]

24. Officers today are attaining higher levels of education. By 1996, two thirds of the Canadian police labour force had some post-secondary education.[433] There have been some reports that police officers with higher levels of education are perceived to act more professionally when conducting their duties, and subject to fewer complaints.[434]

25. What has not changed as quickly is the basic process for entering and continuing in the policing profession in Ontario. The Ontario Police College, located in Aylmer, continues to provide basic recruit, refresher, and specialist courses to police services in the province.

26. After training, most, if not all, cadets return to their respective services

where they receive additional training. Once this is successfully completed, the officers are sworn in and receive their badges and warrant cards. From this point forward, officers may engage and continue in the profession of policing, subject to the requirements of the *Police Services Act* and legal, ethical, and professional standards.

The requirements needed to enter and continue in the profession of policing in Ontario remain largely static, ill-defined, and inconsistent.

27. Many stakeholders from inside and outside the police community commented on the indoctrination into police culture which begins as early as initial training. That culture traditionally has been White, male, and hyper-masculine.[435]

28. Stakeholders told me that training emphasizes traits such as physical strength, stoicism, and loyalty to fellow officers. While those traits are admirable and may be beneficial to the work of a police officer, they should not overwhelm other traditional traits such as empathy and compassion. These other traits are also necessary for officers to engage with the public in a respectful and cooperative manner.

29. Moreover, I was told that not all police services have the same training and professional development expectations for their officers. For example, all new police officers must complete the basic recruit course from the Ontario Police College. But some police services require additional training before an officer will be hired. And the education and training from the recruit stage onwards often appears to be driven by the particular needs of the individual police services, not by a consistent, province-wide professional standard.

30. Similarly, the requirements needed to enter and continue in the profession of policing in Ontario remain largely static, ill-defined, and inconsistent. A police officer may be promoted for various reasons. Unlike some other professions, there is no standard educational requirement or degree of professional competence required to move up the professional ladder. One police service, for instance, may have certain expectations or requirements for an officer to attain a particular rank that are not shared by other police services.

31. In England and Wales, a College

of Policing was recently established as a professional body for policing. The College has begun the process of setting the qualifications required for new police officers and officer advancement, instituting continuing professional development programs, and determining standards for policing.[436]

32. There is no College of Policing in Ontario.

33. In contrast, many other professions in Ontario have regulatory bodies which oversee their members. For example, there is a College of Physicians and Surgeons for doctors, a College of Trades for skilled trade professionals, and a College of Teachers for teachers.

34. The core function of these regulatory bodies is to protect the public. This is done through the establishment and maintenance of high standards of professional accountability. These standards in turn lead to a higher degree of public trust.

35. Notably, one of the hallmarks of a profession is a well-developed code of ethics. This code provides members of the public with a clear idea of the values and ethical responsibilities of each member of the profession. These values and responsibilities, when considered alongside relevant legislation, act as a guide to professional practice. They also serve as a mechanism for ensuring professional accountability.[437]

36. Furthermore, most professions have licensing requirements. This is the case for doctors, lawyers, electricians, architects, accountants, engineers, real estate brokers, teachers, and many other regulated professionals.

37. Only members of the profession who hold a current licence can identify themselves using the protected titles, such as "Registered Nurse." The legislation may specify activities which can be carried out only by a licensed professional, given the potential risk for harm.

38. The licensing requirement for participation in certain professions correlates to the importance of those professions to the community. It also reflects the high degree of responsibility assumed by the involved professionals.

39. For many professionals, the work they perform may have a significant impact on the health, safety, security, and wellbeing of the public. Public protection and trust are therefore emphasized in the role of their regulatory bodies.

40. At present, the police in Ontario are responsible for protecting the safety of

our communities. They are empowered to arrest and use physical force, including deadly force, against citizens. Yet there is no College of Policing overseeing the profession. Should there be? My answer is yes.

41. More specifically, I recommend a professional body be created which is responsible for regulating and governing the profession of policing in Ontario. The College of Policing's functions should include the following:

- Developing common and clear entry level academic requirements for police officers;
- Working with educational partners to develop a curriculum for a professional degree in policing which incorporates multidisciplinary education in areas including social and cultural competency, mental health, domestic abuse, serving vulnerable communities, and anti-racism and equity studies;
- Developing and delivering social and cultural competency programs for police officers in partnership with post-secondary institutions;
- Working to create a police culture that is more progressive and inclusive, beginning at the Ontario Police College;
- Setting standards for the admission, progression, and demission of members of the profession;
- Developing a common framework of performance expectations, and of the requirements for professional development and accreditation;
- Developing a set of ethical and professional standards;
- Working continuously to improve the development of policing standards and best practices;
- Monitoring police services to ensure that they adhere to policing standards and best practices;
- Fostering the lifetime learning of police officers to ensure ongoing professional development and competence;
- Establishing partnerships in research and education; and
- Ensuring that police officers carry on their duties in accordance with the defined expectations.

42. Let me be clear: the establishment of a College of Policing should not replace the SIU, OIPRD, and OCPC. It may reduce the work of the oversight bodies through the selection, promotion, and support of officers who embody the ideals of professionalism.

But it would not eliminate the need for civilian oversight.

43. Rather, the College of Policing should complement civilian oversight through the development of a culture of professionalization.

44. This is the approach in England and Wales, where the College of Policing coexists with the Independent Police Complaints Commission.

The College of Policing should complement civilian oversight through the development of a culture of professionalization.

45. Like the College of Policing in England and Wales, the College of Policing in Ontario should set the standards for policing. This should include standards on police education and training for both new recruits and seasoned officers.

46. Notably, the College of Policing should play a key role in modernizing the education of police officers, both at the Ontario Police College as well as colleges and universities. This means evaluating, updating, and renewing police studies and law enforcement-related course offerings at post-secondary institutions. And it requires transforming the Ontario Police College from what may be viewed as simply a training facility into an educational institution. This may include setting a multidisciplinary curriculum for a professional policing education degree, developed in consultation with other academic institutions.[438] A degree program with well-defined expectations and consistent standards will lead to better accountability, transparency, and legitimacy of police services.

47. For most professions, a recognized system of accreditation for formal educational programs helps to demonstrate that graduates of these programs have the required knowledge, specialized skills, and adequate preparation to carry out the responsibilities of their role. This provides reassurance to the public that those people who are deemed eligible to enter the profession are doing so competently. Accreditation constitutes an additional and important form of oversight. In many cases, regulatory bodies (either on their own or with other bodies and agencies) set standards for accreditation and carry out the accreditation functions. The College of Policing should assume this role.

48. In addition to setting standards for training and education, the College of Policing also should set standards with respect to police conduct and best

practices. The College of Policing could play an important role as a repository of researched best practices on a number of policing issues, such as crime prevention, social and cultural competency, and assistance to victims of crime.

49. Currently, the core values of one police service may be weighted differently from that of another police service. A standardized set of norms and expectations based on research and knowledge would place all police services on the same playing field. More importantly, in an aim to ensure public trust, this set of norms would provide the public with information about the roles, responsibilities, and expectations of police officers across all ranks.

50. Similarly, the professional standards of policing set by the College of Policing could be used by the Ministry of Community Safety and Correctional Services when monitoring and overseeing police services. In England and Wales, for instance, Her Majesty's Inspectorate of Constabulary has due regard for the professional standards established by the College of Policing when it assesses police services. The Ministry of Community Safety and Correctional Services could give similar regard to the standards set by the College of Policing in Ontario.

51. Eventually, the College of Policing could assume a role in the licensing of police officers. Currently, the "professional license" of the police officer is the officer's individual badge. The badge not only signifies that an officer is competent to carry out their assigned duties, but also that the officer will be held individually accountable for their actions.

52. The police badge is backed by the force of authority of both the government and the police profession. It confers power upon the officer. How that power is used every day has an impact on the public perception and trust of the police and the police profession.

53. The College of Policing could eventually establish criteria for licensing police officers. A license could serve as a prerequisite to a badge. As a professional's ability to practice is tied to their licensure, there is considerable incentive for regulated members to ensure that their behaviour is consistent with the established guidelines and standards of their profession. Among other things, the College of Policing also could maintain a public register of licensed police officers in the same way the regulated health professions and legal professions do.

54. The goal of the College of Policing would be to develop a culture of professionalization in policing. Its establishment therefore would not be inconsistent with civilian oversight. To the contrary, a College of Policing would enhance civilian oversight through stronger policing standards and service.

55. Police services with well-trained, professionally-accredited members are well-suited and well-prepared to understand the problems, demands, and opportunities of policing. They should be empowered to act proactively to identify and address individual or systemic issues before they escalate. And they should be encouraged to set high professional standards to build public trust and confidence in policing. A College of Policing helps achieve these aims.

56. As a result, I recommend that a College of Policing be established as a professional body responsible for regulating and governing the profession of policing in Ontario.

Recommendation 12.3

Consideration should be given to establishing a College of Policing similar to that in operation in England and Wales.

Recommendation 12.4

Working with post-secondary institutions, a task force or advisory group should be created to evaluate, modernize, and renew police studies and law enforcement-related course offerings across post-secondary institutions. Consideration should be given to updating the Ontario Police College curriculum, including through the creation of a post-secondary degree in policing.

APPENDIX A

Recommendations

Chapter 4 – Composition of Oversight Bodies

Recommendation 4.1

The laws on the civilian police oversight bodies should be set out in a statute, and regulations made under that statute, dedicated to civilian police oversight, and separate from the *Police Services Act*.

Recommendation 4.2

The SIU should be recognized as an arm's length agency accountable to the Ministry of the Attorney General.

Recommendation 4.3

The oversight bodies should develop and deliver mandatory social and cultural competency programs for their staff. Those programs should be developed and delivered in partnership with the communities they serve and organizations supporting those communities.

Recommendation 4.4

There should be ongoing recruitment and development of people from communities under-represented within the oversight bodies, including in senior and leadership positions.

Recommendation 4.5

The SIU director and the Independent Police Review Director should be appointed for a five-year term of office. A person may be re-appointed as director for a second five-year term, but may not serve more than two terms. A director's appointment may not be terminated, except for cause.

Recommendation 4.6

When appointing the SIU director, the following additional factors should be considered:

a. The candidate's understanding of the SIU's dual functions of effective investigations and public accountability;

b. The candidate's understanding of the needs and concerns of the community of stakeholders the SIU serves; and

c. The added value that a candidate's work or cultural background would bring to the organization.

Recommendation 4.7

The SIU should have a deputy director of investigations and a deputy director of operations and communications.

Recommendation 4.8

The SIU should create a public accountability office responsible for public communications and should be provided with adequate resources for this function.

Recommendation 4.9

The SIU should enhance its services to affected persons and should be provided with adequate resources for this function.

Recommendation 4.10

Affected persons support staff should make initial contact with affected persons who are not witnesses. They should maintain ongoing, proactive communication with all affected persons throughout an investigation.

Recommendation 4.11

The SIU should enhance its community outreach and should be provided with adequate resources for this function.

Recommendation 4.12

The legislation should be amended to provide the following:

a. The director or deputy director of investigations may lay charges;

b. The deputy director of investigations may not be a person who is a police officer or former police officer; and

c. The deputy director of investigations may designate a person, other than a police officer or former police officer, as acting deputy director of investigations to exercise the powers and perform the duties of that deputy director if that deputy director is absent or unable to act.

Recommendation 4.13

Salaries paid to SIU investigators should be comparable to those paid to other investigators.

Recommendation 4.14

The SIU should actively recruit civilian investigators with relevant experience who were not former police officers.

Recommendation 4.15

At least 50 percent of the non-forensic investigators on an investigative team at the SIU should be investigators with no background in policing.

Recommendation 4.16

The OIPRD should actively recruit civilian investigators with relevant experience who were not former police officers. No more than 25 percent of the OIPRD's investigators should be former police officers.

Recommendation 4.17

The SIU and OIPRD should incorporate anti-bias measures into their recruitment, training, education, and evaluation of investigators.

Recommendation 4.18

There should be a standardized education program to accredit SIU and OIPRD investigators.

Recommendation 4.19

The required qualifications and accreditation of an oversight investigator should be set out in a regulation.

Recommendation 4.20

The Ombudsman should have jurisdiction over all three police oversight bodies.

Chapter 5 – Effective Criminal Investigations

Recommendation 5.1

"Serious injuries" should be defined in the legislation in accordance with the Osler definition.

Recommendation 5.2

The mandate of the SIU should include all incidents involving the discharge of a firearm by a police officer at a person.

Recommendation 5.3

The SIU should have the discretion to conduct an investigation into any criminal matter when such an investigation is in the public interest. When deciding whether an investigation is in the public interest, the SIU should consider the following:

a. If there is a request to investigate from a chief of police, a police services board, the Attorney General, or the Minister of Community Safety and Correctional Services;

b. If the conduct in question involves allegations of criminal fraud, breach of trust, corruption, obstruction of justice, perjury, or another serious criminal offence; or

c. If the matter is potentially aggravated by systemic racism or by discrimination.

Recommendation 5.4

The SIU should have the discretion to lay charges for any criminal or provincial offence uncovered during an investigation.

Recommendation 5.5

The SIU's mandate should include investigations of auxiliary members of a police force and special constables employed by a police force.

Recommendation 5.6

The legislation should explicitly state that the SIU's mandate includes the investigation of former police officers and matters that pre-date the establishment of the SIU.

Recommendation 5.7

The requirements for police notification of the SIU should be set out in legislation which should provide the following:

a. The SIU must be notified of all incidents in which death or serious injury to a person may have resulted from the conduct of a police officer;

b. "Serious injuries" include any injury that is likely to interfere with the health or comfort of the victim and is more than merely transient or trifling in nature, including injuries resulting from sexual assault;

c. Without limiting the generality of the foregoing, serious injury will be presumed when the victim:

   i. is admitted to hospital;

   ii. suffers a fracture to a limb, rib, or vertebrae or the skull;

   iii. suffers a dislocation;

   iv. suffers burns to the body;

   v. loses any portion of the body;

   vi. suffers temporary or permanent loss of vision or hearing; or

   vii. suffers serious soft tissue injuries;

d. The SIU must be notified of all incidents involving allegations of sexual assault against police officers;

e. The SIU must be notified of all incidents involving the discharge of a firearm by a police officer at another person; and

f. Where a prolonged delay is likely before the seriousness of the injury can be assessed, the SIU must be notified so that it can monitor the situation and decide on the extent of its involvement.

Recommendation 5.8

The general requirements of the duty to cooperate with the SIU, as well as the timing of that requirement, should be set out in the legislation. In particular, the legislation should stipulate the following:

a. The duty to cooperate arises immediately upon SIU involvement; and

b. The duty to cooperate requires the police to comply forthwith with directions and requests from the SIU.

Recommendation 5.9

The general types of information or evidence that the SIU is normally entitled to receive, as well as any restrictions on the information or evidence the SIU can request, should be set out in the legislation.

Recommendation 5.10

The legislation should clarify that "notes on the incident" means the duty notes written by a police officer during an SIU investigation.

Recommendation 5.11

The legislation should explicitly specify that the duty to cooperate with the SIU applies to civilian members of a police force, special constables employed by a police force, and auxiliary members of a police force.

Recommendation 5.12

The legislation should include a provincial offence for failing to cooperate with an SIU investigation punishable by fine, imprisonment, or both.

Recommendation 5.13

SIU interviews of witness officers should be audio or video recorded unless, in the SIU's opinion, it would be impracticable to do so.

Recommendation 5.14

The legislation should provide that the SIU may provide a copy of the record of a witness officer's interview to the witness officer if, in the SIU's opinion, it is appropriate to do so and on conditions that the SIU deems to be appropriate.

Recommendation 5.15

A subject officer's notes on an incident prepared before SIU involvement should be produced to SIU investigators upon request.

Recommendation 5.16

The Attorney General's directive granting immunity for subject officers' notes and statements in SIU prosecutions should be re-assessed in light of subsequent jurisprudential developments.

Chapter 6 – Transparent and Accountable Criminal Investigations

Recommendation 6.1

At the end of an investigation, the SIU should release the name of a subject officer if the officer is charged.

Recommendation 6.2

The names of witness officers should not be released.

Recommendation 6.3

The names of civilian witnesses should not be released.

Recommendation 6.4

The legislation should provide that the SIU reports to the public on every investigation.

Recommendation 6.5

For cases where the SIU is notified but does not invoke or withdraws its mandate, the SIU should report in summary the reasons for its decisions as part of its annual report.

Recommendation 6.6

For cases that result in a criminal charge, the SIU should release the following information:

a. The officer's name;

b. The offence charged and when charged; and

c. Details about the officer's next court appearance.

Recommendation 6.7

For cases that do not result in a criminal charge, the SIU should release the director's report to the public.

Recommendation 6.8

For cases that do not result in a criminal charge, the director's report should include the following elements:

a. An explanation why the incident falls under the SIU's mandate;

b. A summary of the investigative process, including an investigative timeline;

c. A summary of the relevant evidence considered, including (i) physical evidence, (ii) forensic evidence, (iii) expert evidence, and (iv) witness evidence, which would include any evidence obtained from the subject officer;

d. Any relevant video, audio, or photographic evidence of the incident in question, modified to the extent necessary to remove identifying information;

e. An explanation for why any of the evidence listed above was not included in the report;

f. A detailed narrative of the event;

g. The reasons for the director's decision, including (i) the reasons for preferring some evidence over other contradictory evidence, (ii) an explanation of any relevant legal standard, and (iii) an explanation why the conduct did not meet the standard for laying charges; and

h. A statement on whether the matter has been referred to the OIPRD as well as whether there were any issues with cooperation relating to the investigation.

Recommendation 6.9

For cases that do not result in a criminal charge, the director's report should not include the following information:

a. Names of subject officers, witness officers, affected persons, or civilian witnesses (or any other evidence or information identifying them to the public);

b. Any information that, in the discretion of the director, could lead to a risk of serious harm;

c. Any information disclosing confidential police investigative techniques and procedures;

d. Any information whose release is otherwise prohibited or restricted by law; and

e. Any information that could identify a victim of sexual assault.

Recommendation 6.10

For cases that do not result in a criminal charge, the director's report should be published online on the SIU website. Copies of the report should be provided to (i) the affected person or their next of kin, (ii) any subject officer, (iii) the chief of any involved police service, and (iv) the Attorney General.

Recommendation 6.11

The legislation should be amended to allow the SIU to make public statements during an investigation when the statement is aimed at preserving public confidence, and the benefit of preserving public confidence clearly outweighs any detriment to the integrity of the investigation.

Recommendation 6.12

The Attorney General should release past reports in the following circumstances:

a. In all incidents in which a person died, prioritizing cases in which there was no coroner's inquest, subject to the privacy interests of the deceased's family;

b. In any incident on request of the affected person, or if the affected person is deceased, a family member of the affected person; and

c. On request of any individual, when there is significant public interest in the incident reported on, subject to the privacy interests of the affected person, or if the affected person is deceased, the privacy interests of that person's family.

Recommendation 6.13

Past reports should exclude the information set out in recommendation 6.9. Whenever possible, editorial notes should provide a summary of what the excluded information was about and an explanation for why it was necessary to remove it.

Recommendation 6.14

The SIU should aim to conclude investigations, including any final reporting to the public, within 120 days. If the SIU has not concluded an investigation within 120 days, it should report to the public on the status of the investigation. The SIU should further report on the status of the investigation every 60 days thereafter, until the investigation has concluded.

Recommendation 6.15

The *Coroners Act* should be amended to require that the coroner hold an inquest when a police officer's use of force, including use of restraint or use of a firearm, is a direct contributor to the death of an individual.

Recommendation 6.16

The coroner should retain discretion to hold an inquest in cases where a police officer is involved in an individual's death, but that police officer's use of force was not a direct contributor to the death. For those cases, the coroner should provide written reasons to the public if the coroner decides not to hold an inquest.

Recommendation 6.17

The government should provide funding for legal assistance to represent the interests of the spouse, parent, child, brother, sister, or personal representative of the deceased person at the coroner's inquest in SIU cases.

Chapter 7 – Public Complaint Investigations

Recommendation 7.1

The OIPRD should be renamed. The name should be easily understood and better reflect the OIPRD's core functions.

Recommendation 7.2

The OIPRD should expand its public outreach program. The program should target both the general public and community organizations that serve vulnerable people.

Recommendation 7.3

The complaint process should be easily accessible to all members of the public wherever they reside in Ontario.

Recommendation 7.4

The OIPRD, together with community groups and organizations, should provide assistance to public complainants to help navigate the complaints process. This assistance should be offered from the initial intake through to final disposition of the complaint.

Recommendation 7.5

Resources should be designated and made available to community groups and organizations to assist complainants through the complaints process.

Recommendation 7.6

The OIPRD should receive and investigate public complaints concerning special constables employed by a police force and auxiliary members of a police force.

Recommendation 7.7

A person should be prohibited from making a complaint if it appears that the person is acting as a proxy for a person otherwise prohibited from making a complaint.

Recommendation 7.8

Police associations should be prohibited from making complaints regarding a police force or member of a police force within the jurisdiction of the police association.

Recommendation 7.9

The Ministry of Community Safety and Correctional Services should review the process for members of a police service to make internal complaints to ensure there are effective whistleblower protections.

Recommendation 7.10

A chief of police should be able to request that the OIPRD investigate a complaint, without the approval of the police services board.

Recommendation 7.11

The OIPRD should have the discretion to conduct an investigation without a public complaint in any of the following circumstances:

a. If the SIU, a chief of police, or a police services board has referred a matter to the OIPRD for investigation;

b. If a public complaint has been made, and the OIPRD investigation reveals potential misconduct or policy or service issues other than those raised by the complaint itself;

c. If the complainant has withdrawn a complaint but there is a public interest in continuing the investigation; or

d. If there is a public interest in initiating an investigation.

Recommendation 7.12

Early resolution of complaints should be encouraged through the development and operation of alternative dispute resolution programs.

Recommendation 7.13

The legislative grounds allowing the OIPRD to screen out complaints should be updated to reflect the fact that complaints are presumptively screened in, and that sufficient reasons need to be provided where they are screened out.

Recommendation 7.14

The "public interest" ground for screening out complaints should be removed or, if retained, legislatively defined.

Recommendation 7.15

The OIPRD should be given discretion to screen out complaints, or terminate the investigation of complaints, when investigation or further investigation is not necessary or reasonably practicable.

Recommendation 7.16

Third party complainants should be allowed to file complaints. The OIPRD's discretionary grounds for not dealing with a third party complaint should be narrow.

Recommendation 7.17

The OIPRD should have sole responsibility for screening complaints against a municipal chief of police or a municipal deputy chief of police, and should notify the police services board of its decision.

Recommendation 7.18

The OIPRD should have sole responsibility for screening complaints made against the OPP Commissioner and OPP Deputy Commissioners, and should notify the Minister of Community Safety and Correctional Services of its decision.

Recommendation 7.19

The OIPRD should track complaints to identify officers who are the subject of multiple complaints and complainants who file multiple complaints without merit.

Recommendation 7.20

Within five years, the OIPRD should be the sole body to investigate public conduct complaints.

Recommendation 7.21

The OIPRD should receive funding and resources commensurate with its new responsibility to investigate all public conduct complaints.

Recommendation 7.22

Over the next five years, until the OIPRD is able to conduct all public conduct complaint investigations, the OIPRD should be able to refer complaints to police forces for investigation. During this interim period, the OIPRD should be solely responsible for laying disciplinary charges and should have the authority to order further investigation or to take over an investigation conducted by a police force.

Recommendation 7.23

The OIPRD should be solely responsible for investigating complaints against municipal chiefs of police, the OPP Commissioner, and their deputies.

Recommendation 7.24

The OIPRD should have the discretion to retain service or policy complaints in appropriate circumstances.

Recommendation 7.25

The OIPRD should be vested with the power to lay disciplinary charges against police officers.

Recommendation 7.26

The "serious/not serious" and "substantiated/unsubstantiated" terminology for public complaints should be abolished.

Recommendation 7.27

The general requirements of the duty to cooperate with the OIPRD, as well as the timing of that requirement, should be set out in the legislation. In particular, the legislation should stipulate the following:

a. The duty to cooperate arises immediately upon OIPRD involvement; and

b. The duty to cooperate requires the police to comply forthwith with directions and requests from the OIPRD.

Recommendation 7.28

The general types of information or evidence that the OIPRD is normally entitled to receive, as well as any restrictions on the information or evidence the OIPRD can request, should be set out in the legislation.

Recommendation 7.29

The duty to cooperate with the OIPRD should specifically extend to civilian members of a police force, special constables employed by a police force, and auxiliary members of a police force.

Recommendation 7.30

The legislation should include a provincial offence for failing to cooperate with the OIPRD punishable by fine, imprisonment, or both.

Recommendation 7.31

The provincial government should request that the federal government amend the *Youth Criminal Justice Act* to permit the OIPRD to access records.

Recommendation 7.32

The six-month limitation period for serving a notice of hearing for disciplinary matters should be eliminated for public complaints.

Recommendation 7.33

Decisions of the OIPRD should be transparent to complainants, police officers who are the subject of a complaint, and police chiefs of the forces to which the complaint relates.

Recommendation 7.34

The OIPRD should collect and publish summary information on the outcomes of all public complaints.

Recommendation 7.35

The OIPRD should work towards performance metrics, reportable to the public, to ensure timely completion of its work.

Recommendation 7.36

The OIPRD should communicate periodically with involved parties about the status of a complaint and inform them of its outcome as soon as is practicable.

Recommendation 7.37

The OIPRD should make the results and recommendations of systemic reviews in the form of a written report. The report should be available to the public.

Recommendation 7.38

The OIPRD should have the authority to designate in writing one or more chiefs of police to respond to recommendations from a systemic review. The designated chief of police or chiefs of police should be required to respond in writing to the OIPRD as soon as is feasible, but in any event within six months.

Recommendation 7.39

The OIPRD should monitor complaints and publish the results of disciplinary charges, including the outcomes and penalties imposed.

Chapter 8 – Public Complaint Adjudications

Recommendation 8.1

Independent public complaints prosecutors who work at the Ministry of the Attorney should prosecute public complaints. After the OIPRD lays a disciplinary charge, the independent public complaints prosecutor should be given carriage of the file.

Recommendation 8.2

The OIPRD and public complainants should not have standing at disciplinary hearings, but may seek leave to intervene. Other interested parties also may seek leave to intervene.

Recommendation 8.3

The OCPC should conduct all first instance hearings of public complaints.

Recommendation 8.4

Internal complaints should be governed by the *Police Services Act*. Consideration should be given to what role, if any, the OCPC should have in the internal disciplinary process and how the internal and public disciplinary processes interact.

Recommendation 8.5

Rights of review of a decision of the OCPC from a first instance hearing of a public complaint should be confined to the right of judicial review by the litigants in the Divisional Court.

Recommendation 8.6

After the OIPRD lays a disciplinary charge, the independent public complaints prosecutor should have the power to settle the complaint.

Recommendation 8.7

Prior to holding a disciplinary hearing, the OCPC should have the authority to direct that the parties engage in alternative dispute resolution.

Recommendation 8.8

Disciplinary hearing decisions from the OCPC should be released as soon as practicable and made available to the public.

Chapter 9 – Coordinating Oversight and Removing Inefficiencies

Recommendation 9.1

The SIU investigation should take priority over all other investigations. When there is a parallel criminal investigation, a memorandum of understanding between the SIU and the police services should set out the mechanics of the investigations. When there is a parallel civil investigation, the investigation should stand down at the discretion of the SIU.

Recommendation 9.2

At the conclusion of the SIU's case, the SIU should deliver a copy of its investigative file to the OIPRD on request, subject to any privacy and confidentiality conditions.

Recommendation 9.3

Section 11 reports should be made public, subject to the same considerations for SIU director's reports set out in recommendation 6.9.

Recommendation 9.4

Police services should provide section 11 reports to the OIPRD for review. The OIPRD should have the discretion to publicly comment on a section 11 report and the authority to direct further investigation, require further explanation or amplification, and lay conduct charges.

Recommendation 9.5

The requirement to commence a section 11 investigation "forthwith" should be eliminated. The section 11 investigation and report should be completed as soon as reasonably practicable.

Recommendation 9.6

The legislation should authorize the SIU to comment on and refer conduct matters to the OIPRD and policy and service matters to the chief of police of the relevant force. Any cross-referral should be noted in the SIU's public report.

Recommendation 9.7

The legislation should authorize the OIPRD to refer matters potentially falling within the SIU's jurisdiction to the SIU.

Recommendation 9.8

In addition to conducting all first instance hearings from public complaints, the OCPC should adjudicate any other proceeding as directed by the Ministry of Community Safety and Correctional Services and the Ministry of the Attorney General.

Recommendation 9.9

The OCPC's authority to approve the establishment, maintenance, and regulation of municipal detention facilities under section 16.1 of the *Police Services Act* should be eliminated.

Recommendation 9.10

The OCPC's powers relating to the adequacy and standards of police services under sections 9, 23, and 24 of the *Police Services Act* should be eliminated.

Recommendation 9.11

The OCPC's investigative, inquiry, and reporting powers under sections 25 and 26 of the *Police Services Act* should be eliminated.

Recommendation 9.12

The OCPC's powers regarding budgetary disputes and the structure of police services under sections 5(1)(6), 6, 8, 9, and 40 of the *Police Services Act* should be eliminated.

Recommendation 9.13

The OCPC's power to hear appeals from employees of a police force discharged or retired for becoming disabled under section 47 of the *Police Services Act* should be eliminated.

Recommendation 9.14

The OCPC's appointment, suspension, and termination powers with respect to First Nations Constables under section 54 of the *Police Services Act* should be eliminated.

Recommendation 9.15

The OCPC's power to direct internal complaints under section 78 of the *Police Services Act* should be eliminated.

Recommendation 9.16

The OCPC's powers to conduct employment status hearings and approve the creation of different bargaining units under sections 116 and 118 of the *Police Services Act* should be eliminated.

Recommendation 9.17

Requests to the OCPC for review of decisions concerning complaints relating to incidents which occurred before 2009 must be made to the OCPC within the next two years, after which time they can no longer be made.

Chapter 10 – Indigenous Peoples and Police Oversight

Recommendation 10.1

The oversight bodies should develop and deliver in partnership with Indigenous persons and communities mandatory Indigenous cultural competency training for their staff. This training should be a permanent and ongoing commitment within each organization, and include the following:

a. A substantial course about Canada's Indigenous communities, with a focus on Ontario's Indigenous communities, including, but not limited to their history, culture, spirituality, language, and current issues. This training must be consistent, comprehensive, and available to all staff, especially those coming into contact or working with Indigenous peoples; and

b. Key performance indicators to track outcomes and success.

Recommendation 10.2

The oversight bodies should increase outreach to Indigenous communities and establish meaningful and equitable partnerships with Indigenous organizations.

Recommendation 10.3

There should be ongoing recruitment and development of Indigenous persons at the oversight bodies, including in senior and leadership positions.

Recommendation 10.4

The oversight bodies should implement a culturally-competent approach to service delivery.

Recommendation 10.5

The oversight bodies should develop an ongoing audit process to assess the implementation and effectiveness of cultural competency and institutional change.

Recommendation 10.6

Consideration should be given to expanding the mandates of the oversight bodies to include First Nations policing, subject to the opting in of individual First Nations.

Chapter 11 – Demographic Data Collection

Recommendation 11.1

Ontario's police oversight bodies should collect demographic data on matters falling within their respective mandates. Relevant demographic data should include gender, age, race, religion, ethnicity, mental health status, disability, and Indigenous status.

Recommendation 11.2

An advisory committee should be established to develop best practices on the collection, management, and analysis of relevant demographic data.

Chapter 12 – Other Forms of Police Oversight

Recommendation 12.1

The Ministry of Community Safety and Correctional Services should establish selection criteria for police services board appointees.

Recommendation 12.2

The Ministry of Community Safety and Correctional Services should develop mandatory training for police services board members. This training should be developed in partnership with the Ontario Association of Police Services Boards and post-secondary institutions with expertise in the areas of public sector and not-for-profit governance.

Recommendation 12.3

Consideration should be given to establishing a College of Policing similar to that in operation in England and Wales.

Recommendation 12.4

Working with post-secondary institutions, a task force or advisory group should be created to evaluate, modernize, and renew police studies and law enforcement-related course offerings across post-secondary institutions. Consideration should be given to updating the Ontario Police College curriculum, including through the creation of a post-secondary degree in policing.

APPENDIX B

Orders-in-Council

Executive Council of Ontario/Conseil exécutif de l'Ontario

Ontario

Order in Council
Décret

On the recommendation of the undersigned, the Lieutenant Governor of Ontario, by and with the advice and concurrence of the Executive Council of Ontario, orders that:

Sur la recommandation de la personne soussignée, la lieutenante-gouverneure de l'Ontario, sur l'avis et avec le consentement du Conseil exécutif de l'Ontario, décrète ce qui suit:

WHEREAS the Lieutenant Governor in Council finds it necessary and convenient to amend Order in Council O.C. 629/2016 effective the date of this Order in Council;

AND WHEREAS the Special Investigations Unit (SIU) was established in 1990 and its legislative authority is set out in Part VII, Section 113 of the Police Services Act, with a mandate to cause investigations to be conducted into the circumstances of serious injuries and deaths that may have resulted from criminal offences, including sexual assaults committed by police officers;

AND WHEREAS the Office of the Independent Police Review Director (OIPRD) was established in 2007, and its legislative authority is set out in Part II.I and Part V of the Police Services Act, with a mandate to receive, manage and oversee all public complaints about police in Ontario; complaints can be in relation to the conduct of a police officer, or the policies and services of a police force;

AND WHEREAS the Ontario Civilian Police Commission (OCPC) was established in 2007 and its legislative authority is set out in Part II of the Police Services Act, with a mandate to, among other things, conduct hearings and adjudicate disputes related to police disciplinary decisions; budget disputes between municipal councils and police service boards; and disputes related to the provision of police services;

AND WHEREAS the Attorney General for Ontario has legislative authority for the three aforementioned police oversight bodies;

AND WHEREAS the oversight bodies perform a vital role in the administration of justice in the Province;

AND WHEREAS it was determined that it would be desirable to authorize under the common law pursuant to the prerogative of her Majesty the Queen in Right of Ontario, and in the discharge of the

O.C./Décret: 1530/2016

government's executive functions, an individual to conduct an independent review of the matters referred to herein;

THEREFORE, it is ordered that the Honorable Michael Tulloch, a Justice of the Ontario Court of Appeal, be appointed as Independent Reviewer, in accordance with the following terms of reference:

Mandate

1. The Independent Reviewer shall conduct a review and make recommendations on how to:
    a. enhance the transparency and accountability of the police oversight bodies, while preserving fundamental rights;
    b. ensure the police oversight bodies are effective and have clear mandates;
    c. reduce overlap and inefficiencies between these bodies; and
    d. enhance cultural competence in the three police oversight bodies in relation to their interactions with Indigenous Peoples.
2. The Independent Reviewer shall address as a priority ways in which the transparency of the SIU can be enhanced while preserving fundamental rights, including:
    a. Whether more information than is currently released to the public about an investigation, including the SIU Director's reports, should be released and, if so, the form this should take;
    b. whether subject/witness officer names and other witness names should be released; and
    c. whether past reports of the SIU Director should be released and, if so, the form this should take.
3. The Independent Reviewer shall, if feasible and in his discretion, make interim recommendations on the priority matters referred to in paragraphs 2 (a) to (c) or, alternatively, include such recommendations in his Final Report.
4. The Independent Reviewer also shall consider and provide recommendations with respect to the following:
    a. Whether former police officers should be employed by the police oversight bodies to conduct investigations;
    b. Whether the mandates of the three oversight bodies should be set out in legislation separate and apart from the Police Services Act;
    c. Whether any information collected by each police oversight body in relation to investigations, or otherwise, can be shared between them, and if so, how it best can be accomplished;
    d. Whether the three police oversight bodies should collect demographic statistics such as race, gender, age and community membership, whether mental health information ought to be collected as part of this statistical process, and what, if any, parameters ought to guide the collection of such data; and
    e. Any other matter which, in his discretion he deems advisable in light of the objectives set out in paragraphs 1 (a) to (c) hereof.
5. In conducting the review, the Independent Reviewer shall:
    a. review the existing legislation, processes and practices of each oversight body;

b. review and consider any existing records or reports relevant to this mandate;
c. engage in public consultations, including engagements with Indigenous communities to ensure the review is informed by Indigenous perspectives;
d. conduct inter-jurisdictional analysis, including any relevant legislation, and identify best practices;
e. undertake such further inquiries as the Independent Reviewer, in his discretion, deems appropriate; and
f. prepare a report on his findings and recommendations.

6. The Independent Reviewer will determine the method, content and extent of consultations required to fulfill his mandate.
7. The Independent Reviewer shall deliver his final report and recommendations to the Attorney General no later than March 31, 2017.
8. In conducting the review, the Independent Reviewer may request any person to provide information or records to him.
9. In fulfilling his mandate, the Independent Reviewer shall not report on any individual cases that are being investigated, or have been investigated by any of the three police oversight bodies.
10. The Independent Reviewer shall perform his duties without expressing any conclusion or recommendation regarding professional discipline matters involving any person or the civil or criminal liability of any person or organization.
11. Any notes, records, recollections, statements made to, and documents produced by the Independent Reviewer or provided to him in the course of the review, will be confidential. The disclosure of such information to Ontario or any other person shall be within the sole and exclusive discretion of the Independent Reviewer, except as required or restricted by the Freedom of Information and Protection of Privacy Act or any other applicable law.

Resources

12. Within a budget approved by the Ministry of the Attorney General, the Independent Reviewer may retain such counsel, staff, or expertise he considers necessary in the performance of his duties at reasonable remuneration approved by the Ministry of the Attorney General. The Independent Reviewer and his staff shall be reimbursed for reasonable expenses incurred in connection with their duties in accordance with Management Board of Cabinet Directives and Guidelines.
13. The Independent Reviewer shall follow Management Board of Cabinet Directives and Guidelines and other applicable government policies in obtaining other services and goods he considers necessary in the performance of his duties unless, in his view, it is not possible to follow them.

The Ontario Government

14. The Attorney General shall, in consultation with the Independent Reviewer, set a budget for the fulfillment of his mandate.
15. All ministries and all agencies, boards and commissions of the Government of Ontario shall, subject to any privilege or other legal restrictions, assist the Independent Reviewer to the

fullest extent possible so that the Independent Reviewer may carry out his duties and they shall respect the independence of the review.

16. The Attorney General shall make the final report of the Independent Reviewer available to the public as soon as practicable after receiving it. In delivering his report to the Attorney General, the Independent Reviewer shall ensure that the report is in a form appropriate for public release, consistent with the requirements of the Freedom of Information and Protection of Privacy Act and other applicable legislation. The Independent Reviewer shall also ensure that the report is delivered in English and French at the same time, in electronic and printed versions.

Further, Order in Council O.C. 629/2016 be revoked effective the date of this Order in Council.

ATTENDU QUE la lieutenante-gouverneure en conseil estime nécessaire et opportun d'apporter au décret n° 629/2016 des modifications qui entrent en vigueur à la date du présent décret;

ATTENDU QUE l'Unité des enquêtes spéciales (UES) a été constituée en 1990 sous le régime de l'article 113 de la partie VII de la Loi sur les services policiers, avec pour mandat de faire mener des enquêtes sur les circonstances qui sont à l'origine de blessures graves et de décès pouvant être imputables à des infractions criminelles, notamment des agressions sexuelles, de la part d'agents de police;

ATTENDU QUE le Bureau du directeur indépendant de l'examen de la police (BDIEP) a été constitué en 2007 sous le régime des parties II.I et V de la Loi sur les services policiers, avec pour mandat de recevoir, gérer et superviser l'ensemble des plaintes du public à l'égard des services policiers en Ontario au sujet de la conduite d'un agent de police ou encore des politiques d'un corps de police ou des services offerts par celui-ci;

ATTENDU QUE la Commission civile de l'Ontario sur la police (CCOP) a été constituée en 2007 sous le régime de la partie II de la Loi sur les services policiers, avec pour mandat, entre autres, de tenir des audiences et de trancher des différends liés à des décisions d'ordre disciplinaire en matière de police, des différends d'ordre budgétaire entre des conseils municipaux et des commissions de services policiers et des différends liés à la prestation de services policiers;

ATTENDU QUE les trois organismes de surveillance de la police susmentionnés relèvent du procureur général de l'Ontario;

ATTENDU QUE ces organismes de surveillance jouent un rôle crucial dans l'administration de la justice dans la province;

ATTENDU QU'il a été déterminé qu'il est souhaitable d'autoriser, en common law, selon la prérogative de Sa Majesté la reine du chef de l'Ontario, et dans le cadre des fonctions exécutives du

gouvernement, un particulier à effectuer un examen indépendant des questions mentionnées dans le présent décret;

EN CONSÉQUENCE, il est ordonné que l'honorable Michael Tulloch, juge de la Cour d'appel de l'Ontario, soit nommé examinateur indépendant conformément au mandat suivant :

Mandat

1. L'examinateur indépendant procède à un examen et fait des recommandations visant ce qui suit :
    a. accroître la transparence et la responsabilité des organismes de surveillance de la police, tout en préservant les droits fondamentaux;
    b. assurer l'efficacité des organismes de surveillance de la police et la clarté de leurs mandats;
    c. réduire les chevauchements et les inefficiences entre ces organismes;
    d. accroître la sensibilité aux facteurs culturels au sein des trois organismes de surveillance de la police dans leurs rapports avec les peuples autochtones.
2. L'examinateur indépendant se penche en priorité sur les façons d'accroître la transparence de l'UES tout en préservant les droits fondamentaux, notamment la question de savoir s'il convient de rendre publics :
    a. davantage de renseignements que maintenant au sujet d'une enquête, y compris les rapports du directeur de l'UES, et, le cas échéant, la façon de procéder;
    b. l'identité d'un agent impliqué ou d'un agent témoin et celle d'autres témoins;
    c. les rapports précédents de directeurs de l'UES et, le cas échéant, la façon de procéder.
3. L'examinateur indépendant fait, dans la mesure du possible et à sa discrétion, des recommandations provisoires sur les questions prioritaires visées aux sous-alinéas 2 a) à c) ou incorpore de telles recommandations dans son rapport final.
4. L'examinateur indépendant étudie les questions suivantes et fait des recommandations à leur sujet :
    a. la question de savoir si d'anciens agents de police devraient être employés par les organismes de surveillance de la police pour mener des enquêtes;
    b. la question de savoir si les mandats des trois organismes de surveillance devraient être énoncés dans des textes législatifs distincts de la Loi sur les services policiers;
    c. la question de savoir si les organismes de surveillance de la police peuvent s'échanger les renseignements qu'ils recueillent, notamment relativement à des enquêtes, et, le cas échéant, la meilleure façon de procéder;
    d. la question de savoir si les trois organismes de surveillance de la police devraient recueillir des données démographiques, comme la race, le sexe, l'âge et l'appartenance à une communauté, si cette collecte de données statistiques devrait englober des renseignements sur la santé mentale et quels seraient les éventuels paramètres guidant la collecte de ces données;
    e. toute autre question dont il estime l'étude opportune compte tenu des objectifs énoncés aux sous-alinéas 1 a) à c).
5. Dans le cadre de son examen, l'examinateur indépendant :

a. examine les dispositions législatives et les procédés en vigueur ainsi que les pratiques actuelles touchant chaque organisme de surveillance;
b. examine et étudie les dossiers ou les rapports existants qui se rapportent à son mandat;
c. mène des consultations publiques notamment en sollicitant les collectivités autochtones pour veiller à ce que l'examen bénéficie du point de vue autochtone;
d. procède à une analyse comparative basée sur d'autres autorités législatives, notamment des dispositions législatives pertinentes, et détermine les meilleures pratiques à suivre;
e. mène toute autre enquête qu'il estime appropriée;
f. rédige un rapport qui énonce ses conclusions et ses recommandations.

6. L'examinateur indépendant détermine la méthode, la teneur et l'étendue des consultations qu'il doit tenir dans le cadre de son mandat.
7. L'examinateur indépendant remet son rapport final et ses recommandations au procureur général au plus tard le 31 mars 2017.
8. Dans le cadre de son examen, l'examinateur indépendant peut demander à toute personne de lui fournir des renseignements ou des dossiers.
9. Dans le cadre de son mandat, l'examinateur indépendant ne doit pas faire rapport sur des affaires particulières qui font ou qui ont fait l'objet d'une enquête de la part de l'un des trois organismes de surveillance de la police.
10. L'examinateur indépendant s'acquitte de ses fonctions sans formuler de conclusions ou de recommandations quant aux questions de discipline professionnelle mettant en cause toute personne ou quant à la responsabilité civile ou criminelle de toute personne ou de tout organisme.
11. Les notes, dossiers, souvenirs et déclarations communiqués à l'examinateur indépendant et les documents produits par lui ou qui lui ont été fournis dans le cadre de son examen demeurent confidentiels. La divulgation de ces renseignements à l'Ontario ou à toute autre personne sera à la seule et entière discrétion de l'examinateur indépendant, sauf conformément aux exigences ou restrictions prévues par la Loi sur l'accès à l'information et la protection de la vie privée ou toute autre loi applicable.

Ressources

12. Dans le cadre d'un budget approuvé par le ministère du Procureur général, l'examinateur indépendant peut retenir les services des avocats, du personnel ou des experts qu'il juge nécessaires à l'exercice de ses fonctions selon la rémunération raisonnable approuvée par le ministère du Procureur général. L'examinateur et son personnel se font rembourser les frais raisonnables engagés dans l'exercice de leurs fonctions, conformément aux directives et aux lignes directrices du Conseil de gestion du gouvernement.
13. À moins que, à son avis, cela ne soit pas possible, l'examinateur indépendant suit les directives et les lignes directrices du Conseil de gestion du gouvernement ainsi que les autres politiques applicables du gouvernement dans le cadre de l'obtention des autres biens et services qu'il estime nécessaires à l'exercice de ses fonctions.

Le gouvernement de l'Ontario

14. Le procureur général établit, en consultation avec l'examinateur indépendant, un budget pour l'exécution du mandat de celui-ci.
15. Sous réserve de tout privilège ou de toute autre restriction légale, tous les ministères ainsi que tous les organismes, conseils et commissions du gouvernement de l'Ontario prêtent sans réserve leur concours à l'examinateur indépendant de façon qu'il puisse s'acquitter de ses fonctions et ils respectent l'indépendance de l'examen.
16. Le procureur général met le rapport final de l'examinateur indépendant à la disposition du public dès qu'il est matériellement possible de le faire après l'avoir reçu. L'examinateur indépendant veille à remettre son rapport final au procureur général sous une forme appropriée pour sa diffusion publique, conformément aux exigences de la Loi sur l'accès à l'information et la protection de la vie privée et de toute autre loi applicable. En outre, l'examinateur indépendant veille à ce que le rapport soit présenté à la fois en français et en anglais, sur support électronique et papier.

En outre, le décret n° 629/2016 est abrogé à la date du présent décret.

Recommended: Attorney General
Recommandé par: Le procureur général

Concurred: Chair of Cabinet
Appuyé par: Le président du Conseil des ministres,

Approved and Ordered: OCT 19 2016
Approuvé et décrété le:

Administrator of the Government
L'administratrice du gouvernement

Ontario

Executive Council
Conseil exécutif

Order in Council
Décret

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that:

Sur la recommandation de la personne soussignée, le lieutenant-gouverneur, sur l'avis et avec le consentement du Conseil exécutif, décrète ce qui suit :

WHEREAS the Special Investigations Unit (SIU) was established in 1990 and its legislative authority is set out in Part VII, Section 113 of the *Police Services Act*, with a mandate to cause investigations to be conducted into the circumstances of serious injuries and deaths that may have resulted from criminal offences, including sexual assaults committed by police officers;

ATTENDU QUE l'Unité des enquêtes spéciales (UES) a été constituée en 1990 sous le régime de l'article 113 de la partie VII de la *Loi sur les services policiers*, avec pour mandat de faire mener des enquêtes sur les circonstances qui sont à l'origine de blessures graves et de décès pouvant être imputables à des infractions criminelles, notamment des agressions sexuelles, de la part d'agents de police;

AND WHEREAS the Office of the Independent Police Review Director (OIPRD) was established in 2007, and its legislative authority is set out in Part II.I and Part V of the *Police Services Act*, with a mandate to receive, manage and oversee all public complaints about police in Ontario; complaints can be in relation to the conduct of a police officer, or the policies and services of a police force;

ATTENDU QUE le Bureau du directeur indépendant de l'examen de la police (BDIEP) a été constitué en 2007 sous le régime des parties II.I et V de la *Loi sur les services policiers*, avec pour mandat de recevoir, gérer et superviser l'ensemble des plaintes du public à l'égard des services policiers en Ontario au sujet de la conduite d'un agent de police ou encore des politiques d'un corps de police ou des services offerts par celui-ci;

AND WHEREAS the Ontario Civilian Police Commission (OCPC) was established in 2007 and its legislative authority is set out in Part II of the *Police Services Act*, with a mandate to, among other things, conduct hearings and adjudicate disputes related to police disciplinary decisions; budget disputes between municipal councils and police service boards; and disputes related to the provision of police services;

ATTENDU QUE la Commission civile de l'Ontario sur la police (CCOP) a été constituée en 2007 sous le régime de la partie II de la *Loi sur les services policiers*, avec pour mandat, entre autres, de tenir des audiences et de trancher des différends liés à des décisions d'ordre disciplinaire en matière de police, des différends d'ordre budgétaire entre des conseils municipaux et des commissions de services policiers et des différends liés à la prestation de services policiers;

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AND WHEREAS the Attorney General for Ontario has legislative authority for the three aforementioned police oversight bodies and the Solicitor General of Ontario also has legislative authority with respect to OCPC;

AND WHEREAS the oversight bodies perform a vital role in the administration of justice in the Province;

AND WHEREAS it was determined that it would be desirable to authorize under the common law pursuant to the prerogative of her Majesty the Queen in Right of Ontario, and in the discharge of the government's executive functions, an individual to conduct an independent review of the matters referred to herein;

THEREFORE, it is ordered that the Honorable Michael Tulloch, a Justice of the Ontario Court of Appeal, be appointed as Independent Reviewer, in accordance with the following terms of reference:

Mandate

1. The Independent Reviewer shall conduct a review and make recommendations on how to:

   (a) enhance the transparency and accountability of the police oversight bodies, while preserving fundamental rights;

   (b) ensure the police oversight bodies are effective and have clear mandates; and

   (c) reduce overlap and inefficiencies between these bodies.

2. The Independent Reviewer shall address as a priority ways in which the transparency of the SIU can be enhanced while preserving fundamental rights, including:

   (a) whether more information than is currently released to the public about an investigation, including the SIU Director's reports, should be released and, if so, the form this should take;

ATTENDU QUE les trois organismes de surveillance de la police susmentionnés relèvent de la procureure générale de l'Ontario et que la CCOP relève également du solliciteur général de l'Ontario;

ATTENDU QUE ces organismes de surveillance jouent un rôle crucial dans l'administration de la justice dans la province;

ATTENDU QU'il a été déterminé qu'il est souhaitable d'autoriser, en common law, selon la prérogative de Sa Majesté la reine du chef de l'Ontario, et dans le cadre des fonctions exécutives du gouvernement, un particulier à effectuer un examen indépendant des questions mentionnées dans le présent décret;

EN CONSÉQUENCE, il est ordonné que l'honorable Michael Tulloch, juge de la Cour d'appel de l'Ontario, soit nommé examinateur indépendant conformément au mandat suivant :

Mandat

1. L'examinateur indépendant procède à un examen et fait des recommandations visant ce qui suit :

   a) accroître la transparence et la responsabilité des organismes de surveillance de la police, tout en préservant les droits fondamentaux;

   b) assurer l'efficacité des organismes de surveillance de la police et la clarté de leurs mandats;

   c) réduire les chevauchements et les inefficiences entre ces organismes.

2. L'examinateur indépendant se penche en priorité sur les façons d'accroître la transparence de l'UES tout en préservant les droits fondamentaux, notamment la question de savoir s'il convient de rendre publics :

   a) davantage de renseignements que maintenant au sujet d'une enquête, y compris les rapports du directeur de l'UES, et, le cas échéant, la façon de procéder;

.../3

(b) whether subject/witness officer names and other witness names should be released; and

(c) whether past reports of the SIU Director should be released and, if so, the form this should take.

3. The Independent Reviewer shall, if feasible and in his discretion, make interim recommendations on the priority matters referred to in paragraphs 2 (a) to (c) or, alternatively, include such recommendations in his final report.

4. The Independent Reviewer also shall consider and provide recommendations with respect to the following:

(a) whether former police officers should be employed by the police oversight bodies to conduct investigations;

(b) whether the mandates of the three oversight bodies should be set out in legislation separate and apart from the *Police Services Act*;

(c) whether any information collected by each police oversight body in relation to investigations, or otherwise, can be shared between them, and if so, how it best can be accomplished;

(d) whether the three police oversight bodies should collect demographic statistics such as race, gender, age and community membership, whether mental health information ought to be collected as part of this statistical process, and what, if any, parameters ought to guide the collection and use of such data; and

b) l'identité d'un agent impliqué ou d'un agent témoin et celle d'autres témoins;

c) les rapports précédents de directeurs de l'UES et, le cas échéant, la façon de procéder.

3. L'examinateur indépendant fait, dans la mesure du possible et à sa discrétion, des recommandations provisoires sur les questions prioritaires visées aux sous-alinéas 2 a) à c) ou incorpore de telles recommandations dans son rapport final.

4. L'examinateur indépendant étudie les questions suivantes et fait des recommandations à leur sujet :

a) la question de savoir si d'anciens agents de police devraient être employés par les organismes de surveillance de la police pour mener des enquêtes;

b) la question de savoir si les mandats des trois organismes de surveillance devraient être énoncés dans des textes législatifs distincts de la *Loi sur les services policiers*;

c) la question de savoir si les organismes de surveillance de la police peuvent s'échanger les renseignements qu'ils recueillent, notamment relativement à des enquêtes, et, le cas échéant, la meilleure façon de procéder;

d) la question de savoir si les trois organismes de surveillance de la police devraient recueillir des données démographiques, comme la race, le sexe, l'âge et l'appartenance à une communauté, si cette collecte de données statistiques devrait englober des renseignements sur la santé mentale et quels seraient les éventuels paramètres guidant la collecte et l'utilisation de ces données;

.../4

5. In conducting the review, the Independent Reviewer shall:

   (a) review the existing legislation, processes and practices of each oversight body;

   (b) review and consider any existing records or reports relevant to this mandate;

   (c) conduct inter-jurisdictional analysis, including any relevant legislation, and identify best practices;

   (d) consult with the Minister of Community and Safety and Correctional Services in relation to the Minister's authority with respect to OCPC and the relevant legislative provisions of the *Police Services Act;*

   (e) engage in public consultations;

   (f) undertake such further inquiries as the Independent Reviewer, in his discretion, deems appropriate; and

   (g) prepare a report on his findings and recommendations.

6. The Independent Reviewer will determine the method, content and extent of consultations required to fulfill his mandate.

7. The Independent Reviewer shall deliver his final report and recommendations to the Attorney General no later than March 31, 2017.

8. In conducting the review, the Independent Reviewer may request any person to provide information or records to him.

5. Dans le cadre de son examen, l'examinateur indépendant :

   a) examine les dispositions législatives et les procédés en vigueur ainsi que les pratiques actuelles touchant chaque organisme de surveillance;

   b) examine et étudie les dossiers ou les rapports existants qui se rapportent à son mandat;

   c) procède à une analyse comparative basée sur d'autres autorités législatives, notamment des dispositions législatives pertinentes, et détermine les meilleures pratiques à suivre;

   d) consulte le ministre de la Sécurité communautaire et des Services correctionnels relativement aux pouvoirs de celui-ci à l'égard de la CCOP et aux dispositions législatives pertinentes de la *Loi sur les services policiers;*

   e) mène des consultations publiques;

   f) mène toute autre enquête qu'il estime appropriée;

   g) rédige un rapport qui énonce ses conclusions et ses recommandations.

6. L'examinateur indépendant détermine la méthode, la teneur et l'étendue des consultations qu'il doit tenir dans le cadre de son mandat.

7. L'examinateur indépendant remet son rapport final et ses recommandations à la procureure générale au plus tard le 31 mars 2017.

8. Dans le cadre de son examen, l'examinateur indépendant peut demander à toute personne de lui fournir des renseignements ou des dossiers.

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9. In fulfilling his mandate, the Independent Reviewer shall not report on any individual cases that are being investigated, or have been investigated by any of the three police oversight bodies.

10. The Independent Reviewer shall perform his duties without expressing any conclusion or recommendation regarding professional discipline matters involving any person or the civil or criminal liability of any person or organization.

11. Any notes, records, recollections, statements made to, and documents produced by the Independent Reviewer or provided to him in the course of the review, will be confidential. The disclosure of such information to Ontario or any other person shall be within the sole and exclusive discretion of the Independent Reviewer, except as required or restricted by the *Freedom of Information and Protection of Privacy Act* or any other applicable law.

Resources

12. Within a budget approved by the Ministry of the Attorney General, the Independent Reviewer may retain such counsel, staff, or expertise he considers necessary in the performance of his duties at reasonable remuneration approved by the Ministry of the Attorney General. The Independent Reviewer and his staff shall be reimbursed for reasonable expenses incurred in connection with their duties in accordance with Management Board of Cabinet Directives and Guidelines.

13. The Independent Reviewer shall follow Management Board of Cabinet Directives and Guidelines and other applicable government policies in obtaining other services and goods he considers necessary in the performance of his duties unless, in his view, it is not possible to follow them.

9. Dans le cadre de son mandat, l'examinateur indépendant ne doit pas faire rapport sur des affaires particulières qui font ou qui ont fait l'objet d'une enquête de la part de l'un des trois organismes de surveillance de la police.

10. L'examinateur indépendant s'acquitte de ses fonctions sans formuler de conclusions ou de recommandations quant aux questions de discipline professionnelle mettant en cause toute personne ou quant à la responsabilité civile ou criminelle de toute personne ou de tout organisme.

11. Les notes, dossiers, souvenirs et déclarations communiqués à l'examinateur indépendant et les documents produits par lui ou qui lui ont été fournis dans le cadre de son examen demeurent confidentiels. La divulgation de ces renseignements à l'Ontario ou à toute autre personne sera à la seule et entière discrétion de l'examinateur indépendant, sauf conformément aux exigences ou restrictions prévues par la *Loi sur l'accès à l'information et la protection de la vie privée* ou toute autre loi applicable.

Ressources

12. Dans le cadre d'un budget approuvé par le ministère du Procureur général, l'examinateur indépendant peut retenir les services des avocats, du personnel ou des experts qu'il juge nécessaires à l'exercice de ses fonctions selon la rémunération raisonnable approuvée par le ministère du Procureur général. L'examinateur et son personnel se font rembourser les frais raisonnables engagés dans l'exercice de leurs fonctions, conformément aux directives et aux lignes directrices du Conseil de gestion du gouvernement.

13. À moins que, à son avis, cela ne soit pas possible, l'examinateur indépendant suit les directives et les lignes directrices du Conseil de gestion du gouvernement ainsi que les autres politiques applicables du gouvernement dans le cadre de l'obtention des autres biens et services qu'il estime nécessaires à l'exercice de ses fonctions.

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The Ontario Government

14. The Attorney General shall, in consultation with the Independent Reviewer, set a budget for the fulfillment of his mandate.

15. All ministries and all agencies, boards and commissions of the Government of Ontario shall, subject to any privilege or other legal restrictions, assist the Independent Reviewer to the fullest extent possible so that the Independent Reviewer may carry out his duties and they shall respect the independence of the review.

16. The Attorney General shall make the final report of the Independent Reviewer available to the public as soon as practicable after receiving it. In delivering his report to the Attorney General, the Independent Reviewer shall ensure that the report is in a form appropriate for public release, consistent with the requirements of the *Freedom of Information and Protection of Privacy Act* and other applicable legislation. The Independent Reviewer shall also ensure that the report is delivered in English and French at the same time, in electronic and printed versions.

Le gouvernement de l'Ontario

14. La procureure générale établit, en consultation avec l'examinateur indépendant, un budget pour l'exécution du mandat de celui-ci.

15. Sous réserve de tout privilège ou de toute autre restriction légale, tous les ministères ainsi que tous les organismes, conseils et commissions du gouvernement de l'Ontario prêtent sans réserve leur concours à l'examinateur indépendant de façon qu'il puisse s'acquitter de ses fonctions et ils respectent l'indépendance de l'examen.

16. La procureure générale met le rapport final de l'examinateur indépendant à la disposition du public dès qu'il est matériellement possible de le faire après l'avoir reçu. L'examinateur indépendant veille à remettre son rapport final à la procureure générale sous une forme appropriée pour sa diffusion publique, conformément aux exigences de la *Loi sur l'accès à l'information et la protection de la vie privée* et de toute autre loi applicable. En outre, l'examinateur indépendant veille à ce que le rapport soit présenté à la fois en français et en anglais, sur support électronique et papier.

Recommandé par : La procureure générale,

Recommended _____
Attorney General

Appuyé par : Le président du Conseil des ministres,

Concurred _____
Chair of Cabinet

Approuvé et décrété le

Approved and Ordered APR 2 9 2016
Date

La lieutenante-gouverneure

_____
Lieutenant Governor

APPENDIX C

Jurisdictional Summaries

British Columbia

(a) Deaths and serious injuries

1. The Independent Investigations Office of British Columbia is a civilian-led body that conducts investigations into incidents involving the police that result in serious harm or death to members of the public.

2. Established in 2011, the mandate of the Independent Investigations Office extends to incidents of death or serious harm as a result of the actions of an officer, whether on or off duty, including members of the RCMP.[439] "Serious harm" is defined in the legislation to mean an injury that may result in death or cause serious disfigurement or substantial loss or impairment of mobility of the body or the function of a limb or organ.[440]

3. The Independent Investigations Office is headed by a Chief Civilian Director. The Chief Civilian Director is appointed by the Lieutenant Governor in Council. They hold office for up to two five-year terms, and must never have been a police officer.[441]

4. The Chief Civilian Director appoints the office's investigators. Investigators may not be current police officers or have served as police officers in British Columbia in the previous five years.[442]

5. Police officers are required by legislation to "cooperate fully" with the Independent Investigations Office.[443] What it means to "cooperate fully" is set out in a substantial memorandum of understanding between the Independent Investigations Office and police services. That memorandum of understanding describes the procedures to be followed in an investigation by the Independent Investigations Office, addresses various issues such as concurrent investigations and the role of the coroner, and details the records and materials police forces and officers must provide to the Independent Investigations Office.[444]

6. Following an investigation, if the Chief Civilian Director determines that an officer *may* have committed an offence, they do not lay a charge, but instead report the matter to Crown counsel.[445] Crown counsel then considers whether there is a substantial likelihood of conviction and a prosecution is required in the public interest.[446]

7. This relationship between the Chief Civilian Director and Crown counsel conforms to the one that exists between all policing agencies and the Crown in British Columbia. Unlike Ontario, the police in British Columbia pre-screen all charges with Crown counsel before laying criminal charges.

8. If Crown counsel does not approve any charges, it may release a media statement explaining the decision.[447]

9. For matters not reported to Crown counsel, the legislation provides that a summary of the results of the investigation may be provided to the public if the Chief Civilian Director considers it to be in the public interest.[448] As a matter of policy, the Independent Investigations Office will issue a public report.[449] The Independent Investigations Office will provide the names of involved officers and affected persons only when those names have either already been made available to the public or if, because of the legal necessity of a coroner's inquest, such names will clearly be made public at the time of the inquest.[450]

(b) Public complaints

10. The Office of the Police Complaint Commissioner was established in 1998 in British Columbia to provide impartial civilian oversight of complaints by the public involving the police.

11. The Office is headed by the Public Complaint Commissioner. The Commissioner is an independent officer of the legislature appointed for up to two five-year terms.[451]

12. The Commissioner performs a gatekeeping function by reviewing all complaints filed against municipal police officers to determine whether they are admissible and whether they raise allegations of police misconduct.[452]

13. If a complaint is accepted, it may be resolved informally or through mediation.[453]

14. Formal investigations are reserved for the most serious complaints or those that cannot be otherwise resolved.[454] The affected police department will usually investigate the complaint, but the Commissioner may direct another police department conduct the investigation instead.[455] The Commissioner oversees the investigation as it unfolds and may direct that investigative steps be taken.[456]

15. At an investigation's conclusion, the investigating officer provides a final investigative report to the relevant discipline authority and the Commissioner.[457] The discipline authority then determines whether or not to take disciplinary action.[458]

16. The Commissioner reviews all investigations and decisions to ensure the integrity of the process and the fairness and impartiality of the decisions. In case of disagreement, the Commissioner

may appoint a retired judge to review the final investigative report, conduct a paper review of the record, or preside over a public hearing for the matter.[459]

Alberta

(a) Deaths and serious injuries

17. The Alberta Serious Incident Response Team is an integrated civilian-led investigative unit that investigates cases of police-involved deaths and serious injuries.

18. Operational since 2008, the Team is an agency within the Ministry of Justice and Solicitor General, headed by an Executive Director and staffed by a group of civilian government employees and seconded police officers.[460]

19. The Team investigates incidents and complaints involving serious injury or death and matters of a serious or sensitive nature that may have resulted from the actions of a police officer, including members of the RCMP.[461]

20. "Serious injury" is not defined in the legislation, but has been interpreted by the Team to include injuries "likely to interfere with the health or comfort" of an individual that are "more than merely passing or trivial in nature."[462] It is presumed when a person is admitted for a stay in a hospital or suffers a severe injury.[463]

21. Similarly, while the legislation does not define "serious or sensitive nature," the Team has interpreted the phrase to mean matters for which the consequences may be likely to bring the administration of justice, and more particularly the police service, into disrepute.[464]

22. In practice, when an incident appears to fall within the Team's mandate, the chief of police notifies the local police commission and the Director of Law Enforcement.[465] The Director of Law Enforcement then has the discretion to refer the case to the Team or allow the affected police service or another police service to investigate.[466]

23. At the conclusion of an investigation, the Executive Director of the Alberta Serious Incident Response Team reviews the file. If the Executive Director believes there are reasonable grounds that an offence has been committed, they forward a copy of the file to the Crown prosecutor for an opinion on whether charges should be laid.[467]

24. The Executive Director ultimately decides whether to lay charges, and what charges should be laid, after taking into

consideration the opinion of the Crown prosecutor.[468]

25. The Executive Director determines the outcome of all investigative files and reports their findings to the chief of police, local police commission, and Director of Law Enforcement.[469]

26. The Executive Director's reports are confidential, but the Alberta Serious Incident Response Team will issue a news release at the conclusion of each investigation.[470]

(b) Public complaints

27. Public complaint directors for the different police commissions in Alberta and the Law Enforcement Review Board oversee complaints against the province's municipal police officers.

28. Public complaint directors are civilian appointees designated by each commission in the province to receive complaints against police officers, act as a liaison during the complaint process, and review investigations into complaints.[471]

29. Complaints may be submitted to either the public complaint director of the police commission or the chief of police of the municipal police service where the officer who is the subject of the complaint is employed.[472]

30. All complaints with respect to a police service or a police officer, other than the chief of police, are initially referred to and dealt with by the chief.[473]

31. If a complaint cannot be resolved informally, a member of the police service will investigate the matter.[474]

32. The public complaint director reviews the investigation while it is ongoing and at its conclusion.[475]

33. When the investigation is completed, the police chief reviews the investigation to determine what action, if any, will be taken, and may proceed with a disciplinary hearing.[476]

34. The Law Enforcement Review Board hears appeals from the complaint disposition.[477] It is as an independent, quasi-judicial body, comprised of members appointed by the Lieutenant Governor in Council for renewable three-year terms.[478]

Saskatchewan

(a) Deaths and serious injuries

35. Saskatchewan has no independent agency tasked with investigating incidents of death or serious injury involving the

police. Instead, if a person dies or suffers serious injury as a result of the actions of a police officer, the Deputy Minister of Justice will appoint an investigation observer who is a serving or retired member from another police agency to review the investigation and provide a report to the Deputy Minister of Justice.[479]

(b) Public complaints

36. Saskatchewan's Public Complaints Commission was created in 2006 to receive, investigate, and review complaints against Saskatchewan's municipal police officers.[480]

37. The Commission consists of a panel of five non-police individuals, appointed by the Lieutenant Governor in Council, including at least one member of First Nations ancestry, at least one member of Métis ancestry, and at least one member who is a lawyer.[481]

38. When the Commission receives a complaint about the actions of an officer, it will determine whether an investigation should be conducted by the Commission, the police service whose member is the subject of the complaint (with or without an outside observer appointed by the Commission), or a separate police service.[482]

39. If the Commission believes the complaint is trivial, frivolous, vexatious, unfounded, or made in bad faith, it may direct that an investigation be terminated or not undertaken.[483]

40. Complaints may be resolved informally,[484] failing which a chief may order a disciplinary hearing or remedial action if the chief believes that the officer's actions contravene the regulations governing the discipline of officers.[485]

41. Throughout the process, the Public Complaints Commission informs, advises, and assists the complainant, and monitors the handling of the complaint.[486]

Manitoba

(a) Deaths and serious injuries

42. In Manitoba, the Independent Investigation Unit investigates serious incidents involving police officers, including members of the RCMP.

43. Operational since 2015, the mandate of the Independent Investigation Unit is to investigate incidents where a person's death or serious injury may have resulted from the actions of a police officer or a police officer may have breached prescribed provisions of the *Criminal Code* and other federal and provincial

statutes.[487] "Serious injury" is defined by regulation.[488]

44. When a police officer is at the scene of an incident falling within the Unit's mandate, the Unit must be notified, even if the officer that is the subject of the incident was not on duty at the time.[489] Upon arrival at the scene, the Unit takes over the investigation.[490]

45. The Unit is headed by a civilian director appointed by the Lieutenant Governor in Council for up to two five-year terms. They cannot be a current or former police officer.[491]

46. The civilian director oversees all the Unit's investigations. They are assisted by a group of investigators. The investigators may be current or former police officers or civilians with investigative experience who meet prescribed qualifications.[492]

47. In addition, a civilian monitor may be appointed by the Manitoba Police Commission to monitor the Unit's investigations.[493] Civilian monitors cannot be current police officers and must receive training before monitoring an investigation.[494]

48. If an investigation involves a death or the civilian director considers it to be in the public interest to involve a civilian monitor, the civilian director must ask that a monitor be appointed.[495] The civilian monitor monitors the investigation in accordance with prescribed practices and procedures, and ultimately reports to the chair of the Manitoba Police Commission.[496]

49. Police officers who were involved in or present at a serious incident must refrain from communicating directly or indirectly about the incident with other involved officers before they are interviewed by the Unit.[497]

50. Witness officers must fully complete their notes in accordance with their duty and provide them to their police chief within twenty-four hours after an investigator from the Unit requests them, unless the civilian director agrees to extend the time and records the reasons for allowing the extension.[498]

51. Subject officers also must fully complete their notes in accordance with their duty. They are under no obligation to provide those notes to the Unit, but may do so voluntary.[499]

52. Witness officers must submit to interviews with investigators from the Unit while subject officers are invited, but not compelled, to do an interview.[500] All interviews must be videotaped or audiotaped.[501]

53. At the end of the Unit's investigation, the civilian director may lay charges against the officer or refer the matter to the Manitoba Prosecution Service for a Crown opinion as to whether the officer should be charged.[502]

54. There is no legislated requirement for public disclosure of the results of an investigation by the Independent Investigation Unit. That said, at the beginning and end of an investigation, the Unit will typically issue news releases to advise that its team has been deployed and to make public the outcome of its investigation.[503]

55. The civilian director's final report is subject to limited disclosure in order to ensure the impartiality of related investigations and proceedings such as parallel criminal investigations, fatality inquiries, disciplinary proceedings, and civil litigation.[504] The name of the subject officer is not disclosed unless charges are laid and that officer's name will become part of the public record in any event.[505]

(b) Public complaints

56. The Law Enforcement Review Agency receives public complaints against municipal police officers in Manitoba. It was established in 1985 as an independent, non-police agency.[506]

57. Headed by a commissioner appointed by the Lieutenant Governor in Council,[507] the Law Enforcement Review Agency is mandated to receive and investigate complaints by any person who feels aggrieved by a disciplinary default allegedly committed by a police officer.[508]

58. The Agency employs a team of professional investigators to conduct investigations.[509] After the investigation, the Agency will screen the complaint[510] and may attempt to resolve the matter informally.[511]

59. If a complaint cannot be resolved informally or the officer does not admit to having committed a disciplinary offence, the matter is referred to a provincial court judge for a public hearing.[512]

Québec

(a) Deaths and serious injuries

60. Québec is in the process of implementing its own model of civilian oversight for death and serious injury cases involving the police.

61. The newly established Bureau des enquêtes indépendantes began operations in June 2016. It is mandated to conduct investigations as directed by the Minister of Public Security, including incidents

where a person dies, sustains a serious injury, or is injured by a firearm used by a police officer during a police intervention or while the person is in police custody.[513] Although the legislation provides that a government regulation will be passed to define what constitutes a "serious injury", no such regulation is yet in place.[514]

62. The Bureau consists of a director, assistant director, and investigators. It is considered to be a police force for the purposes of the Bureau's mandate.[515]

63. The Bureau's director and assistant director are chosen from a list of qualified candidates based on established criteria by a selection committee formed by the Minister of Justice.[516] They must, among other requirements, be either a retired judge or lawyer with at least fifteen years' experience and cannot have ever been a peace officer.[517]

64. A separate regulation governs the recruitment of the Bureau's investigators. Investigators cannot be current peace officers. The regulation requires that they complete a designated training program to acquire the required investigating skills to conduct independent police investigations.[518]

65. The director, assistant director, and investigators are employed full time for a fixed term of five years or less, but remain in office at the expiry of their terms until reappointed or replaced.[519]

66. A principal investigator is assigned to lead each investigation. They cannot have ever been a member or employee of the police force in question.[520]

67. Directors and employees of police forces, including police officers, must cooperate with the Bureau.[521] Both subject and witness officers must prepare and share their notes of the incident and submit to an interview with the Bureau.[522]

68. At the conclusion of each investigation into an incident of death or serious injury, the Bureau's director sends an investigation record to the Director of Criminal and Penal Prosecutions who determines whether a charge will be laid.[523] If a death was involved, a copy of the report also is sent to the coroner.[524]

69. The Bureau's director must publicly report on the Bureau's activities at least twice a year.[525]

70. Insofar as it does not impede an investigation from the Bureau or a parallel investigation, the director will inform the public of the beginning of an investigation, its conduct, and the transmission of the investigation record to the Director

of Criminal and Penal Prosecutions and, if applicable, the coroner.[526]

71. The report sent to the Director of Criminal and Penal Prosecutions and the coroner is not made public.[527]

(b) Public complaints

72. The Police Ethics Commissioner receives and examines public complaints about the police in Québec.[528]

73. The Commissioner must be a lawyer of at least ten years. They are appointed for a term not exceeding five years, but which may be renewed.[529]

74. After receipt, complaints are presumptively submitted to mandatory conciliation unless the Commissioner is satisfied there are valid reasons to bypass conciliation or the complaint is clearly frivolous or vexatious.[530]

75. Failing a settlement, the Commissioner may decide to hold an investigation and designate an investigator. The investigator cannot be a current or former member of the police force as the officer under investigation.[531]

76. At the conclusion of an investigation, the investigator prepares an investigation report for the Commissioner. The Commissioner can then dismiss the complaint, cite the police officer to appear before the Police Ethics Committee, or refer the case to the Director of Criminal and Penal Prosecutions.[532]

77. The Police Ethics Committee, which is comprised of government-appointed lawyers, hears and disposes all matters of police ethics.[533]

New Brunswick

(a) Deaths and serious injuries

78. New Brunswick does not have an independent investigations agency to investigate incidents of death or serious injury involving the police. Instead, the major municipal police services and RCMP have entered into a memorandum of agreement to create the Use of Force Investigative Team to investigate critical incidents. The team is led by an officer in charge and a primary investigator. Neither can be employed by the police service involved in the incident.[534]

(b) Public complaints

79. The New Brunswick Police Commission is an independent oversight body charged with overseeing the process for public complaints against the police. Complaints can involve the conduct of

police officers or the policies or services of municipal and regional police forces in New Brunswick.[535]

80. The members of the Commission are appointed by the Lieutenant Governor in Council, including a chair, vice-chair, and others as needed.[536]

81. The Commission generally refers complaints concerning the conduct of a police officer to the officer's chief of police for processing.[537] If it is in the public interest, however, the Commission may process the complaint itself or take over processing from the chief.[538]

82. The chief of police may summarily dismiss a conduct complaint if it is frivolous, vexatious, or not made in good faith.[539] The Commission will review the chief's decision and either confirm or rescind it.[540]

83. If a complaint is not summarily dismissed, the chief may attempt to resolve the complaint informally.[541] The Commission will review the informal resolution at either the complainant's request or on its own motion.[542]

84. If a complaint is not summarily dismissed or informally resolved or if the Commission so orders, the chief will proceed with an investigation.[543] The chief has the discretion to appoint an outside investigator to investigate a conduct complaint and must do so if necessary to preserve public confidence in the complaint process.[544]

85. At the conclusion of an investigation, the investigator will provide the chief with an investigation report.[545] The chief can then decide to take no further action or proceed to a settlement conference.[546] Both the decision to take no further action and the result of any settlement conference are subject to review by the Commission.[547]

86. If the settlement conference is not successful, the chief of police will serve a notice of arbitration hearing on the officer.[548]

Nova Scotia

(a) Deaths and serious injuries

87. Since 2012, the Serious Incident Response Team has independently investigated serious incidents arising from the actions of police in Nova Scotia, including members of the RCMP.

88. The Serious Incident Response Team's mandate is to investigate all matters that involve death, serious injury, sexual assault, domestic violence, or other matters of significant public interest that

may have arisen from the actions of any police officer in the province.[549]

89. A chief of police must notify the Civilian Director of the Serious Incident Response Team as soon as practicable when the chief believes an incident may have occurred that falls under the Team's mandate or the chief determines it would be in the public interest for the Team to deal with an incident involving a police officer.[550]

90. The term "serious injury" is not defined by legislation, but the Team has determined that it includes fractures to limbs, ribs, the head, or the spine; burns, cuts, or lacerations which are serious or affect a major portion of the body; loss of any portion of the body; serious internal injuries; any injury caused by gunshot; and admission to hospital as a result of the injury (not including outpatient care followed by release).[551]

91. The Civilian Director is appointed by the Governor in Council for up to two five-year terms and cannot be a current or former police officer.[552]

92. The Governor in Council may, on the recommendation of the Civilian Director, appoint investigators to the Team.[553] Currently, the Team consists of two civilian investigators who were former police officers, and two seconded police officers.[554]

93. Once the Civilian Director becomes aware of a serious incident, they may, among other things, have the Team investigate or refer the matter to another body for investigation, including another police department or an independent team or agency from another province.[555]

94. All involved officers are required to complete their notes in the usual manner.[556] Subject officers, however, are not required to provide their notes to the investigators from the Serious Incident Response Team. A subject officer's notes may only be provided with the officer's express permission.[557]

95. Witness officers are required to provide a copy of their notes to both the investigator and the police chief within forty-eight hours of request, or less time if delay could jeopardize the investigation.[558] Witness officers also can be directed to attend an interview as part of the investigation.[559] The interviews are to be videotaped or audiotaped if practicable.[560]

96. At the conclusion of the investigation, a report is submitted to the Civilian Director who, in the case of an investigation conducted by the Team, decides whether charges will be laid.[561]

97. The Civilian Director must provide a summary of the investigation to both the Minister of Justice and the involved police force as soon as reasonably practicable, but in any event within three months of receiving the investigative report.[562] The Civilian Director or Minister of Justice must then, within two days, make public a summary of the investigation.[563]

98. By regulation, the summaries of the Civilian Director and Minister of Justice must include: a summary of the facts; the time frame of the investigation; a statement of the number of civilian witnesses and witness police officers interviewed; a statement of the relevant legal issues; and a decision whether a charge will be laid.[564] The summary may include the names of the subject police officers and witness police officers.[565] If no charges are laid, the summary may include reasons for the decision.[566] If charges are laid, then after the prosecution is concluded, a supplementary summary can be provided explaining why charges were laid.[567]

(b) Public complaints

99. Since 2006, the Office of the Police Complaints Commissioner has overseen public complaints against municipal police officers in Nova Scotia.[568]

100. The Police Complaints Commissioner heads the Office and is appointed by the Governor in Council for renewable three-year terms.[569]

101. Complaints respecting the conduct of a police officer are initially referred to the affected police service for informal resolution.[570] If a complaint cannot be resolved informally, the police service will investigate and decide whether to discipline the officer or take no further action.[571] A complainant or affected officer who is unsatisfied with the result may in turn make a request to the Commissioner for review by the Police Review Board.[572]

102. Once the Commissioner receives a request for review, they will attempt to negotiate a resolution and may conduct an investigation or designate another person to conduct an investigation.[573] If there is no resolution, the Commissioner will refer complaints found to have merit to the Police Review Board for a hearing and a final determination.[574]

Prince Edward Island

(a) Deaths and serious injuries

103. There is no independent agency to investigate incidents of death or serious

injury involving police in Prince Edward Island.[575]

104. However, the Minister of Justice and Public Safety and the Attorney General may appoint a person to conduct an investigation into any matter related to policing and law enforcement in the province.[576]

105. In the past, the Minister has requested Nova Scotia's Serious Incident Response Team conduct investigations into serious incidents involving Prince Edward Island police officers.[577]

(b) Public complaints

106. The Police Commissioner of Prince Edward Island is an independent office mandated to investigate and resolve public complaints of unprofessional conduct by the police.[578]

107. Appointed by the Lieutenant Governor in Council for a five-year term subject to re-appointment, the Commissioner must be a lawyer with at least ten years' experience or a former judge.[579]

108. Complaints about municipal police officers are made first to the chief of the police service where the officer works.[580] If the complaint is not dismissed or delayed from consideration due to ongoing criminal proceedings, the chief will designate another officer in the police department or ask the chief of another police service to designate an officer to conduct an investigation.[581]

109. Following an investigation, the chief may dismiss the complaint, resolve the complaint informally if the matter is not of a serious nature, or institute disciplinary proceedings.[582]

110. The Commissioner will, at a party's request, review a disciplinary decision or the decision to dismiss a complaint before or after the investigation.[583] The request is referred to an investigator who will review the decision; carry out any appropriate investigation; and either informally resolve the complaint, dismiss it, or refer it to the Commissioner for a hearing.[584]

111. For referred complaints, the Commissioner will hold a hearing and may dismiss the complaint or find misconduct and impose discipline.[585]

Newfoundland and Labrador

(a) Deaths and serious injuries

112. Newfoundland and Labrador has no independent investigative agency to investigate incidents of deaths and serious injuries involving the police. That said, the

Royal Newfoundland Constabulary and the RCMP have signed a memorandum of agreement to address investigations of critical incidents involving their members. The agreement sets up the Integrated Critical Investigation Team, which is comprised of officers from both services. Investigating officers cannot be employed by the affected police agency.[586]

(b) Public complaints

113. The Royal Newfoundland Constabulary Public Complaints Commission oversees and investigates public complaints concerning members of the Royal Newfoundland Constabulary.[587]

114. Operational since 1993, the Commission is led by a commissioner appointed by the Lieutenant Governor in Council for a five-year term, but remains in office until reappointed or replaced.[588]

115. Complaints are usually first referred to the affected chief of police for investigation and appropriate action.[589] A police officer appointed to investigate a complaint must do so in a neutral and objective matter and is barred from investigating any complaint where they may have a conflict of interest.[590]

116. Following an investigation, the chief may settle the matter with the agreement of the parties, dismiss the complaint, or discipline the police officer involved.[591]

117. Complainants and officers who are not satisfied with the chief's decision to dismiss a complaint or discipline an officer may appeal to the Commission.[592] In addition, if it is in the public interest, the chief may transmit a complaint directly to the Commission without initially investigating it.[593]

118. Following receipt of an appeal or the direct transmission of a complaint, the Commission will conduct its own investigation.[594] After the investigation, the Commission may settle the matter by agreement of the parties, dismiss the complaint or appeal, or refer the matter to an adjudicator for a public hearing.[595] The adjudicator may confirm or vary the chief's decision (if applicable) and impose disciplinary and corrective measures.[596]

RCMP

(a) Deaths and serious injuries

119. The RCMP has no independent investigative agency to investigate incidents of death or serious injury involving RCMP officers. In 2013, however, the *Royal Canadian Mounted Police Act* was amended to allow provincial investiga-

tive bodies to investigate serious incidents involving the RCMP when they are referred to them.[597]

120. Pursuant to the amended legislation, if there is an investigative body in the province in which a serious incident involving an RCMP member is alleged to have occurred, the designated authority for that province must first consider appointing that body to investigate the incident.[598] For the purposes of the relevant parts of the legislation, the designated authority for each province is a person, body, or authority designated by the Lieutenant Governor in Council of that province.[599]

121. "Serious incident" is defined in the legislation to mean either an incident that may have resulted in a serious injury or death. "Serious incident" also includes an incident that may constitute an offence if it is in the public interest to have the incident investigated by an investigative body or police force other than the RCMP.[600]

122. When there is no provincial investigative body or the designated authority does not appoint one, the designated authority may instead appoint a police force to investigate the incident.[601]

123. The RCMP must request that an investigative body or police force conduct the investigation if there is no designated authority or the designated authority notifies the RCMP that no investigative body or police force will be appointed to investigate the incident.[602] If the investigative body or police force declines the request and there is no other appropriate investigative body to receive the request, the RCMP must investigate the incident itself.[603]

124. An observer may be appointed to observe an investigation conducted by the RCMP or another police force to assess its impartiality.[604] The observer may inform the RCMP or police force of any concerns and must provide a report about the impartiality of the investigation.[605]

(b) Public complaints

125. The Civilian Review and Complaints Commission for the RCMP is an independent agency that reviews public complaints concerning the conduct of RCMP members.

126. Complaints can be initiated by members of the public or the Commission's Chairperson.[606]

127. If a complaint cannot be resolved informally, it is typically referred to the RCMP for investigation unless the Chairperson determines it would be in

the public interest for the Commission to investigate.[607]

128. When an investigation is complete, the RCMP will prepare a report setting out a summary of the complaint, the findings of the investigation, and a summary of any action that has been or will be taken with respect to the complaint's disposition.[608]

129. A complainant who is not satisfied with the RCMP's handling of a complaint may request that the Commission conduct a further review.[609] If the Commission is satisfied with the RCMP's handling of the complaint, it will issue a report to that effect, thereby ending the review process.[610] If, in contrast, the Commission is not satisfied with how the RCMP handled the complaint, it may review the complaint without further investigation, ask the RCMP to investigate further, initiate its own investigation, or hold a public hearing to inquire into the complaint.[611]

130. At the conclusion of its review, the Commission will issue an interim report directed at the RCMP outlining various recommendations and findings.[612] The RCMP Commissioner is given an opportunity to respond and explain any further action that has been or will be taken with respect to the complaint.[613]

131. After considering the RCMP's Commissioner's response, the Commission will issue a final report setting out its findings and recommendations.[614]

England and Wales

132. The Independent Police Complaints Commission for England and Wales oversees the police complaints system in England and Wales, assesses appeals against certain decisions made by police forces relating to misconduct complaints, and investigates serious matters involving the police, including incidents involving death or serious injury following police contact.

133. The Commission is overseen by a Chair, ten operational commissioners and four non-executive commissioners, none of whom can have ever been police officers.[615]

134. The Commission's investigators come from a wide variety of backgrounds, with some being former police officers. For example, in its 2015 report, the Commission noted that of its 253 investigators, 45 were ex-police civilians and 57 were ex-police officers, with 10 of those having been both an ex-police officer and former police civilian.[616]

135. The Commission is involved in both death and serious injury investigations and the administration of public complaints. The kinds of matters that must be referred to the Commission are set out in the legislation.[617]

136. Notably, all death and serious injury cases must be referred to the Commission.[618] "Serious injury" is defined to mean a fracture, an injury causing damage to an internal organ, the impairment of any bodily function, a deep cut, or a deep laceration.[619] In addition, the Commission must be informed of complaints and conduct matters involving the following:

- Serious assault;
- Serious sexual offences;
- Serious corruption;
- Criminal offence or behaviour which is liable to misconduct proceedings and which, in either case, is aggravated by discriminatory behaviour on the grounds of a person's race, sex, religion, or other identified status;
- A relevant offence (i.e. those punishable by seven years imprisonment or more); and
- Complaints or conduct matters alleged to have arisen from the same incident as anything falling within these criteria.[620]

137. Once a matter has been referred to it, the Commission determines whether the investigation will be conducted by the Commission, the local police, or the local police under the Commission's supervision or management.[621] In determining the form of investigation, the Commission takes into account the seriousness of the case and the public interest.[622] The Commission anticipates that it will be able to conduct its own investigations into all serious and sensitive matters beginning this year.[623]

138. The Commission can interview subject officers, as the right to silence operates differently in England and Wales than in Canada. Interviews can be delayed for up to five days, and investigators are required to provide some disclosure to officers before interviews.[624]

139. Criminal or disciplinary proceedings can generally not be brought until a report of the investigation has been completed and submitted.[625]

140. The Commission is responsible for publishing investigation reports in independent investigations conducted by the Commission and managed investigations conducted by the local police.[626] Since 2012, these reports are published publicly, subject to the harm test, editing,

and delays to accommodate other legal proceedings.[627]

141. The investigation reports may include recommendations to be applied nationally or directed at individual forces, and conclusions as to whether there are any conduct or performance issues for officers and staff.[628] Commission policy governs whether subjects or witnesses are named in the report.[629]

142. If an investigation concludes that there are potential criminal issues, the report is sent to the Director of Public Prosecutions for a decision as to whether to prosecute.[630]

Northern Ireland

143. The Office of the Police Ombudsman for Northern Ireland is an independent, impartial civilian oversight body that handles complaints about the conduct of police officers. It also conducts investigations into incidents of death, potential criminal offences, and other misconduct by police officers.

144. Operational since 2000, the Office is headed by the Police Ombudsman. The Police Ombudsman is normally appointed by Royal Warrant for a non-renewable seven-year term.[631]

145. The Police Ombudsman conducts almost all investigations of criminal or public complaints against the Police Service of Northern Ireland, despite having the power to refer some of that responsibility to others.[632]

146. All complaints about the police must either be made directly to or referred to the Police Ombudsman.[633]

147. In the absence of a complaint, if a police officer may have committed a criminal offence or behaved in a manner which would justify disciplinary proceedings, other public sector actors may be required to direct the matter to the Police Ombudsman.[634] In addition, where it appears that the conduct of a police officer may have resulted in the death of some other person, the chief constable is required to refer the matter to the Police Ombudsman.[635]

148. The Police Ombudsman also has the authority to investigate certain matters which have not been the subject of a complaint or referral.[636]

149. Following an investigation, the Police Ombudsman will review the investigative report. If the report indicates that a criminal offence may have been committed, they will send a copy of the report to the Director of Public Prosecutions

for Northern Ireland together with any recommendations.[637]

150. The final decision to lay charges rests with the Director of Public Prosecutions. They evaluate the evidence to determine whether there is a realistic prospect of conviction (that is to say, the evidence supports the allegation beyond all reasonable doubt and the prosecution is in the public interest).[638]

151. If criminal proceedings are not initiated or have concluded, or there is no indication of a criminal offence and mediation is not suitable or successful, the Police Ombudsman will consider disciplinary proceedings.[639] The Police Ombudsman will send the appropriate disciplinary authority a memorandum with a recommendation as to whether or not disciplinary proceedings should be initiated.[640] The Police Ombudsman may direct disciplinary proceedings in the case of a disagreement.[641]

NOTES

1. *Metropolitan Police Act 1829* (U.K.), 10 Geo. 4, c. 44.

2. See Natasha L. Henry, "Black Enslavement in Canada" (15 June 2016), online: Historica Canada, The Canadian Encyclopedia <http://www.thecanadianencyclopedia.ca/en/article/black-enslavement/>.

3. See David M. Tanovich, *The Colour of Justice: Policing Race in Canada* (Toronto: Irwin Law, 2006) at 13 and the sources cited under fn. 33; John Sewell, *Police in Canada: The Real Story* (Toronto: James Lorimer & Company, 2010) at 72-73.

4. See Natasha L. Henry, "The Fugitive Slave Act of 1850" (10 February 2015), online: Historica Canada, The Canadian Encyclopedia <http://www.thecanadianencyclopedia.ca/en/article/fugitive-slave-act-of-1850/>.

5. *R. v. Cornell*, 2010 SCC 31, [2010] 2 S.C.R. 142, at para. 24.

6. This includes the original Order-in-Council 629/2016, dated April 29, 2016, and Order-in-Council 1530/2016, as amended on October 19, 2016.

7. *Police Services Act*, R.S.O. 1990, c. P.15.

8. Ministry of Community Safety and Correctional Services, "Policing Services" (3 November 2016), online: Ministry of Community Safety and Correctional Services <http://www.mcscs.jus.gov.on.ca/english/police_serv/about.html>. Some of these are regional police services, such as the Peel Regional Police Service, and not strictly speaking "municipal" police services. For the purpose of this Report, there is no significant distinction between the two. I refer to them both as municipal police services.

9. Statistics Canada, "Table 12-6: Police personnel in municipal police services — Ontario, 2012" (November 27, 2015), online: Statistics Canada <http://www.statcan.gc.ca/pub/85-225-x/2012000/t015-eng.htm>.

10. *Police Services Act*, R.S.O. 1990, c. P.15, s. 42.

11. *Police Services Act*, R.S.O. 1990, c. P.15, ss. 27(1), 31(1)(d).

12. *Police Services Act*, R.S.O. 1990, c. P.15, s. 41(1).

13. *Police Services Act*, R.S.O. 1990, c. P.15, s. 76(1), (3).

14. *Police Services Act*, R.S.O. 1990, c. P.15, s. 76(10).

15. *Police Services Act*, R.S.O. 1990, c. P.15, ss. 82(1), 94.

16. Information about the OPP is available on its website at <www.opp.ca>.

17. *Police Services Act*, R.S.O. 1990, c. P.15, s. 19.

18. See *Police Services Act*, R.S.O. 1990, c. P.15, s. 5.

19. See *Police Services Act*, R.S.O. 1990, c. P.15, s. 10(6).

20. *Police Services Act*, R.S.O. 1990, c. P.15, s. 17(1).

21. *Police Services Act*, R.S.O. 1990, c. P.15, s. 17(2).

22. Though the sections described above use the term "chief of police," that term is defined as including the OPP Commissioner: *Police Services Act*, R.S.O. 1990, c. P.15, s.2.

23. *Police Services Act*, R.S.O. 1990, c. P.15, s. 2.

24. *Police Services Act*, R.S.O. 1990, c. P.15, s. 53(1), (2).

25. *Police Services Act*, R.S.O. 1990, c. P.15, s. 53(3).

26. *Police Services Act*, R.S.O. 1990, c. P.15, s. 52(1), (3).

27. *Police Services Act*, R.S.O. 1990, c. P.15, s. 52(4).

28. *Police Services Act*, R.S.O. 1990, c. P.15, s. 52(5).

29. *Police Services Act*, R.S.O. 1990, c. P.15, s. 117.

30. See e.g. Toronto Police Association, "About Us" (2014), online: Toronto Police Association <www.tpa.ca/about-us>.

31. *Police Services Act*, R.S.O. 1990, c. P.15, ss. 10(2), 10(3), 27(1), 33(1).

32. *Police Services Act*, R.S.O. 1990, c. P.15, ss. 10(9)(b)-(c), 31(1)(b)-(c).

33. *Police Services Act*, R.S.O. 1990, c. P.15, s. 31(1)(d).

34. *Police Services Act*, R.S.O. 1990, c. P.15, s. 31(1)(a), (e).

35. *Police Services Act*, R.S.O. 1990, c. P.15, s. 10(9)(a), (d).

36. *Police Services Act*, R.S.O. 1990, c. P.15, s. 31(1)(i), (j).

37. *Police Services Act*, R.S.O. 1990, c. P.15, s. 69.

38. *Police Services Act*, R.S.O. 1990, c. P.15, s. 63(5).

39. *Police Services Act*, R.S.O. 1990, c. P.15, s. 83(17).

40. *Police Services Act*, R.S.O. 1990, c. P.15, s. 10(9)(f).

41. *Police Services Act*, R.S.O. 1990, c. P.15, s. 64(5).

42. *Police Services Act*, R.S.O. 1990, c. P.15, s. 3(2). See also OIC 497/2004 (10 March 2004), O. Gaz. vol. 137-13.

43. *Police Services Act*, R.S.O. 1990, c. P.15, s. 135.

44. The statute establishing the SIU is section 113 of *the Police Services Act*, R.S.O. 1990, c. P.15. The regulation setting out police conduct and duties in SIU investigations is *Conduct and Duties of Police Officers Respecting Investigations by the Special Investigations Unit*, O. Reg. 267/10.

45. *Police Services Act*, R.S.O. 1990, c. P.15, s. 1.

46. *Police Services Act*, R.S.O. 1990, c. P.15, s. 3(2).

47. Although subsection 113(1) of *the Police Services Act* states that the SIU is a unit of the Ministry of the Solicitor General, responsibility for the SIU was transferred from the Ministry of the Solicitor General to the Ministry of the Attorney General in 1993: OIC 814/93 (17 April 1993), O. Gaz. vol. 126-16.

48. The SIU's jurisdiction is limited to incidents involving "police officers": *Police Services Act*, R.S.O. 1990, c. P.15, s. 113(5). "Police officer" is defined to mean "a chief of police or any other police officer, including a person who is appointed as a police officer under the *Interprovincial Policing Act, 2009,* but does not include a special constable, a First Nations Constable, a municipal law enforcement officer or an auxiliary member of a police force": *Police Services Act*, R.S.O. 1990, c. P.15, s. 2(1).

49. *Police Services Act*, R.S.O. 1990, c. P.15, s. 113(5).

50. *Police Services Act*, R.S.O. 1990, c. P.15, s. 113(7).

51. *Police Services Act*, R.S.O. 1990, c. P.15, s. 113(2), (3).

52. *Police Services Act*, R.S.O. 1990, c. P.15, s. 113(3), (6).

53. O. Reg. 267/10, s. 3. The chief of police may designate a senior officer who is not a subject officer or witness officer in the incident to act in the place of the chief: O. Reg. 267/10, s. 2.

54. O. Reg. 267/10, s. 4.

55. O. Reg. 267/10, s. 6.

56. *Police Services Act*, R.S.O. 1990, c. P.15, s. 113(9).

57. O. Reg. 267/10, s. 1.

58. O. Reg. 267/10, ss. 8-9.

59. O. Reg. 267/10, s. 7.

60. O. Reg. 267/10, s. 7.

61. O. Reg. 267/10, s. 13.

62. O. Reg. 267/10, s. 12.

63. *Police Services Act*, R.S.O. 1990, c. P.15A, s. 113(7).

64. Ministry of the Attorney General, *Crown Policy Manual: Charge Screening* (Ministry of the Attorney General, 21 March 2005).

65. *Police Services Act*, R.S.O. 1990, c. P.15, s. 113(8).

66. These statistics were provided to me by the SIU. They include 142 cases from 1990 to 1992 that were reported, but not mandated.

67. See *Police Services Act*, R.S.O. 1990, c. P.15, ss. 26.1, 26.2.

68. *Police Services Act*, R.S.O. 1990, c. P.15, s. 26.1(1)

69. *Police Services Act*, R.S.O. 1990, c. P.15, s. 26.1(1), (2).

70. *Police Services Act*, R.S.O. 1990, c. P.15, s. 26.1(5).

71. Office of the Independent Police Review Director, OIPRD *Annual Report 2014-2015* (Toronto:

Office of the Independent Police Review Director, 2015) at 16.

72. *Police Services Act*, R.S.O. 1990, c. P.15, s. 58(1).

73. See Office of the Independent Police Review Director, "Customer Service Resolution" (2014), online: Office of the Independent Police Review Director <http://www.OIPRD.on.ca/EN/Complaints/Pages/Customer-Service-Resolution.aspx>.

74. *Police Services Act*, R.S.O. 1990, c. P.15, s. 60(7); *Wall v. Office of the Independent Police Review Director,* 2014 ONCA 884, 123 O.R. (3d) 574, at para. 49; *Endicott v. Ontario (Independent Police Review Office)*, 2014 ONCA 363, 319 O.A.C. 324, at para. 29.

75. *Police Services Act*, R.S.O. 1990, c. P.15, ss. 58, 60. Rule 6.4 of the OIPRD's *Rules of Procedure* sets out the factors which may be considered when determining whether or not to deal with a complaint having regard to the public interest: Office of the Independent Police Review Director, *Rules of Procedure* (Toronto: Office of the Independent Police Review Director, 7 July 2016), rule 6.4.

76. *Police Services Act*, R.S.O. 1990, c. P.15, ss. 58, 60.

77. *Police Services Act*, R.S.O. 1990, c. P.15, s. 61(2)-(4).

78. *Police Services Act*, R.S.O. 1990, c. P.15, ss. 63(4), 64(4), 65(2).

79. *Police Services Act*, R.S.O. 1990, c. P.15, s. 61(5). A conduct complaint involving a police officer appointed under the *Interprovincial Policing Act, 2009* may be retained by the OIPRD or referred to any chief of police: *Police Services Act*, R.S.O. 1990, c. P.15, s. 61(5.1).

80. *Police Services Act*, R.S.O. 1990, c. P.15, s. 61(8). For complaints involving a municipal chief of police or deputy chief of police, the board will review the complaint and ask the OIPRD to investigate if it believes that the conduct may constitute an offence, misconduct, or unsatisfactory work performance. If the OIPRD determines the complaint is unsubstantiated, the matter is closed. If the OIPRD believes on reasonable grounds the conduct constitutes misconduct or unsatisfactory work performance, the matter is referred back to the board for resolution: *Police Services Act*, R.S.O. 1990, c. P.15, s. 69.

81. *Police Services Act*, R.S.O. 1990, c. P.15, s. 61(9). For complaints involving the OPP Commissioner or a deputy OPP Commissioner, the Minister of Community Safety and Correctional Services will deal with the complaint as they see fit: *Police Services Act*, R.S.O. 1990, c. P.15, s. 70.

82. *Police Services Act*, R.S.O. 1990, c. P.15, s. 93.

83. See Office of the Independent Police Review Director, OIPRD *Annual Report 2014-2015* (Toronto: Office of the Independent Police Review Director, 2015) at 17. From April 1, 2014 to March 31, 2015, the OIPRD referred 950 conduct complaints to the officer's police service, 7 to another police service, and retained 161.

84. *Police Services Act*, R.S.O. 1990, c. P.15, s. 66(1).

85. *Police Services Act*, R.S.O. 1990, c. P.15, s. 66(2).

86. *Police Services Act*, R.S.O. 1990, c. P.15, s. 66(3)-(10). A complaint not of a serious nature may be resolved informally on consent of the complainant and the police officer with the OIPRD's approval: *Police Services Act*, R.S.O. 1990, c. P.15, s. 66(4). If consent to informal resolution is not given or is revoked, a police officer is entitled to make representations, orally or in writing, after receiving rea-

sonable information about the matter and to a hearing if they refuse to accept the penalty imposed or action taken by the chief of police: *Police Services Act*, R.S.O. 1990, c. P.15, s. 66(10).

87. *Police Services Act*, R.S.O. 1990, c. P.15, s. 71(1).

88. *Police Services Act*, R.S.O. 1990, c. P.15, s. 71(3).

89. *Police Services Act*, R.S.O. 1990, c. P.15, s. 67.

90. *Police Services Act*, R.S.O. 1990, c. P.15, s. 72.

91. *Police Services Act*, R.S.O. 1990, c. P.15, s. 68(1).

92. *Police Services Act*, R.S.O. 1990, c. P.15, ss. 26.4, 26.6, 26.7.

93. *Police Services Act*, R.S.O. 1990, c. P.15, s. 68(1)-(3).

94. *Police Services Act*, R.S.O. 1990, c. P.15, s. 68(4).

95. *Police Services Act*, R.S.O. 1990, c. P.15, s. 68(5). Subsection 66(10), which allows for resolution of a complaint not of a serious nature without a hearing even if consent to informal resolution is not given or is revoked, also applies to OIPRD-retained investigations: *Police Services Act*, R.S.O. 1990, c. P.15, s. 68(7).

96. *Trumbley v. Fleming* (1986), 55 O.R. (2d) 570 (C.A.), aff'd [1987] 2 S.C.R. 577.

97. *Police Services Act*, R.S.O. 1990, c. P.15, s. 83(3).

98. *Police Services Act*, R.S.O. 1990, c. P.15, ss. 82, 84. Subsection 94(1) of *the Police Services Act* provides that a chief of police may delegate their powers and duties under subsection 84(1) to conduct a hearing and dispose of a matter.

99. *Police Services Act*, R.S.O. 1990, c. P.15, s. 80. See also O. Reg. 268/10, s. 30, Schedule.

100. *Police Services Act*, R.S.O. 1990, c. P.15, s. 84(1).

101. *Penner v. Niagara (Regional Police Services Board)*, 2013 SCC 19, [2013] 2 S.C.R. 125, at para. 60; *Jacobs v. Ottawa (Police Service)*, 2016 ONCA 345, at para. 12, leave to appeal to S.C.C. ref'd 2017 CanLII 444 (SCC).

102. *Police Services Act*, R.S.O. 1990, c. P.15, s. 85(1).

103. *Police Services Act*, R.S.O. 1990, c. P.15, s. 85(7).

104. *Police Services Act*, R.S.O. 1990, c. P.15, s. 87(1).

105. The total number of complaints screened in and screened out will not necessarily equal the total number of complaints received in any given year. Some complaints may be carried over from prior years and some complaints received by year end will not already have been screened.

106. Office of the Independent Police Review Director, OIPRD *Annual Report 2014-2015* (Toronto: Office of the Independent Police Review Director, 2015) at 11-12, 17. See also fn. 105.

107. Office of the Independent Police Review Director, OIPRD *Annual Report 2014-2015* (Toronto: Office of the Independent Police Review Director, 2015) at 20.

108. *Police Services Act*, R.S.O. 1990, c. P.15, s. 57.

109. See Office of the Independent Police Review Director, OIPRD *Annual Report 2014-2015*

(Toronto: Office of the Independent Police Review Director, 2015) at 2-3.

110. *Independent Police Review Act, 2007*, S.O. 2007, c. 5, s. 5; *Police Services Act, 1990*, S.O. 1990, c. 10, s. 21; *The Police Amendment Act, 1961-62,* S.O. 1961-62, c. 105, s. 6.

111. *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009*, S.O. 2009, c. 33, Sched. 5; O. Reg. 126/10, s. 4. The Safety, Licensing Appeals and Standards Tribunals Ontario is a "cluster" established to resolve and decide matters arising from over thirty statutes relating to public protection and safety in Ontario: Safety, Licensing Appeals and Standards Tribunals Ontario, *Business Plan 2014-2017* (Toronto: Safety, Licensing Appeals and Standards Tribunals Ontario, 31 March 2014) at 3.

112. *Police Services Act*, R.S.O. 1990, c. P.15, s. 21; *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009,* S.O. 2009, c. 33, Sched. 5, s. 14.

113. *Police Services Act*, R.S.O. 1990, c. P.15, s. 87.

114. *Police Services Act*, R.S.O. 1990, c. P.15, s. 39(5).

115. *Police Services Act*, R.S.O. 1990, c. P.15, s. 25.

116. *Police Services Act*, R.S.O. 1990, c. P.15, s. 87(1).

117. *Police Services Act*, R.S.O. 1990, c. P.15, s. 47(5).

118. *Police Services Act*, R.S.O. 1990, c. P.15, s. 16.1

119. *Police Services Act*, R.S.O. 1990, c. P.15, s. 25. The OCPC can in some cases conduct first instance disciplinary hearings from these investigations: *Police Services Act*, R.S.O. 1990, c. P.15, s. 25(3.1)-(5).

120. *Police Services Act*, R.S.O. 1990, c. P.15, s. 26.

121. *Police Services Act*, R.S.O. 1990, c. P.15, ss. 9, 23-24. If the OCPC finds that a municipal police force is not providing adequate and effective police services or is not complying with the *Police Services Act* or its regulations, it may direct the police services board to take the measures it considers necessary and, if the board fails to comply with the direction, request the assistance of the OPP: *Police Services Act*, R.S.O. 1990, c. P.15, s. 9(1)-(3).

122. *Police Services Act*, R.S.O. 1990, c. P.15, s. 78.

123. *Police Services Act*, R.S.O. 1990, c. P.15, ss. 5(1)(6), 6(3), 8, 39(5), 40

124. *Police Services Act*, R.S.O. 1990, c. P.15, ss. 116, 118(3).

125. *Police Services Act*, R.S.O. 1990, c. P.15, s. 54(1), (5), (6).

126. *Police Services Act*, R.S.O. 1990, c. P.15, s. 87(1).

127. *Police Services Act*, R.S.O. 1990, c. P.15, s. 87(8).

128. *Independent Police Review Act, 2007*, S.O. 2007, c. 5, s. 5; *Police Services Act, 1990*, S.O. 1990, c. 10, s. 21; *The Police Amendment Act, 1961-62*, S.O. 1961-62, c. 105, s. 6.

129. *The Police Amendment Act, 1961-62*, S.O. 1961-62, c. 105, s. 6. See also *The Ministry of the Solicitor General Act, 1972*, S.O. 1972, c. 2.

130. Ontario Police Commission, *First Annual Report: April 1 – December 31, 1962* (Toronto: Ontario Police Commission, 1963) at 3.

131. For example, the Ontario Police Commission was empowered to intervene if a municipality was not maintaining adequate police services and to investigate, inquire into, and report on the performance of duties by police officers and matters relating to the maintenance of law and order: *The Police Amendment Act, 1961-62*, S.O. 1961-62, c. 105, ss. 2, 9; cf. *Police Services Act*, R.S.O. 1990, c. P.15, ss. 9, 23, 26. Shortly after its establishment, the Ontario Police Commission was also given authority to resolve budgetary disputes between municipalities and local boards of commissioners of police (the predecessor to today's police services boards): *The Police Amendment Act, 1965*, S.O. 1965, c. 99, s. 4; cf. *Police Services Act*, R.S.O. 1990, c. P.15, s. 39(5). In addition, it was soon charged with approving the organization of amalgamated police forces and conducting hearings to determine if a person was a member of a police force or a senior officer: *The Police Amendment Act, 1965*, S.O. 1965, c. 99, s. 7; *The Police Amendment Act, 1968,* S.O. 1968, c. 97, s. 3; *The Police Amendment Act, 1968-69*, S.O. 1968-69, c. 96, s. 1; cf. *Police Services Act*, R.S.O. 1990, c. P.15, s. 116.

132. Clare E. Lewis, Sidney B. Linden & Judith Keene, "Public Complaints Against Police in Metropolitan Toronto – The History and Operation of the Office of the Public Complaints Commissioner" (1986-1987), 29 Crim. L. Q. 115, at 117-118; Ian D. Scott, "Development of Civilian Oversight in Ontario", in Ian D. Scott, ed., *Issues in Civilian Oversight of Policing in Canada* (Toronto: Canada Law Book, 2014) at 91-92; Patrick J. LeSage, *Report on the Police Complaints System in Ontario* (Toronto: Ministry of the Attorney General, 2005) at 16-17.

133. Clare E. Lewis, Sidney B. Linden & Judith Keene, "Public Complaints Against Police in Metropolitan Toronto – The History and Operation of the Office of the Public Complaints Commissioner" (1986-1987), 29 Crim. L. Q. 115, at 118.

134. Clare E. Lewis, Sidney B. Linden & Judith Keene, "Public Complaints Against Police in Metropolitan Toronto – The History and Operation of the Office of the Public Complaints Commissioner" (1986-1987), 29 Crim. L. Q. 115, at 118.

135. Clare E. Lewis, Sidney B. Linden & Judith Keene, "Public Complaints Against Police in Metropolitan Toronto – The History and Operation of the Office of the Public Complaints Commissioner" (1986-1987), 29 Crim. L. Q. 115, at 118.

136. Clare E. Lewis, Sidney B. Linden & Judith Keene, "Public Complaints Against Police in Metropolitan Toronto – The History and Operation of the Office of the Public Complaints Commissioner" (1986-1987), 29 Crim. L. Q. 115, at 119; Ian D. Scott, "Development of Civilian Oversight in Ontario", in Ian D. Scott, ed., *Issues in Civilian Oversight of Policing in Canada* (Toronto: Canada Law Book, 2014) at 92.

137. *Metropolitan Toronto Police Force Complaints Project Act, 1981*, S.O. 1981, c. 43. Clare E. Lewis, Sidney B. Linden & Judith Keene, "Public Complaints Against Police in Metropolitan Toronto – The History and Operation of the Office of the Public Complaints Commissioner" (1986-1987), 29 Crim. L. Q. 115, at 119-121.

138. See *Metropolitan Toronto Police Force Complaints Act, 1984*, S.O. 1984, c. 63.

139. *Metropolitan Toronto Police Force Complaints Act, 1984*, S.O. 1984, c. 63. Clare E. Lewis, Sidney B. Linden & Judith Keene, "Public Complaints Against Police in Metropolitan Toronto – The His-

tory and Operation of the Office of the Public Complaints Commissioner" (1986-1987), 29 Crim. L. Q. 115, at 121-122.

140. Race Relations and Policing Task Force, *The Report of the Race Relations and Policing Task Force* by Clare Lewis (Toronto: Race Relations and Policing Task Force, 1989) at v; Ian D. Scott, "Development of Civilian Oversight in Ontario", in Ian D. Scott, ed., *Issues in Civilian Oversight of Policing in Canada* (Toronto: Canada Law Book, 2014) at 94.

141. Race Relations and Policing Task Force, *The Report of the Race Relations and Policing Task Force* by Clare Lewis (Toronto: Race Relations and Policing Task Force, 1989).

142. Race Relations and Policing Task Force, *The Report of the Race Relations and Policing Task Force* by Clare Lewis (Toronto: Race Relations and Policing Task Force, 1989) at 150.

143. Race Relations and Policing Task Force, *The Report of the Race Relations and Policing Task Force* by Clare Lewis (Toronto: Race Relations and Policing Task Force, 1989) at 184.

144. *Police Services Act, 1990*, S.O. 1990, c. 10.

145. *Police Services Act, 1990*, S.O. 1990, c. 10, s. 113(5).

146. *Police Services Act, 1990*, S.O. 1990, c. 10, Part VI.

147. *Police Services Act, 1990*, S.O. 1990, c. 10, Part II.

148. Stephen Lewis, *Report of the Advisor on Race Relations to the Premier of Ontario* (Toronto: Ontario Advisor on Race Relations, 1992) at 2-3.

149. Stephen Lewis, *Report of the Advisor on Race Relations to the Premier of Ontario* (Toronto: Ontario Advisor on Race Relations, 1992) at 10; OIC 814/93 (17 April 1993), O. Gaz. vol. 126-16.

150. Commission on Systemic Racism in the Ontario Criminal Justice System, *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System* by Margaret Gittens & David P. Cole (Toronto: Commission on Systemic Racism in the Ontario Criminal Justice System, 1995).

151. Commission on Systemic Racism in the Ontario Criminal Justice System, *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System* by Margaret Gittens & David P. Cole (Toronto: Commission on Systemic Racism in the Ontario Criminal Justice System, 1995) at 377-384.

152. Roderick M. McLeod, *A Report and Recommendations on Amendments to the Police Services Act Respecting Civilian Oversight of Police* (Toronto: Miller Thomson LLP, 1996).

153. *Police Services Amendment Act, 1997*, S.O. 1997, c. 8. See also Tammy Landau, "Back to the Future: The Death of Civilian Review of Public Complaints Against the Police in Ontario, Canada" in Andrew John Goldsmith & Colleen Lewis, eds., *Civilian Oversight of Policing: Governance, Democracy, and Human Rights* (Oxford: Hart Publishing, 2000) at 69-76.

154. George W. Adams, *Consultation Report of the Honourable George W. Adams, Q.C. to the Attorney General and Solicitor General Concerning Police Cooperation with the Special Investigations Unit* (Toronto: Ministry of the Attorney General, 1998).

155. Ian D. Scott, "Development of Civilian Oversight in Ontario", in Ian D. Scott, ed., *Issues in Civilian Oversight of Policing in Canada* (Toronto: Canada Law Book, 2014) at 101; O. Reg. 673/98,

later amended to O. Reg. 267/10; O. Reg. 674/98 (amending O. Reg. 123/98, later amended to O. Reg. 268/10).

156. George W. Adams, *Review Report on the Special Investigations Unit Reforms Prepared for the Attorney General of Ontario by the Honourable George W. Adams, Q.C.* (Toronto: Ministry of the Attorney General, 2003).

157. Ian D. Scott, "Development of Civilian Oversight in Ontario", in Ian D. Scott, ed., *Issues in Civilian Oversight of Policing in Canada* (Toronto: Canada Law Book, 2014) at 103.

158. Ian D. Scott, "Development of Civilian Oversight in Ontario", in Ian D. Scott, ed., *Issues in Civilian Oversight of Policing in Canada* (Toronto: Canada Law Book, 2014) at 103.

159. Patrick J. LeSage, *Report on the Police Complaints System in Ontario* (Toronto: Ministry of the Attorney General, 2005) at 66.

160. *Independent Police Review Act, 2007*, S.O. 2007, c. 5.

161. See *Proclamation* (3 October 2009), O. Gaz. vol. 142-40.

162. Office of the Ombudsman, *Oversight Unseen: Investigation into the Special Investigation Unit's Operational Effectiveness and Credibility* by André Marin (Toronto: Ombudsman Ontario, 2008).

163. Patrick J. LeSage, *Report Regarding* SIU *Issues* (Toronto: Gowling Lafleur Henderson LLP, 2011).

164. O. Reg. 283/11 (amending O. Reg. 267/10).

165. Office of the Ombudsman, *Oversight Undermined: Investigation into the Ministry of the Attorney General's Implementation of Recommendations Concerning Reform of the Special Investigation Unit* by André Marin (Toronto: Ombudsman Ontario, 2011).

166. See e.g. *Police Services Act*, R.S.O. 1990, c. P.15, ss. 21-26.9, 56-75, 113; O. Reg. 263/09; O. Reg. 267/10.

167. *Police Services Act*, R.S.O. 1990, c. P.15, s. 113(1).

168. Ontario, Management Board of Cabinet, *Agencies and Appointments Directive* (July 2016) at 9, 23-24.

169. Ontario, Management Board of Cabinet, *Agencies and Appointments Directive* (July 2016) at 7, 20-22.

170. Ontario, Management Board of Cabinet, *Agencies and Appointments Directive* (July 2016) at 11-12.

171. See Ontario, Management Board of Cabinet, *Agencies and Appointments Directive* (July 2016) at 42-51; Ontario, Public Appointments Secretariat, "General Information" (2017), online: Public Appointments Secretariat <https://www.pas.gov.on.ca/scripts/en/generalInfo.asp>.

172. See *Standing Orders of the Legislative Assembly of Ontario* (January 2009), s. 108(f).

173. Stephen Lewis, *Report of the Advisor on Race Relations to the Premier of Ontario* (Toronto: Ontario Advisor on Race Relations, 1992) at 10.

174. An Order-in-Council transferred responsibility from the Ministry of the Solicitor General to

the Ministry of the Attorney General in 1993, but *the Police Services Act* was not amended: see OIC 814/93 (17 April 17 1993), O. Gaz. vol. 126-16.

175. *The Police Services Act*, C.C.S.M. c. P94.5, s. 58; *Police Act*, S.N.S. 2004, c. 31, s. 26B.

176. *Police Services Act*, R.S.O. 1990, c. P.15, s. 113(3).

177. *Police Services Act*, R.S.O. 1990, c. P.15, s. 113(7).

178. *Police Services Act*, R.S.O. 1990, c. P.15, s. 113(8).

179. Special Investigations Unit, *Annual Report 2014-2015* (Mississauga: Special Investigations Unit, 2015) at 39. The report states that the $562,695 spent on the Office of the Director includes expenditures on training expenses for communications, outreach, and affected persons services, but it does not specify the amount.

180. For greater certainty, I am not suggesting that the SIU spends too much on investigations.

181. Unfortunately, despite often having great need, many affected persons fail to meet government requirements for funding. For example, the Victim Quick Response Program, offered by the Ministry of the Attorney General, provides funding support for short-term counselling, funeral expenses, and other immediate emergency expenses: see Ministry of the Attorney General, "Victim Quick Response Program" (2015), online: Ministry of the Attorney General <https://www.attorneygeneral.jus.gov.on.ca/english/ovss/vqrp.php>. But it only applies when someone was killed by someone who committed a crime. Since the ministry does not generally consider an SIU incident a "crime" unless charges are laid, few affected persons qualify. In addition, I am told some affected family are disqualified if their family member was considered to be committing a crime at the time of their death.

182. *Police Services Act*, R.S.O. 1990, c. P-15, s. 113(3).

183. *Police Services Act*, R.S.O. 1990, c. P-15, s. 113(6).

184. George W. Adams, *Consultation Report of the Honourable George W. Adams, Q.C. to the Attorney General and Solicitor General Concerning Police Cooperation with the Special Investigations Unit* (Toronto: Ministry of the Attorney General, 1998) at 25.

185. Office of the Ombudsman, *Oversight Unseen: Investigation into the Special Investigation Unit's Operational Effectiveness and Credibility* by André Marin (Toronto: Ombudsman Ontario, 2008) at para. 323.

186. This is based on information provided to me from the SIU. I was told that in February 2017, six new on-call investigators would start working at the SIU, three of whom were former police officers. This would make 31 out of 41 of the on-call investigators former police officers, instead of the previous 28 out of 35.

187. Race Relations and Policing Task Force, *The Report of the Race Relations and Policing Task Force* by Clare Lewis (Toronto: Race Relations and Policing Task Force, 1989) at 148.

188. Stephen Lewis, *Report of the Advisor on Race Relations to the Premier of Ontario* (Toronto: Ontario Advisor on Race Relations, 1992) at 9.

189. George W. Adams, *Consultation Report of the Honourable George W. Adams, Q.C. to the Attorney General and Solicitor General Concerning Police Cooperation with the Special Investigations Unit* (Toronto: Ministry of the Attorney General, 1998) at 96-98.

190. Office of the Ombudsman, *Oversight Unseen: Investigation into the Special Investigation Unit's Operational Effectiveness and Credibility* by André Marin (Toronto: Ombudsman Ontario, 2008) at paras. 320-349.

191. *Police Act,* R.S.A. 2000, c. P-17, s. 46.2; Alberta Serious Incident Response Team, *Annual Report 2014* (undated) at 33.

192. *The Police Services Act*, C.C.S.M. c. P94.5, s. 60.

193. *The Police Services Act*, C.C.S.M. c. P94.5, s. 61.

194. Serious Incident Response Team, "About SIRT" (2017), online: Serious Incident Response Team <https://sirt.novascotia.ca/about>.

195. Bureau des enquêtes indépendantes, "Profile and Selection" (2017), online: Ministère de la Sécurité publique du Québec <https://www.bei.gouv.qc.ca/home/investigators/profile-and-selection.html>. See also *Police Act*, C.Q.L.R. c. P-13.1, s. 289.10.

196. See *Police Act,* R.S.B.C. 1996, c. 367, s. 38.13. See also Independent Investigations Office of British Columbia, "FAQs" (2016), online: Independent Investigations Office of British Columbia <http://iiobc.ca/faqs/>.

197. Independent Investigations Office of British Columbia, "FAQs" (2016), online: Independent Investigations Office of British Columbia <http://iiobc.ca/faqs/>.

198. *Police Act*, R.S.B.C. 1996, c. 367, s. 38.06(3).

199. Independent Investigations Office of British Columbia, "FAQs" (2016), online: Independent Investigations Office of British Columbia <http://iiobc.ca/faqs/>.

200. Independent Police Complaints Commission, *Annual Report and Statement of Accounts 2014/15* (London, U.K.: Independent Police Complaints Commission, 2015) at 110.

201. Stephen P. Savage, "Independent Minded: The Role and Status of 'Independence' in the Investigation of Police Complaints", in Tim Prenzler & Garth den Heyer, eds., *Civilian Oversight of Police: Advancing Accountability in Law Enforcement* (Boca Raton: CRC Press, 2016) at 36.

202. Independent Police Complaints Commission, *Annual Report and Statement of Accounts 2014/15* (London, U.K.: Independent Police Complaints Commission, 2015) at 110.

203. Criminal Justice Inspection Northern Ireland, *An Inspection into the Independence of the Office of the Police Ombudsman for Northern Ireland* (Belfast: Criminal Justice Inspection Northern Ireland, 2011) at 32.

204. Louise Porter & Tim Prenzler, "Complainants' Views of Police Complaint Systems: The Gap between Aspiration and Experience", in Tim Prenzler & Garth den Heyer, eds., *Civilian Oversight of Police: Advancing Accountability in Law Enforcement* (Boca Raton: CRC Press, 2016) at 84.

205. Commission for Public Complaints Against the Royal Canadian Mounted Police, *Police Investigating Police: Final Public Report* (Ottawa: Commission for Public Complaints Against the Royal Canadian Mounted Police, 2009) at 83, 87.

206. Council of Canadian Academics, *Policing Canada in the 21st Century: New Policing for New Challenges* (Ottawa: Library and Archives Canada, 2014) at 78.

207. See my discussion of practices in other jurisdictions at appendix C.

208. *Police Services Act*, R.S.O. 1990, c. P-15, s. 26.1(5).

209. Patrick J. Lesage, *Report on the Police Complaints System in Ontario* (Toronto: Ministry of the Attorney General, 2005) at 73.

210. Stephen Lewis, *Report of the Advisor on Race Relations to the Premier of Ontario* (Toronto: Ontario Advisor on Race Relations, 1992) at 9.

211. Man. Reg. 99/2015, s. 3.

212. Ian D. Scott, "Development of Civilian Oversight in Ontario", in Ian D. Scott, ed., *Issues in Civilian Oversight of Policing in Canada* (Toronto: Canada Law Book, 2014) at 94.

213. Ian D. Scott, "Development of Civilian Oversight in Ontario", in Ian D. Scott, ed., *Issues in Civilian Oversight of Policing in Canada* (Toronto: Canada Law Book, 2014) at 94.

214. Race Relations and Policing Task Force, *The Report of the Race Relations and Policing Task Force* by Clare Lewis (Toronto: Race Relations and Policing Task Force, 1989) at 15-16.

215. Race Relations and Policing Task Force, *The Report of the Race Relations and Policing Task Force* by Clare Lewis (Toronto: Race Relations and Policing Task Force, 1989) at 147.

216. Race Relations and Policing Task Force, *The Report of the Race Relations and Policing Task Force* by Clare Lewis (Toronto: Race Relations and Policing Task Force, 1989) at 147.

217. Race Relations and Policing Task Force, *The Report of the Race Relations and Policing Task Force* by Clare Lewis (Toronto: Race Relations and Policing Task Force, 1989) at 150.

218. Race Relations and Policing Task Force, *The Report of the Race Relations and Policing Task Force* by Clare Lewis (Toronto: Race Relations and Policing Task Force, 1989) at 149.

219. *R. v. Nasogaluak,* 2010 SCC 6, [2010] 1 S.C.R. 206, at para. 32.

220. *Police Services Act*, R.S.O. 1990, c. P.15, s. 113(9); O. Reg. 267/10.

221. *Police Services Act*, R.S.O. 1990, c. P.15, s. 113(5).

222. *Peel (Police) v. Ontario (Special Investigations Unit),* 2012 ONCA 292, 110 O.R. (3d) 536, at paras. 24-25.

223. O. Reg. 267/10, s. 3.

224. See George W. Adams, *Review Report on the Special Investigations Unit Reforms prepared for the Attorney General of Ontario by The Honourable George W. Adams Q.C.* (Toronto: Ministry of the Attorney General, 2003) at 32.

225. Roderick M. McLeod, *A Report and Recommendations on Amendments to the Police Services Act Respecting Civilian Oversight of Police* (Toronto: Miller Thomson LLP, 1996) at para. 4.3.9.

226. Patrick J. LeSage, *Report regarding* SIU *Issues* (Toronto: Ministry of the Attorney General, 2011) at 2.

227. See e.g. *Police Act*, R.S.B.C. 1996, c. 367, ss. 38.01, 76(1); Man. Reg. 99/2015.

228. R.R.O. 1990, Reg. 926, s. 9.

229. R.R.O. 1990, Reg. 926, ss. 9.1-10.

230. *Police Act*, R.S.A. 2000, c. P-17, s. 46.1(1)(b)(ii).

231. Alberta Serious Incident Response Team, "Definitions – Investigation Related" (2016), online: Alberta Serious Incident Response Team <https://solgps.alberta.ca/asirt/what-we-do/Pages/definitions.aspx>.

232. See *Police Act*, R.S.A. 2000, c. P-17, s. 46.1(1)(b)(ii); *Police Act*, R.S.B.C. 1996, c. 367, ss. 38.02(1)(c), 44. In Manitoba, the civilian director of the Independent Investigation Unit may decide to take over the investigation of criminal conduct of an officer falling outside of the mandatory mandate: *The Police Services Act*, C.C.S.M. c.94.5, s. 75(1). In Nova Scotia, the chief officer may notify the director of the Serious Incident Response Team of any incident which the chief officer determines would be in the public interest for the Team to investigate: *Police Act*, S.N.S. 2004, c. 31, s. 26I(1)(b). In Québec, in exceptional circumstances, the minister may request the Bureau des enquêtes indépendantes to investigate matters that do not involve serious injury, death, or injury from a firearm: *Police Act*, C.Q.L.R. c. P-13.1, s. 289.3.

233. *Police Services Act*, R.S.O. 1990, c. P.15, s. 113(7).

234. *Highway Traffic Act*, R.S.O. 1990, c. H.8.

235. *Peel (Police) v. Ontario (Special Investigations Unit)*, 2012 ONCA 292, 110 O.R. (3d) 536, at paras. 24-25.

236. O. Reg. 267/10, s. 3.

237. George W. Adams, *Review Report on the Special Investigations Unit Reforms prepared for the Attorney General of Ontario by The Honourable George W. Adams Q.C.* (Toronto: Ministry of the Attorney General, 2003) at 37-38. See also George W. Adams, *Consultation Report of the Honourable George W. Adams, Q.C. to the Attorney General and Solicitor General Concerning Police Cooperation with the Special Investigations Unit* (Toronto: Ministry of the Attorney General, 1998) at 86, where it was stated: "It is not practical for a police service to attempt to determine the SIU's jurisdiction in a strict legal sense before notification is effected because of the inherent uncertainty of many incidents."

238. See the Special Investigations Unit, *Annual Report 2014-2015* (Mississauga: Special Investigations Unit, 2015) at 31.

239. *Police Services Act*, R.S.O. 1990, c. P-15, s. 113(9); *Police Services Act, 1990*, S.O. 1990, c. 10, s. 113(9).

240. George W. Adams, *Consultation Report of the Honourable George W. Adams, Q.C. to the Attorney General and Solicitor General Concerning Police Cooperation with the Special Investigations Unit* (Toronto: Ministry of the Attorney General, 1998) at 3.

241. George W. Adams, *Consultation Report of the Honourable George W. Adams, Q.C. to the Attorney General and Solicitor General Concerning Police Cooperation with the Special Investigations Unit* (Toronto: Ministry of the Attorney General, 1998) at 3-6.

242. See O. Reg. 673/98. The regulation has since been amended and re-enacted as O. Reg. 267/10.

243. George W. Adams, *Review Report on the Special Investigations Unit Reforms prepared for the Attorney General of Ontario by The Honourable George W. Adams Q.C.* (Toronto: Ministry of the Attorney

General, 2003) at 26.

244. *Police Services Act*, R.S.O. 1990, c. P-15, s.113(9)

245. See O. Reg. 267/10.

246. George W. Adams, *Review Report on the Special Investigations Unit Reforms prepared for the Attorney General of Ontario by The Honourable George W. Adams Q.C.* (Toronto: Ministry of the Attorney General, 2003) at 46.

247. O. Reg. 267/10, s. 9.

248. E.g. Office of the Ombudsman, *Oversight Unseen: Investigation into the Special Investigation Unit's Operational Effectiveness and Credibility* by André Marin (Toronto: Ombudsman Ontario, 2008) at para. 237; George W. Adams, *Review Report on the Special Investigations Unit Reforms prepared for the Attorney General of Ontario by The Honourable George W. Adams Q.C.* (Toronto: Ministry of the Attorney General, 2003) at 55.

249. See recommendation 5.15 on the scope of this protection.

250. *Police Services Act*, R.S.O. 1990, c. P.15, ss. 2, 113(9).

251. O. Reg. 268/10, Sched., s. 2(c)(ii).

252. *Police Services Act*, R.S.O. 1990, c. P-15, s. 79(1)-(2).

253. *Police Services Act*, R.S.O. 1990, c. P-15, s. 79(3).

254. *Ombudsman Act*, R.S.O. 1990, c. O.6, s. 27.

255. O. Reg. 267/10, s. 8(4).

256. George W. Adams, *Consultation Report of the Honourable George W. Adams, Q.C. to the Attorney General and Solicitor General Concerning Police Cooperation with the Special Investigations Unit* (Toronto: Ministry of the Attorney General, 1998) at 92-93.

257. George W. Adams, *Review Report on the Special Investigations Unit Reforms prepared for the Attorney General of Ontario by The Honourable George W. Adams Q.C.* (Toronto: Ministry of the Attorney General, 2003) at 53-54.

258. O. Reg. 267/10, s. 8(3).

259. George W. Adams, *Consultation Report of the Honourable George W. Adams, Q.C. to the Attorney General and Solicitor General Concerning Police Cooperation with the Special Investigations Unit* (Toronto: Ministry of the Attorney General, 1998) at 92-93.

260. George W. Adams, *Consultation Report of the Honourable George W. Adams, Q.C. to the Attorney General and Solicitor General Concerning Police Cooperation with the Special Investigations Unit* (Toronto: Ministry of the Attorney General, 1998) at 93.

261. O. Reg. 267/10, s. 9.

262. George W. Adams, *Consultation Report of the Honourable George W. Adams, Q.C. to the Attorney General and Solicitor General Concerning Police Cooperation with the Special Investigations Unit* (Toronto: Ministry of the Attorney General, 1998) at 93.

263. George W. Adams, *Consultation Report of the Honourable George W. Adams, Q.C. to the Attorney*

General and Solicitor General Concerning Police Cooperation with the Special Investigations Unit (Toronto: Ministry of the Attorney General, 1998) at 93-94.

264. George W. Adams, *Consultation Report of the Honourable George W. Adams, Q.C. to the Attorney General and Solicitor General Concerning Police Cooperation with the Special Investigations Unit* (Toronto: Ministry of the Attorney General, 1998) at 70-71, 93-94. See also *R. v. Fitzpatrick*, [1995] 4 S.C.R. 154, at 172-174.

265. E.g. *R. v. Schertzer* (2007), 161 C.C.R. (2d) 367 (Ont. S.C.). See also *R. v. Sandhu,* 2015 ONSC 1679, 331 C.R.R. (2d) 171; *R. v. Calleja*, 2012 ONCJ 868, 111 W.C.B. (2d) 922; Ian Scott, "Reforming Ontario's Special Investigations Unit" (2013), 60 Crim L. Q. 191, at 201-202.

266. Charles A. Harnick, *Harnick Directive* (23 December 1998); *R. v. Calleja*, 2012 ONCJ 868, 111 W.C.B. (2d) 922, at para. 16.

267. The policy is named after the Attorney General at the time, Charles A. Harnick.

268. George W. Adams, *Consultation Report of the Honourable George W. Adams, Q.C. to the Attorney General and Solicitor General Concerning Police Cooperation with the Special Investigations Unit* (Toronto: Ministry of the Attorney General, 1998) at 89-91.

269. George W. Adams, *Consultation Report of the Honourable George W. Adams, Q.C. to the Attorney General and Solicitor General Concerning Police Cooperation with the Special Investigations Unit* (Toronto: Ministry of the Attorney General, 1998) at 64, 89-91.

270. E.g. *R. v. Nedelcu,* 2012 SCC 59, [2012] 3 S.C.R. 311; *R. v. v. Schertzer* (2007), 161 C.C.R. (2d) 367 (Ont. S.C.).

271. The SIU informed me that, as of February 21, 2017, the composition of former police officers as SIU investigators was as follows: 3 out of 15 full-time investigators; 31 out of 41 on-call investigators; 2 out of 3 investigations managers; 9 out of 9 forensic investigators; and 2 out of 2 forensic managers.

272. See Special Investigations Unit, *Annual Report 2014-2015* (Mississauga: Special Investigations Unit, 2015) at 30.

273. *Criminal Code*, R.S.C. 1985, c. C-46, s. 25.

274. Office of the Ombudsman, *Oversight Unseen: Investigation into the Special Investigation Unit's Operational Effectiveness and Credibility* by André Marin (Toronto: Ombudsman Ontario, 2008) at para. 311.

275. See *Canadian Broadcasting Corp. v. New Brunswick (Attorney General*), [1996] 3 S.C.R. 480; *Dagenais v. Canadian Broadcasting Corp*., [1994] 3 S.C.R. 835; *R. v. Mentuck*, 2001 SCC 76, [2001] 3 S.C.R. 442; and *Vancouver Sun (Re),* 2004 SCC 43, [2004] 2 S.C.R. 332.

276. George W. Adams, *Consultation Report of the Honourable George W. Adams Q.C. to the Attorney General and Solicitor General Concerning Police Cooperation with the Special Investigations Unit* (Toronto: Ministry of the Attorney General, 1998) at 95.

277. George W. Adams, *Review Report on the Special Investigations Unit Reforms prepared for the Attorney General of Ontario by The Honourable George W. Adams Q.C.* (Toronto: Ministry of the Attorney General, 2003) at 59.

278. George W. Adams, *Consultation Report of the Honourable George W. Adams Q.C. to the Attorney General and Solicitor General Concerning Police Cooperation with the Special Investigations Unit* (Toronto: Ministry of the Attorney General, 1998) at 96; George W. Adams, *Review Report on the Special Investigations Unit Reforms prepared for the Attorney General of Ontario by The Honourable George W. Adams Q.C.* (Toronto: Ministry of the Attorney General, 2003) at 58-59.

279. George W. Adams, *Consultation Report of the Honourable George W. Adams Q.C. to the Attorney General and Solicitor General Concerning Police Cooperation with the Special Investigations Unit* (Toronto: Ministry of the Attorney General, 1998) at 95.

280. George W. Adams, *Consultation Report of the Honourable George W. Adams Q.C. to the Attorney General and Solicitor General Concerning Police Cooperation with the Special Investigations Unit* (Toronto: Ministry of the Attorney General, 1998) at 96.

281. Office of the Ombudsman, *Oversight Unseen: Investigation into the Special Investigation Unit's Operational Effectiveness and Credibility* by André Marin (Toronto: Ombudsman Ontario, 2008) at para. 319; Office of the Ombudsman, *Oversight Undermined: Investigation into the Ministry of the Attorney General's Implementation of Recommendations Concerning Reform of the Special Investigation Unit* by André Marin (Toronto: Ombudsman Ontario, 2011) at para. 136.

282. Office of the Ombudsman, *Oversight Undermined: Investigation into the Ministry of the Attorney General's Implementation of Recommendations Concerning Reform of the Special Investigation Unit* by André Marin (Toronto: Ombudsman Ontario, 2011) at para. 136.

283. Office of the Ombudsman, *Oversight Unseen: Investigation into the Special Investigation Unit's Operational Effectiveness and Credibility* by André Marin (Toronto: Ombudsman Ontario, 2008) at para. 317.

284. See e.g. Independent Investigation Unit of Manitoba, "Final report: IIU concludes investigation into fatal police shooting involving members of Winnipeg Police Service, September 20, 2015" (10 January 2017), online: Independent Investigation Unit of Manitoba <http://iiumanitoba.ca/pdf/final_report_jan12_2017.pdf>; Independent Investigations Office of British Columbia, "Public Report of the Chief Civilian Director Regarding a Fatal Officer-Involved Shooting on July 16, 2015 Involving the Dawson Creek RCMP" (16 November 2016), online: Independent Investigations Office of British Columbia <http://iiobc.ca/wp-content/uploads/2016/11/07-16-2015-Dawson-Creek-Firearm-Death-2015-000104.pdf>.

285. See *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, ss. 2, 21, 42. Sections 21 and 42 restrict the release of personal information. But section 2 defines "personal information" as "recorded information about an identifiable individual." This means that information is not "personal information" when the individual that it is about is unidentifiable. Thus if the person is unidentifiable, sections 21 and 42 do not restrict the release of any recorded information about them.

286. Section 12 of O. Reg. 267/10 restricts the information police may provide. Section 13 of O. Reg. 267/10 restricts the information that the SIU may provide.

287. *Coroners Act*, R.S.O. 1990, c. C.37, s. 32. The coroner may restrict the public from the hearing if of the opinion that national security might be endangered or if a person has been charged with an indictable offence under the *Criminal Code*, R.S.C. 1985, c. C-46.

288. *Coroners Act*, R.S.O. 1990, c. C.37, s. 10(4)-(4.6).

289. *Coroners Act*, R.S.O. 1990, c. C.37, s. 20.

290. For example, from April 1, 2014 to March 31, 2015, the OIPRD received 2,926 complaints. 1,280 complaints were screened in for investigation. Of the 734 conduct complaint decisions, 620 complaints were unsubstantiated, 77 were substantiated as less serious, and 37 were substantiated as serious: Office of the Independent Police Review Director, OIPRD *Annual Report 2014-2015* (Toronto: Office of the Independent Police Review Director, 2015) at 11, 20.

291. *Police Services Act*, R.S.O. 1990, c. P.15, s. 58(4).

292. *Police Services Act*, R.S.O. 1990, c. P.15, s. 58(4).

293. *Police Services Act*, R.S.O. 1990, c. P.15, s. 26.1(7). In his 2005 report, Chief Justice LeSage recommended that civilian administrators be responsible for the administration of the complaints system in each region of the province: Patrick J. Lesage, *Report on the Police Complaints System in Ontario* (Toronto: Ministry of the Attorney General, 2005) at 66.

294. *Police Services Act*, R.S.O. 1990, c. P.15, s. 58(1)-(2).

295. *Police Services Act*, R.S.O. 1990, c. P.15, s. 2(1).

296. *Police Services Act*, R.S.O. 1990, c. P.15, s. 2(1).

297. *Police Services Act*, R.S.O. 1990, c. P.15, s. 25.

298. *Police Services Act*, R.S.O. 1990, c. P.15, s. 58(2), (4).

299. *Police Act*, R.S.B.C. 1996, c. 367, s. 93.

300. *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-10, s. 45.59.

301. *Police Services Act*, R.S.O. 1990, c. P.15, s. 25.

302. *Police Services Act*, R.S.O. 1990, c. P.15, s. 76(4).

303. Office of the Independent Police Review Director, OIPRD *Annual Report 2014-2015* (Toronto: Office of the Independent Police Review Director, 2015) at 9, 18-19.

304. Patrick J. Lesage, *Report on the Police Complaints System in Ontario* (Toronto: Ministry of the Attorney General, 2005) at 70-71.

305. *Endicott v. Ontario (Independent Police Review Office)*, 2014 ONCA 363, 319 O.A.C. 324, at para. 29.

306. *Police Services Act*, R.S.O. 1990, c. P.15, s. 60.

307. Office of the Independent Police Review Director, OIPRD *Annual Report 2014-2015* (Toronto: Office of the Independent Police Review Director, 2015) at 12.

308. *Police Services Act*, R.S.O. 1990, c. P.15, s. 60(7).

309. Office of the Independent Police Review Director, OIPRD *Annual Report 2014-2015* (Toronto: Office of the Independent Police Review Director, 2015) at 12.

310. Office of the Independent Police Review Director, *Rules of Procedure* (Toronto: Office of the Independent Police Review Director, 7 July 2016), rule 6.4.

311. See e.g. *R. v. Morales,* [1992] 3 S.C.R. 711, at 731; *R. v. Sparrow,* [1990] 1 S.C.R. 1075, at

1113.

312. See e.g. *Police Act*, R.S.B.C. 1996, c. 367, s. 82; *The Law Enforcement Review Act*, C.C.S.M. c. L75, s. 13.

313. *National Defence Act*, R.S.C. 1985, c. N-5, s. 250.28(2)(c).

314. *Police Act*, R.S.B.C. 1996, c. 367, s. 109(1)(a).

315. *Police Services Act*, R.S.O. 1990, c. P.15, ss. 58(1), 60(5).

316. *Police Services Act*, R.S.O. 1990, c. P.15, s. 60(6).

317. Patrick J. Lesage, *Report on the Police Complaints System in Ontario* (Toronto: Ministry of the Attorney General, 2005) at 67.

318. *Police Services Act*, R.S.O. 1990, c. P.15, ss. 61(9), 70.

319. *Police Services Act*, R.S.O. 1990, c. P.15, ss. 61(8), 69.

320. *Police Services Act*, R.S.O. 1990, c. P.15, s. 61(5).

321. Office of the Independent Police Review Director, OIPRD *Annual Report 2014-2015* (Toronto: Office of the Independent Police Review Director, 2015), at 17.

322. *Police Services Act*, R.S.O. 1990, c. P.15, s. 69(2).

323. *Police Services Act*, R.S.O. 1990, c. P.15, s. 70.

324. *Police Services Act*, R.S.O. 1990, c. P.15, s. 61(2)-(4).

325. For example, from April 1, 2014 to March 31, 2015, the OIPRD screened in 1,210 complaints, including 1,118 conduct complaints, 73 service complaints, and 19 policy complaints: Office of the Independent Police Review Director, OIPRD *Annual Report 2014-2015* (Toronto: Office of the Independent Police Review Director, 2015) at 17.

326. *Police Services Act*, R.S.O. 1990, c. P.15, s. 66.

327. *Police Services Act*, R.S.O. 1990, c. P.15, ss. 66, 71.

328. *Police Services Act*, R.S.O. 1990, c. P.15, s. 72.

329. *Police Services Act*, R.S.O. 1990, c. P.15, s. 68.

330. *Police Services Act*, R.S.O. 1990, c. P.15, s. 26.6.

331. *Police Services Act*, R.S.O. 1990, c. P.15, s. 26.4.

332. *Police Services Act*, R.S.O. 1990, c. P.15, s. 79.

333. *Youth Criminal Justice Act,* S.C. 2002, c. 1.

334. OIC 651/2016 (4 May 4 2016).

335. *Police Services Act*, R.S.O. 1990, c. P.15, s. 83(17)-(18).

336. *Police Services Act*, R.S.O. 1990, c. P.15, s. 83(17).

337. See *Blencoe v. British Columbia (Human Rights Commission),* 2000 SCC 44, [2000] S.C.R. 307.

338. *Police Services Act*, R.S.O. 1990, c. P.15, s. 60(7). See also *Wall v. Office of the Independent Police*

Review Director, 2014 ONCA 884, 123 O.R. (3d) 574, at paras. 48-67.

339. *Police Services Act*, R.S.O. 1990, c. P.15, s. 60(7)-(8).

340. See *Police Services Act*, R.S.O. 1990, c. P.15, ss. 66(2), 67(2), 68(2).

341. See *Police Services Act*, R.S.O. 1990, c. P.15, ss. 66(1), 67(2), 68(3).

342. *Police Services Act*, R.S.O. 1990, c. P.15, s. 57.

343. *Police Services Act*, R.S.O. 1990, c. P.15, s. 57.

344. *Police Services Act*, R.S.O. 1990, c. P.15, s. 66(3).

345. *Police Services Act*, R.S.O. 1990, c. P.15, s. 82(1).

346. *Police Services Act*, R.S.O. 1990, c. P.15, s. 94(1).

347. *Amormino v. Police Services Board (*OPP*),* 2015 ONSC 7718, 342 O.A.C. 53 (Div. Ct.).

348. *Police Services Act*, R.S.O. 1990, c. P.15, s. 82(1).

349. *Police Services Act*, R.S.O. 1990, c. P.15, s. 82(1).

350. See *Police Services Act*, R.S.O. 1990, c. P.15, s. 94(1). Subsection 94(1) allows the chief of police to delegate the power to conduct a hearing to a police officer or former police officer of the rank of inspector or higher, a judge, or a retired judge.

351. Patrick J. LeSage, *Report on the Police Complaints System in Ontario* (Toronto: Ministry of the Attorney General, 2005) at 80. More recently, the Court of Appeal for Ontario observed that hearing officers are not independent of the chief: *Ottawa Police Services v. Diafwila,* 2016 ONCA 627, 352 O.A.C. 310, at para. 62.

352. According to statistics provided to me by the OIPRD, between April 1, 2015 and March 31, 2016, only 32 substantiated complaints were found to be serious, thus necessitating a hearing. An additional 57 substantiated complaints were found to be less serious, thus allowing them to be resolved informally failing which a hearing may occur. Between April 1, 2014 and March 31, 2015, there were 37 substantiated serious complaints and 77 substantiated less serious complaints.

353. The chair of the OCPC has the authority to set quorum for any purpose: *Police Services Act*, R.S.O. 1990, c. P.15, s. 21(6).

354. *Police Services Act*, R.S.O. 1990, c. P.15, s. 87(1).

355. See *Police Services Act*, R.S.O. 1990, c. P.15, s. 41(1).

356. *Police Services Act*, R.S.O. 1990, c. P.15, s. 84. See also *Police Services Act*, R.S.O. 1990, c. P.15, s. 94(1).

357. *Police Services Act*, R.S.O. 1990, c. P.15, s. 87. While the OIPRD has the right to be heard on an appeal, it is statutorily restricted from initiating the appeal: *Police Services Act*, R.S.O. 1990, c. P.15, s. 87(7).

358. See *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1, ss. 2, 6. In certain circumstances, the OCPC will conduct the first instance disciplinary hearing for public complaints regarding a chief or deputy chief: *Police Services Act*, R.S.O. 1990, c. P.15, s. 69(8). Such decisions may be appealed to the Divisional Court: *Police Services Act,* R.S.O. 1990, c. P.15, s. 88(1). Hearing decisions regarding

rank and file officers are appealed to the OCPC and then proceed by way of judicial review to the Divisional Court: *Police Services Act*, R.S.O. 1990, c. P.15, s. 87(1); see e.g. *London Police Association v. London Police Service*, 2014 CanLII 78436 (Ont. Div. Ct.).

359. O. Reg. 267/10, s. 5.

360. Special Investigations Unit, *Operations Policy 003: Cooperation between the* SIU *and Police Services* (last revised September 13, 2010). The SIU also has an operations policy on SIU cooperation in section 11 investigations: Special Investigations Unit, *Operations Policy 004:* SIU *Cooperation under Section 11 of Ontario Regulation 267/10* (last revised September 13, 2010).

361. Memorandum of Understanding Respecting Investigations Between Independent Investigations Office of British Columbia (IIO) and Royal Canadian Mounted Police (RCMP) and the Municipal Police Departments of British Columbia and the Organized Crime Agency of British Columbia and the South Coast British Columbia Transportation Authority Police Service and the Stl'atl'imx Tribal Police (12 February 2013).

362. *Police Services Act*, R.S.O. 1990, c. P.15, s. 26.4.

363. O. Reg. 267/10, s. 11(1).

364. O. Reg. 267/10, s. 11(2), (4), (5).

365. O. Reg. 267/10, s. 11(1), (4), (5).

366. See section 3.500.

367. *Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch),* 2001 SCC 52, [2001] 2 S.C.R. 781, at para. 42; *Brosseau v. Alberta (Securities Commission),* [1989] 1 S.C.R. 301, at 309-310.

368. *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009,* S.O. 2009, c. 33, Sched. 5; O. Reg. 126/10, s. 4.

369. *Police Services Act*, R.S.O. 1990, c. P.15, s. 16.1.

370. *Police Services Act*, R.S.O. 1990, c. P.15, ss. 9, 23, 24.

371. If the OCPC suspends or removes the chief of police, it may appoint their replacement: *Police Services Act*, R.S.O. 1990, c. P.15, s. 23(6). If the OCPC suspends or removes a board member, the municipal council or the Lieutenant Governor in Council will appoint their replacement: *Police Services Act*, R.S.O. 1990, c. P.15, s. 23(9).

372. A hearing is generally required before the OCPC takes action under section 23, but the OCPC may issue an interim order without first holding a hearing if it is of the opinion that an emergency exists and an interim order is necessary in the public interest: *Police Services Act*, R.S.O. 1990, c. P.15, s. 24.

373. *Police Services Act*, R.S.O. 1990, c. P.15, s. 25.

374. "Appointing officials" are persons designated by the Minister of Community Safety and Correctional Services to appoint an extra-provincial police officer as a police officer in Ontario: *Police Services Act*, R.S.O. 1990, c. P.15, s. 2(1); *Interprovincial Policing Act, 2009*, S.O. 2009, c. 30, ss. 1, 34.

375. *Police Services Act*, R.S.O. 1990, c. P.15, s. 25(1).

376. See *Police Services Act*, R.S.O. 1990, c. P.15, s. 25(4)-(5).

377. *Police Services Act*, R.S.O. 1990, c. P.15, s. 26.

378. *Public Inquiries Act,* R.S.O. 1990, c. P.41.

379. *Police Services Act*, R.S.O. 1990, c. P.15, ss. 5(1)(6), 6, 8, 39, 40.

380. *Police Services Act*, R.S.O. 1990, c. P.15, s. 47.

381. *Police Services Act*, R.S.O. 1990, c. P.15, s. 54.

382. *Police Services Act*, R.S.O. 1990, c. P.15, s. 78.

383. *Police Services Act*, R.S.O. 1990, c. P.15, s. 116.

384. *Police Services Act*, R.S.O. 1990, c. P.15, s. 118.

385. For example, under the previous legislation, a police officer or complainant could appeal a police force's hearing decision to the Ontario Civilian Commission on Police Services, the OCPC's predecessor: see *Government Efficiency Act, 2002,* S.O. 2002, c. 18, Sched. N, s. 67 (amending *Police Services Act*, R.S.O. 1990, c. P.15, s. 70).

386. *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11, s. 35.

387. Statistics Canada, "Aboriginal Peoples in Canada: First Nations People, Métis and Inuit" (Ottawa: Statistics Canada, May 2013) at 8.

388. Indigenous and Northern Affairs Canada, "Ontario Region" (24 January 2017), online: Indigenous and Northern Affairs Canada <https://www.aadnc-aandc.gc.ca/eng/1100100020284/1100100020288>.

389. Indigenous and Northern Affairs Canada, "Ontario Region" (24 January 2017), online: Indigenous and Northern Affairs Canada <https://www.aadnc-aandc.gc.ca/eng/1100100020284/1100100020288>.

390. Statistics Canada, "Aboriginal Peoples in Canada: First Nations People, Métis and Inuit" (Ottawa: Statistics Canada, May 2013) at 10.

391. Indigenous and Northern Affairs Canada, "Ontario Region" (24 January 2017), online: Indigenous and Northern Affairs Canada <https://www.aadnc-aandc.gc.ca/eng/1100100020284/1100100020288>.

392. Indigenous and Northern Affairs Canada, "Ontario Region" (24 January 2017), online: Indigenous and Northern Affairs Canada <https://www.aadnc-aandc.gc.ca/eng/1100100020284/1100100020288>.

393. Indigenous and Northern Affairs Canada, "Ontario Region" (24 January 2017), online: Indigenous and Northern Affairs Canada <https://www.aadnc-aandc.gc.ca/eng/1100100020284/1100100020288>.

394. Tungasuvvingat Inuit, "Overview" (2016), online: Tungasuvvingat Inuit <http://tungasuvvingatinuit.ca/overview/>.

395. Tungasuvvingat Inuit, "Overview" (2016), online: Tungasuvvingat Inuit <http://tungasuvvingatinuit.ca/overview/>.

396. See *Daniels v. Canada (Indian Affairs and Northern Development),* 2016 SCC 12, [2016] 1 S.C.R. 99, at para. 17; *R. v. Powley*, 2003 SCC 43, [2003] 2 S.C.R. 207, at paras. 30-34.

397. Statistics Canada, "Aboriginal Peoples in Canada: First Nations People, Métis and Inuit" (Ottawa: Statistics Canada, May 2013) at 12.

398. Public Inquiry into the Administration of Justice and Aboriginal People, *Report of the Aboriginal Justice Inquiry of Manitoba: The Justice System and Aboriginal People* by Alvin Hamilton & Murray Sinclair (Winnipeg: Public Inquiry into the Administration of Justice and Aboriginal People, 1991), vol. 1 at 591-592. See also Les Samuelson, "Aboriginal Policing Issues: A Comparison of Canada and Australia" (Ottawa: Solicitor General of Canada, 5 March 1993) at 12.

399. Jonathan Rudin, "Aboriginal Peoples and the Criminal Justice System" (Research paper commissioned by the Ipperwash Inquiry, 2007) at 1, 32; Public Inquiry into the Administration of Justice and Aboriginal People, *Report of the Aboriginal Justice Inquiry of Manitoba: The Justice System and Aboriginal People* by Alvin Hamilton & Murray Sinclair (Winnipeg: Public Inquiry into the Administration of Justice and Aboriginal People, 1991), vol. 1 at 591-593.

400. Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples: Looking Forward Looking Back* by René Dussault & Georges Erasmus (Ottawa: Royal Commission on Aboriginal Peoples, 1996), vol. 1 at c. 9.

401. See Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (Ottawa: Library and Archives Canada, 2015).

402. Qikiqtani Inuit Association, *QTC Final Report: Achieving Saimaqatiqiingniq* by James Igloliorte (Toronto: Inhabit Media Inc., 2013) at 18-19, 38-45.

403. Jonathan Rudin, "Aboriginal Peoples and the Criminal Justice System" (Research paper commissioned by the Ipperwash Inquiry, 2007) at 1; Don Clairmont, "Aboriginal Policing in Canada: An Overview of Developments in First Nations" (Research paper commissioned by the Ipperwash Inquiry, 2007) at 4; Rick Linden, "Policing First Nations and Métis People: Progress and Prospects" (2005) 68 Sask. L. R. 303, at para. 12.

404. E.g. DPRA Canada, *A Renewed Approach to Policing in Indigenous Communities – Engagement Summary Report: What We Heard* (DPRA Canada, 14 October 2016); Office of the Provincial Advocate for Children and Youth, *Feathers of Hope: Justice and Juries – A First Nations Youth Action Plan for Justice* (Toronto & Thunder Bay: Office of the Provincial Advocate for Children and Youth, 2016); Sidney B. Linden, *Report of the Ipperwash Inquiry* (Toronto: Ministry of the Attorney General, 2007); Public Inquiry into the Administration of Justice and Aboriginal People, *Report of the Aboriginal Justice Inquiry of Manitoba: The Justice System and Aboriginal People* by Alvin Hamilton & Murray Sinclair (Winnipeg: Public Inquiry into the Administration of Justice and Aboriginal People, 1991), vol. 1. at c. 16.

405. See e.g. Jillian Boyce, "Victimization of Aboriginal people in Canada, 2014" (Ottawa: Statistics Canada, 28 June 2016); Jonathan Rudin, "Aboriginal Peoples and the Criminal Justice System" (Research paper commissioned by the Ipperwash Inquiry, 2007) at 28-40.

406. *Police Services Act*, R.S.O. 1990, c. P.15, s. 54.

407. See *R. v. Stephens* (1995), 26 O.R. (3d) 417 (C.A.).

408. *Police Services Act*, R.S.O. 1990, c. P.15, s. 2; Sidney B. Linden, *Report of the Ipperwash Inquiry* (Toronto: Ministry of the Attorney General, 2007), vol. 2 at 251; *R. v. Stephens* (1995), 26 O.R. (3d) 417 (C.A.).

409. Public Safety Canada, "Indigenous Policing" (8 September 2016), online: Public Safety Canada <https://www.publicsafety.gc.ca/cnt/cntrng-crm/plcng/brgnl-plcng/index-en.aspx>.

410. Ontario Provincial Police, "Aboriginal Policing: Role of the Aboriginal Policing Bureau" (7 June 2016), online: Ontario Provincial Police <https://www.opp.ca/index.php?id=115&entry-id=56b7838d8f94ace85c28d172>.

411. See *Police Services Act*, R.S.O. 1990, c. P.15, ss. 2(1), 57, 58(1), 113(5).

412. *Police Services Act*, R.S.O. 1990, c. P.15, s. 54.

413. Scot Wortley, "Police Use of Force in Ontario: An Examination of Data from the Special Investigations Unit – Final Report for the African Canadian Legal Clinic" (Research project submitted to the Ipperwash Inquiry, 2007) at 41. See also Public Inquiry into the Administration of Justice and Aboriginal People, *Report of the Aboriginal Justice Inquiry of Manitoba: The Justice System and Aboriginal People* by Alvin Hamilton & Murray Sinclair (Winnipeg: Public Inquiry into the Administration of Justice and Aboriginal People, 1991), vol. 1 at c. 4.

414. Frank Iacobucci, *First Nations Representation on Ontario Juries: Report of the Independent Review Conducted by the Honourable Frank Iacobucci* (Toronto: Ministry of the Attorney General, 2013) at para. 373.

415. Truth and Reconciliation Commission of Canada, *Truth and Reconciliation Commission of Canada: Calls to Action* (Ottawa: Library and Archives Canada, 2015) at para. 57.

416. Office of the Premier, News Release, "Ontario Implementing New Indigenous Training and Education Requirements" (17 February 2016), online: Queen's Printer for Ontario <https://news.ontario.ca/opo/en/2016/2/ontario-implementing-new-indigenous-training-and-education-requirements.html>.

417. See *Police Services Act*, R.S.O. 1990, c. P.15, ss. 2(1), 57, 58(1), 113(5).

418. DPRA Canada, *A Renewed Approach to Policing in Indigenous Communities – Engagement Summary Report: What We Heard* (DPRA Canada, 14 October 2016) at 17.

419. Office of the Provincial Advocate for Children and Youth, *Feathers of Hope: Justice and Juries – A First Nations Youth Action Plan for Justice* (Toronto & Thunder Bay: Office of the Provincial Advocate for Children and Youth, 2016) at 19.

420. Patrick J. LeSage, *Report on the Police Complaints System in Ontario*, (Toronto: Ministry of the Attorney General, 2005) at 84.

421. Scot Wortley, "The Collection of Race-Based Statistics within the Criminal Justice and Educational Systems: A Report for the Ontario Human Rights Commission" (2005) [unpublished] at 43.

422. Bobby Siu, "How to Eradicate Racial Profiling?" (Racial Profiling Dialogue at York University, 16-18 February 2016) [unpublished].

423. Scot Wortley, "Police Use of Force in Ontario: An Examination of Data from the Special Investigations Unit – Final Report for the African Canadian Legal Clinic" (Research project submitted to the Ipperwash Inquiry, 2007) at 60.

424. American Sociological Association, "The Importance of Collecting Data and Doing Social Scientific Research on Race" (Washington, DC: American Sociological Association, 2003).

425. Karl Lamberth, Jerry Clayton & John Lamberth, *Practitioners Guide for Addressing Racial Profiling: Conference on Confronting Racial Profiling in the 21st Century – Implications for Racial Justice, Boston, 2003* (Boston: Institute for Race and Justice, 2005) at 14.

426. United States Department of Justice, Office of Community Oriented Policing Services, *How to Correctly Collect and Analyze Racial Profiling Data: Your Reputation Depends On It!: Final Project Report for Racial Profiling Data Collection and Analysis* by Joyce McMahon et al. (Washington, DC: Government Printing Office, 2002) at 61.

427. Andrea Gordon, "Peel school board plans to collect race-based data on students", Toronto Star (25 November 2016), online: Toronto Star <https://www.thestar.com/yourtoronto/education/2016/11/25/peel-school-board-plans-to-collect-race-based-data-on-students.html>.

428. *Police Services Act*, R.S.O. 1990, c. P-15, s. 27(4), (5), (9).

429. *Police Services Act*, R.S.O. 1990, c. P-15, s. 31(5).

430. The Minister of Community Safety and Correctional Services may provide or require that board members undergo training: O. Reg. 421/97, s. 3.

431. See Council of Canadian Academics, *Policing Canada in the 21st Century: New Policing for New Challenges* (Ottawa: Library and Archives Canada, 2014) at 23-24.

432. See Benjamin Mazowita & Jacob Greenland, "Police Resources in Canada, 2015" (Ottawa: Statistics Canada, 30 March 2016); Harish C. Jain, Parbudyal Singh & Carol Agocs, "Recruitment, Selection and Promotion of Visible-Minority and Aboriginal Police Officers in Selected Canadian Police Services" (2000), 42 Can. Pub. Admin. 46, at 56-58.

433. See Steering Committee for the Human Resources Study of the Public Policing in Canada, *Strategic Human Resources Analysis of Public Policing in Canada* (Ottawa: Police Sector Council, 2000) at 50.

434. See e.g. Jennifer Manis, Carol A. Archbold & Kimberly D. Hassell, "Exploring the Impact of Police Officer Education on Allegations of Police Misconduct" (2008), 10:4 Intl. J. of Police Science & Management 509.

435. See Lesley J. Bikos, "'I Took the Blue Pill': The Effect of the Hegemonic Masculine Police Culture on Canadian Policewomen's Identities", MA Research Paper, Paper 7 (Western University Department of Sociology, 2016) at 3-4.

436. Information about the College of Policing is available on its website at <http://www.college.police.uk/Pages/Home.aspx>.

437. See e.g. Canadian Nurses Association, "Code of Ethics for Registered Nurses" (June 2008), online: Canadian Nurses Association <https://www.cna-aiic.ca/~/media/cna/files/en/codeofethics.pdf>.

438. For example, in Australia, the New South Wales Police Force has partnered with Charles Sturt

University to develop an associate degree in policing practice. For further information about the program, see: Charles Sturt University, "Associate Degree in Policing Practice" (22 August 2014), online: Charles Sturt University <http://www.csu.edu.au/courses/associate-degree-in-policing-practice>; New South Wales Police Force, "Associate Degree in Policing Practice" (undated), online: New South Wales Police Force <http://www.police.nsw.gov.au/recruitment/the_training/associate_degree_in_policing_practice>.

439. *Police Act*, R.S.B.C. 1996, c. 367, s. 38.09(1). In addition, the Independent Investigations Office has statutory authority to investigate any other contravention of a prescribed provision of the *Criminal Code* or other enactment, although to date, no such provisions have been prescribed: *Police Act*, R.S.B.C. 1996, c. 367, s. 38.09(1). Furthermore, the minister or director of police services may order an investigation into an officer's action that otherwise does not fall within the Independent Investigation Office's mandate: *Police Act*, R.S.B.C. 1996, c. 367, s. 44.

440. *Police Act*, R.S.B.C. 1996, c. 367, s. 76(1).

441. *Police Act*, R.S.B.C. 1996, c. 367, s. 38.03.

442. *Police Act*, R.S.B.C. 1996, c. 367, s. 38.06(3).

443. *Police Act*, R.S.B.C. 1996, c. 367, s. 38.101.

444. Memorandum of Understanding Respecting Investigations Between Independent Investigations Office of British Columbia (IIO) and Royal Canadian Mounted Police (RCMP) and the Municipal Police Departments of British Columbia and the Organized Crime Agency of British Columbia and the South Coast British Columbia Transportation Authority Police Service and the Stl'atl'imx Tribal Police (12 February 2013).

445. *Police Act*, R.S.B.C. 1996, c. 367, s. 38.11.

446. See Ministry of Justice, *Crown Counsel Policy Manual: Charge Assessment Guidelines* (Criminal Justice Branch, Ministry of Justice, 2 October 2009). See e.g. Independent Investigations Office of British Columbia, "IIO to File Report to Crown Counsel (IIO 2015-000107)" (21 October 2016), online: Independent Investigations Office of British Columbia <https://iiobc.ca/2016/10/21/iio-to-file-report-to-crown-counsel-iio-2015-000107/>.

447. See e.g. Ministry of Justice, "No Charges Approved in Yaletown/Science World Shooting Incident" (25 November 2015), online: Independent Investigations Office of British Columbia <http://iiobc.ca/wp-content/uploads/2015/11/15-26-IIO-Yaletown-Science-World-Shooting.pdf>.

448. *Police Act*, R.S.B.C. 1996, c. 367, s. 38.121(2).

449. See e.g. Independent Investigations Office of British Columbia, "Public Report of the Chief Civilian Director Regarding a Fatal Officer-Involved Shooting on July 16, 2015 Involving the Dawson Creek RCMP" (16 November 2016), online: Independent Investigations Office of British Columbia <http://iiobc.ca/wp-content/uploads/2016/11/07-16-2015-Dawson-Creek-Firearm-Death-2015-000104.pdf>.

450. Independent Investigations Office of British Columbia, "FAQs" (2016), online: Independent Investigations Office of British Columbia <http://iiobc.ca/faqs/>.

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

452. *Police Act*, R.S.B.C. 1996, c. 367, s. 82.

453. *Police Act*, R.S.B.C. 1996, c. 367, ss. 157-158.

454. Office of the Police Complaint Commissioner, "A Step-by-Step Guide to the Municipal Police Complaints Process" (undated) at 10, online: Office of the Police Complaint Commissioner <https://www.opcc.bc.ca/publications/printable_brochures/let_us_help_you.pdf>.

455. *Police Act*, R.S.B.C. 1996, c. 367, s. 90. The Police Complaint Commissioner may order an external investigation if it is necessary in the public interest: *Police Act*, R.S.B.C. 1996, c. 367, s. 92.

456. *Police Act*, R.S.B.C. 1996, c. 367, ss. 96-97.

457. *Police Act*, R.S.B.C. 1996, c. 367, s. 98.

458. *Police Act*, R.S.B.C. 1996, c. 367, s. 112.

459. *Police Act*, R.S.B.C. 1996, c. 367, ss. 117, 141, 143.

460. *Police Act*, R.S.A. 2000, c. P-17, s. 46.2; Alberta Serious Incident Response Team, *Annual Report 2014* (undated) at 33.

461. *Police Act*, R.S.A. 2000, c. P-17, s. 46.1(1).

462. Alberta Serious Incident Response Team, "Definitions – Investigation Related" (2016), online: Alberta Serious Incident Response Team <https://solgps.alberta.ca/asirt/what-we-do/Pages/definitions.aspx>.

463. Alberta Serious Incident Response Team, "Definitions – Investigation Related" (2016), online: Alberta Serious Incident Response Team <https://solgps.alberta.ca/asirt/what-we-do/Pages/definitions.aspx>. Injuries include, but are not limited to the following: a fracture or combination of fracture and severe trauma to a limb, rib, or vertebrae or to the skull including the probability of a head injury; burns or abrasions to a major portion of the body; loss of any portion of the body; loss of mobility (paralysis) of any portion of the body; loss of vision or hearing; injury to any internal organ; and loss of consciousness brought about by a state of extreme mental distress, prolonged agitation and/or combative behaviour which collectively may be classified as symptoms of a state of excited delirium.

464. Alberta Serious Incident Response Team, "Definitions – Investigation Related" (2016), online: Alberta Serious Incident Response Team <https://solgps.alberta.ca/asirt/what-we-do/Pages/definitions.aspx>.

465. *Police Act*, R.S.A. 2000, c. P-17, s. 46.1(1). The Minister of Justice and Solicitor General may delegate the Minister's powers, functions and responsibilities under section 46.1 to the Director of Law Enforcement: *Police Act*, R.S.A. 2000, c. P-17, s. 46.1(10).

466. *Police Act*, R.S.A. 2000, c. P-17, s. 46.1(2).

467. Alberta Serious Incident Response Team, *Annual Report 2014* (undated) at 14-15.

468. Alberta Serious Incident Response Team, *Annual Report 2014* (undated) at 14-15.

469. Alberta Serious Incident Response Team, "Disclosure of Executive Director's Report" (2016), online: Alberta Serious Incident Response Team <https://solgps.alberta.ca/asirt/what-we-do/Pages/disclosure-executive-report.aspx>.

470. Alberta Serious Incident Response Team, "Disclosure of Executive Director's Report" (2016), online: Alberta Serious Incident Response Team <https://solgps.alberta.ca/asirt/what-we-do/Pages/disclosure-executive-report.aspx>; Alberta Serious Incident Response Team, "Q&As" (2016), online: Alberta Serious Incident Response Team <https://solgps.alberta.ca/asirt/media-centre/pages/common-questions.aspx>.

471. Alberta Justice and Solicitor General, "Police Complaint Directors" (2016), online: Alberta Justice and Solicitor General <https://www.solgps.alberta.ca/programs_and_services/public_security/law_enforcement_oversight/policing_oversight_complaints/civilian_oversight/Pages/Policing-ComplaintDirectors.aspx>.

472. See *Police Act*, R.S.A. 2000, c. P-17, s. 42.1(6). See also Law Enforcement Review Board, "How to Resolve a Complaint about the Conduct of a Municipal Police Officer" (July 2015), online: Alberta Justice and Solicitor General <https://www.solgps.alberta.ca/programs_and_services/public_security/law_enforcement_oversight/policing_oversight_complaints/Publications/Complaint%20Municipal.pdf>.

473. *Police Act*, R.S.A. 2000, c. P-17, s. 43(1).

474. *Police Act*, R.S.A. 2000, c. P-17, ss. 43.1, 45(1).

475. *Police Act*, R.S.A. 2000, c. P-17, s. 28.1(3)(d).

476. *Police Act*, R.S.A. 2000, c. P-17, s. 45(2)-(4). If the alleged contravention is not of a serious nature, the chief may dispose of the matter without conducting a hearing. In the event the actions of the police officer may constitute an offence under a federal or provincial statute, the chief must refer the matter to the Minister of Justice and Solicitor General: *Police Act*, R.S.A. 2000, c. P-17, s. 45(2).

477. *Police Act*, R.S.A. 2000, c. P-17, s. 48.

478. *Police Act*, R.S.A. 2000, c. P-17, s. 9; Law Enforcement Review Board, "Law Enforcement Review Board Mandate and Roles Document" (July 2015), online: Alberta Justice and Solicitor General <https://www.solgps.alberta.ca/boards_commissions/law_enforcement_review_board/Publications/Alberta%20Law%20Enforcement%20Review%20Board%20-%20Mandate%20and%20Roles.pdf>.

479. *The Police Act, 1990,* S.S. 1990-91, c. P-15.01, s. 91.1.

480. See *The Police Act, 1990,* S.S. 1990-91, c. P-15.01, ss. 38, 39.

481. *The Police Act, 1990,* S.S. 1990-91, c. P-15.01, s. 16.

482. *The Police Act, 1990,* S.S. 1990-91, c. P-15.01, s. 45(3).

483. *The Police Act, 1990,* S.S. 1990-91, c. P-15.01, s. 45(5).

484. *The Police Act, 1990,* S.S. 1990-91, c. P-15.01, s. 46.

485. *The Police Act, 1990,* S.S. 1990-91, c. P-15.01, s. 48.

486. *The Police Act, 1990,* S.S. 1990-91, c. P-15.01, s. 39.

487. *The Police Services Act*, C.C.S.M. c. P94.5, s. 65(1). See also *The Police Services Act*, C.C.S.M. c. P94.5, s. 66(1), (2). The prescribed sections of the *Criminal Code* are perjury, providing contradictory evidence, fabricating evidence, and obstructing justice; there is no prescribed provision of any other

federal law or provincial enactment: Man. Reg. 99/2015, s. 1(2).

488. Man. Reg. 99/2015, s. 1. "Serious injury" is defined to mean the following: a fracture of the skull, jaw, vertebrae, rib, humerus, radius, ulna, femur, tibia, or fibula; burns, cuts, or lacerations that require admission to a hospital on an in-patient basis; the loss of any part of the body; the loss of vision or hearing; internal injuries that require admission to a hospital on an in-patient basis; or any injury caused by the discharge of a firearm.

489. *The Police Services Act*, C.C.S.M. c. P94.5, s. 65(2).

490. *The Police Services Act*, C.C.S.M. c. P94.5, s. 65(4).

491. *The Police Services Act*, C.C.S.M. c. P94.5, s. 56.

492. *The Police Services Act*, C.C.S.M. c. P94.5, ss. 59, 60. In order to be eligible for selection as an investigator, a person must meet the following requirements: (1) be a Canadian citizen or permanent resident; (2) have experience in major crime investigations, in the case of a person who is a current or former police officer; and (3) have experience in conducting and managing a wide range of complex investigations, in the case of a person who is not a current or former police officer: Man. Reg. 99/2015, s. 3.

493. *The Police Services Act*, C.C.S.M. c. P94.5, s. 69(1).

494. *The Police Services Act*, C.C.S.M. c. P94.5, s. 69(2).

495. *The Police Services Act*, C.C.S.M. c. P94.5, s. 70.

496. *The Police Services Act*, C.C.S.M. c. P94.5, ss. 71, 72.

497. Man. Reg. 99/2015, s. 9.

498. Man. Reg. 99/2015, s. 10

499. Man. Reg. 99/2015, s. 11.

500. Man. Reg. 99/2015, s. 12; Independent Investigation Unit of Manitoba, "FAQ" (2016), online: Independent Investigation Unit of Manitoba <http://www.iiumanitoba.ca/faqs.html>.

501. Man. Reg. 99/2015, s. 13.

502. Independent Investigation Unit of Manitoba, "FAQ" (2016), online: Independent Investigation Unit of Manitoba <http://www.iiumanitoba.ca/faqs.html>.

503. Independent Investigation Unit of Manitoba, "FAQ" (2016), online: Independent Investigation Unit of Manitoba <http://www.iiumanitoba.ca/faqs.html>.

504. Independent Investigation Unit of Manitoba, "FAQ" (2016), online: Independent Investigation Unit of Manitoba <http://www.iiumanitoba.ca/faqs.html>.

505. Independent Investigation Unit of Manitoba, "FAQ" (2016), online: Independent Investigation Unit of Manitoba <http://www.iiumanitoba.ca/faqs.html>.

506. Law Enforcement Review Agency, "The History of Manitoba's Law Enforcement Review Agency" (February 2011), online: Government of Manitoba <https://www.gov.mb.ca/justice/lera/history.html>.

507. *The Law Enforcement Review Act*, C.C.S.M. c. L75, s. 2.

508. *The Law Enforcement Review Act*, C.C.S.M. c. L75, s. 6(1).

509. Law Enforcement Review Agency, "Making a Complaint" (undated), online: Government of Manitoba <https://www.gov.mb.ca/justice/lera/complaint/index.html#howis>.

510. *The Law Enforcement Review Act*, C.C.S.M. c. L75, s. 13(1); Manitoba Law Enforcement Review Agency, "Making a Complaint", online: Government of Manitoba <https://www.gov.mb.ca/justice/lera/complaint/index.html#howis>.

511. *The Law Enforcement Review Act*, C.C.S.M. c. L75, s. 15.

512. *The Law Enforcement Review Act*, C.C.S.M. c. L75, s. 17.

513. *Police Act*, C.Q.L.R. c. P-13.1, s. 289.6. Pursuant to section 289.6, the mission of the Bureau des enquêtes indépendantes is to conduct any investigation the Minister of Public Security has charged it with under prescribed provisions of the *Police Act*. The first type of investigation involves allegations made against a police officer or special constable concerning a criminal offence: *Police Act*, C.Q.L.R. c. P-13.1, ss. 286-289. The second type of investigation involves incidents where a person, other than an on-duty police officer, dies, sustains a serious injury, or is injured by a firearm used by a police officer during a police intervention or while the person is in police custody: *Police Act*, C.Q.L.R. c. P-13.1, s. 289.1. In addition, the minister may, in exceptional cases, charge the Bureau to conduct an investigation on any occurrence involving a police officer and related to the peace officer's functions: *Police Act*, C.Q.L.R. c. P-13.1, s. 289.3.

514. *Police Act*, C.Q.L.R. c. P-13.1, s. 289.1.

515. *Police Act*, C.Q.L.R. c. P-13.1, s. 289.5.

516. *Police Act*, C.Q.L.R. c. P-13.1, ss. 289.7-289.8.

517. *Police Act*, C.Q.L.R. c. P-13.1, s. 289.9.

518. C.Q.L.R. c. P-13.1, r. 2.2; *Police Act*, C.Q.L.R. c. P-13.1, s. 289.11. This training, developed by the École nationale de police du Québec and the Québec university network, includes a nine-week theoretical training program, four-week practical training program, and fourteen days of training on investigations related to sexual offences: Bureau des enquêtes indépendantes, "Training" (2017), online: Ministère de la Sécurité publique du Québec <https://www.bei.gouv.qc.ca/home/investigators/training.html>.

519. *Police Act*, C.Q.L.R. c. P-13.1, s. 289.12.

520. *Police Act*, C.Q.L.R. c. P-13.1, s. 289.19.

521. *Police Act*, C.Q.L.R. c. P-13.1, s. 289.20. In addition, there is a separate regulation concerning the conduct of the investigations by the Bureau des enquêtes indépendantes, including obligations of police officers involved in incidents of death or serious injury: C.Q.L.R. c. P-13.1, r. 1.1.

522. C.Q.L.R. c. P-13.1, r. 1.1, s. 1.

523. *Police Act*, C.Q.L.R. c. P-13.1, s. 289.21.

524. *Police Act*, C.Q.L.R. c. P-13.1, s. 289.21.

525. *Police Act*, C.Q.L.R. c. P-13.1, s. 298.22.

526. C.Q.L.R. c. P-13.1, r. 1.1, s. 11.

527. Bureau des enquêtes indépendantes, "Publications – Investigation reports" (2017), online: Ministère de la Sécurité publique du Québec, <https://www.bei.gouv.qc.ca/home/publications.html>.

528. *Police Act*, C.Q.L.R. c. P-13.1, s. 128.

529. *Police Act*, C.Q.L.R. c. P-13.1, s. 129.

530. *Police Act*, C.Q.L.R. c. P-13.1, ss. 147-148.

531. *Police Act*, C.Q.L.R. c. P-13.1, ss. 165, 171.

532. *Police Act*, C.Q.L.R. c. P-13.1, s. 178.

533. *Police Act*, C.Q.L.R. c. P-13.1, ss. 194, 198, Some of the part-time members of the Police Ethics Committee must be members of Indigenous communities to act where a complaint relates to an Indigenous police officer: *Police Act*, C.Q.L.R. c. P-13.1, s. 199.

534. Ian D. Scott, "Oversight Overview", in Ian D. Scott, ed., *Issues in Civilian Oversight of Policing in Canada* (Toronto: Canada Law Book, 2014) at 34.

535. See *Police Act*, S.N.B. 1977, c. P-9.2, s. 25.

536. *Police Act*, S.N.B. 1977, c. P-9.2, s. 18(1).

537. *Police Act*, S.N.B. 1977, c. P-9.2, s. 27.3(1).

538. *Police Act*, S.N.B. 1977, c. P-9.2, s. 26.1.

539. *Police Act*, S.N.B. 1977, c. P-9.2, s. 27.5.

540. *Police Act*, S.N.B. 1977, c. P-9.2, s. 27.6.

541. *Police Act*, S.N.B. 1977, c. P-9.2, s. 27.7.

542. *Police Act*, S.N.B. 1977, c. P-9.2, ss. 27.7(4), 27.9.

543. *Police Act*, S.N.B. 1977, c. P-9.2, s. 28.

544. *Police Act*, S.N.B. 1977, c. P-9.2, s. 28.1.

545. *Police Act*, S.N.B. 1977, c. P-9.2, s. 28.2.

546. *Police Act*, S.N.B. 1977, c. P-9.2, s. 28.4.

547. *Police Act*, S.N.B. 1977, c. P-9.2, ss. 28.5, 29.5.

548. *Police Act*, S.N.B. 1977, c. P-9.2, s. 29.4(4).

549. *Police Act*, S.N.S. 2004, c. 31, ss. 2(l), 26A.

550. *Police Act*, S.N.S. 2004, c. 31, s. 26I.

551. Serious Incident Response Team, "Investigation Process" (2017), online: Serious Incident Response Team <http://sirt.novascotia.ca/investigation-process>.

552. *Police Act*, S.N.S. 2004, c. 31, s. 26B.

553. *Police Act*, S.N.S. 2004, c. 31, s. 26DA.

554. Serious Incident Response Team, "About SIRT" (2017), online: Serious Incident Response

Team <https://sirt.novascotia.ca/about>.

555. *Police Act*, S.N.S. 2004, c. 31, s. 26I(3).

556. N.S. Reg. 89/2012, s. 6(1).

557. N.S. Reg. 89/2012, s. 6(5).

558. N.S. Reg. 89/2012, s. 6(3).

559. N.S. Reg. 89/2012, s. 7.

560. N.S. Reg. 89/2012, s. 7(6).

561. *Police Act*, S.N.S. 2004, c. 31, ss. 26J-26K. If the investigation is conducted by another body, that body decides whether charges will be laid.

562. *Police Act*, S.N.S. 2004, c. 31, s. 26M.

563. *Police Act*, S.N.S. 2004, c. 31, s. 26M; N.S. Reg. 89/2012, s. 9(6).

564. N.S. Reg. 89/2012, s. 9(2).

565. N.S. Reg. 89/2012, s. 9(3).

566. N.S. Reg. 89/2012, s. 9(4).

567. N.S. Reg. 89/2012, s. 9(5).

568. *Police Act*, S.N.S. 2004, c. 31, ss. 11-12.

569. *Police Act*, S.N.S. 2004, c. 31, ss. 11-12.

570. *Police Act*, S.N.S. 2004, c. 31, s. 71(1). Complaints concerning the conduct of an officer other than the chief are referred to the chief whereas complaints concerning the chief are referred to the board: *Police Act*, S.N.S. 2004, c. 31, s. 73.

571. N.S. Reg. 230/2005, ss. 35, 44.

572. *Police Act*, S.N.S. 2004, c. 31, ss. 72(1), 73(5); N.S. Reg. 230/2005, s. 38.

573. *Police Act*, S.N.S. 2004, c. 31, s. 74(1)-(2).

574. *Police Act*, S.N.S. 2004, c. 31, s. 74(4).

575. Ian D. Scott, "Oversight Overview", in Ian D. Scott, ed., *Issues in Civilian Oversight of Policing in Canada* (Toronto: Canada Law Book, 2014) at 36.

576. *Police Act*, R.S.P.E.I. 1988, c. P-11.1, s. 4.

577. See e.g. Serious Incident Response Team, "Summary of Investigation SIRT File#2015-033 Referral from RCMP-PEI" (30 October 2015), online: Government of Prince Edward Island <http://www.gov.pe.ca/photos/original/SIRTArrestMar14.pdf>; Serious Incident Response Team, "Report to the Minister and Attorney General, Justice and Public Safety, Prince Edward Island: Regarding a Shooting of a Male by a Member of the Charlottetown police Service on April 3, 2015 at or near the Charlottetown Mall" (2 July 2015), online: Government of Prince Edward Island <http://www.gov.pe.ca/photos/original/jps_2015-009.pdf>.

578. See *Police Act*, R.S.P.E.I. 1988, c. P-11.1, ss. 21, 35.

579. *Police Act*, R.S.P.E.I. 1988, c. P-11.1, s. 16; P.E.I. Reg. EC141/10, s. 6.

580. *Police Act*, R.S.P.E.I. 1988, c. P-11.1, s. 23.

581. *Police Act*, R.S.P.E.I. 1988, c. P-11.1, ss. 25-26.

582. *Police Act*, R.S.P.E.I. 1988, c. P-11.1, s. 27.

583. *Police Act*, R.S.P.E.I. 1988, c. P-11.1, s. 28.

584. *Police Act*, R.S.P.E.I. 1988, c. P-11.1, s. 29.

585. *Police Act*, R.S.P.E.I. 1988, c. P-11.1, s. 32.

586. Ian D. Scott, "Oversight Overview", in Ian D. Scott, ed., *Issues in Civilian Oversight of Policing in Canada* (Toronto: Canada Law Book, 2014) at 37.

587. *Royal Newfoundland Constabulary Act, 1992*, S.N.L. 1992, c. R-17, s. 22.

588. *Royal Newfoundland Constabulary Act, 1992*, S.N.L. 1992, c. R-17, s. 18.

589. *Royal Newfoundland Constabulary Act, 1992*, S.N.L. 1992, c. R-17, ss. 24, 25. If the complaint concerns the chief of police, it is referred directly to the Royal Newfoundland Constabulary Public Complaints Commission: *Royal Newfoundland Constabulary Act, 1992*, S.N.L. 1992, c. R-17, s. 21.

590. C.N.L.R. 970/96, ss. 7, 8.

591. *Royal Newfoundland Constabulary Act, 1992*, S.N.L. 1992, c. R-17, s. 25.

592. *Royal Newfoundland Constabulary Act, 1992*, S.N.L. 1992, c. R-17, s. 25(3)-(4).

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