

## Appendix B: Survey of Police Complaints Systems

### *New York City*

The Civilian Complaint Review Board (CCRB), consisting of 13 board members and approximately 115 investigative staff, handles public complaints about members of the New York Police Department (NYPD).<sup>1</sup> The CCRB's budget for 2004 was approximately \$10,200,000 (USD).<sup>2</sup> Although the CCRB has been in existence for decades, it only became an entirely civilian body with investigative powers in 1993.<sup>3</sup>

The CCRB investigates cases of excessive/unnecessary force, abuse of authority, discourtesy, and offensive language, while cases of corruption and neglect of duty are investigated by the NYPD.<sup>4</sup> The CCRB only has jurisdiction over NYPD officers and cannot exercise jurisdiction over civilian employees. Unless criminal conduct is involved, NYPD personnel must be served with disciplinary charges resulting from CCRB investigations within 18 months of

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<sup>1</sup> New York, Civilian Complaints Review Board, 'Frequently Asked Questions', online: Civilian Complaints Review Board < <http://www.nyc.gov/html/ccrb/html/faq.html#8> > (date accessed: 7 December 2004) [hereinafter CCRB FAQ].

<sup>2</sup> *Ibid.*

<sup>3</sup> New York, Civilian Complaints Review Board, 'History of the CCRB', online: Civilian Complaints Review Board < <http://www.nyc.gov/html/ccrb/html/history.html> > (date accessed: 7 December 2004).

<sup>4</sup> CCRB FAQ, *supra* note 1.

incidents, necessitating that complaints be filed as soon as possible after incidents arise.<sup>5</sup> Third party complaints are allowed.<sup>6</sup>

CCRB staff investigate civilian complaints against the police. Following these investigations, files are given to the CCRB board, which votes on disposition of the matter.<sup>7</sup> In 2003, the CCRB received 5,568 complaints.<sup>8</sup> In that year, 9% of all allegations were substantiated by the CCRB.<sup>9</sup> Substantiated complaints are forwarded, with or without a discipline recommendation, to the Police Commissioner who is then responsible for meting out discipline ranging from “instructions” in proper techniques up to formal administrative charges that may result in suspension or termination.<sup>10</sup> In 2001, the Mayor and Police Commissioner attempted to give the CCRB power to prosecute its own substantiated cases rather than turning them over to the Police Commissioner for prosecution. Police unions sued to stop this move. In 2003 a New York State appellate court allowed the change.<sup>11</sup> In 1994, 32% of substantiated cases

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<sup>5</sup> New York, Civilian Complaints Review Board, ‘Who Can File a Complaint’, online: Civilian Complaints Review Board <<http://www.nyc.gov/html/ccrb/html/who.html>> (date accessed: 8 December 2004).

<sup>6</sup> *Ibid.*

<sup>7</sup> New York, Civilian Complaints Review Board, ‘The Investigative Process’, online: Civilian Complaints Review Board <<http://www.nyc.gov/html/ccrb/html/how.html>> (date accessed: 13 December 2004) [hereinafter CCRB Investigative Process].

<sup>8</sup> New York, Civilian Complaints Review Board, ‘CCRB Performance’, online: Civilian Complaints Review Board <<http://www.nyc.gov/html/ccrb/html/about.html>> (date accessed: 13 December 2004).

<sup>9</sup> CCRB Investigative Process, *supra* note 7.

<sup>10</sup> New York, Civilian Complaints Review Board, ‘CCRB Substantiated Cases’, online: Civilian Complaints Review Board <<http://www.nyc.gov/html/ccrb/html/ccrbsub.html>> (date accessed: 13 December 2004).

<sup>11</sup> New York, Civilian Complaints Review Board, ‘New Developments’, online: Civilian Complaints Review Board < <http://www.nyc.gov/ccrb/html/news.html> > (date accessed: 13 December 2004).

referred to the Police Commissioner for discipline by the CCRB resulted in discipline; that figure had risen to 77% by 2001.<sup>12</sup>

It is worth noting that the CCRB operates an extensive mediation program. The CCRB retains neutral mediators and mediations take place on CCRB premises. The CCRB indicates that complaints related to injury or property damage will not be mediated. Additionally, the CCRB will not allow mediation for complaints stemming directly from arrests or when the officer has a significant complaints history.<sup>13</sup>

### ***Manitoba***

In operation since 1985, Manitoba's Law Enforcement Review Agency (LERA) is responsible for handling civilian complaints against municipal police in Manitoba. In Manitoba, public complaints can be made by submitting a signed written copy of the complaint to the LERA Commissioner, the chief of the police department concerned, or any member of the department concerned, within 30 days of an incident.<sup>14</sup> The 30-day time limit on complaints can be extended to six months by the Commissioner.<sup>15</sup> The Commissioner is also able to extend the filing date for complaints arising out of the course of police investigations or arrests so that

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<sup>12</sup> New York, Civilian Complaints Review Board, 'Police Department Discipline', online: Civilian Complaints Review Board <<http://www.nyc.gov/html/ccrb/html/depdispln.html>> (date accessed: 13 December 2004).

<sup>13</sup> New York, Civilian Complaints Review Board, 'Mediation', online: Civilian Complaints Review Board <<http://www.nyc.gov/html/ccrb/html/mediation.html>> (date accessed: 7 December 2004).

<sup>14</sup> *Law Enforcement Review Act*, C.C.S.M. c.L75, s. 6(3).

<sup>15</sup> *Ibid.*, s. 6(6).

a complaint can be made at the earlier of: (a) one year after incident or; (b) 30 days after the disposition of a charge.<sup>16</sup> Provision is made for the taking of complaints by individuals unable to write.<sup>17</sup> Third-party complaints are explicitly allowed under the Manitoba scheme.<sup>18</sup>

Following the receipt of a complaint, the LERA Commissioner is required to cause the complaint to be investigated.<sup>19</sup> The Commissioner is able to utilize any resources and employ any persons deemed necessary to investigate a complaint.<sup>20</sup> A police department involved in the complaint cannot conduct the investigation for the Commissioner except at the written request of the complainant.<sup>21</sup> In addition to holding the powers of a Commissioner under Part V of the *Manitoba Evidence Act*,<sup>22</sup> the LERA Commissioner is entitled to receive from the appropriate chief of police all relevant documents, statements and materials, including officer notes or reports.<sup>23</sup> The LERA Commissioner also has the power to obtain a search warrant.<sup>24</sup>

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<sup>16</sup> *Ibid.*, s. 6(7).

<sup>17</sup> *Ibid.*, s. 6(5).

<sup>18</sup> *Ibid.*, s. 6(2).

<sup>19</sup> *Ibid.*, s. 12(1). P. Ceysens, *Legal Aspects of Policing*, vol. 2, looseleaf (Saltspring Island, BC: Earls Court Legal Press, 1994) at 7-59. Paul Ceysens notes: "Manitoba and Québec are the only provinces in Canada in which the complaint oversight body is responsible for investigating the complaint."

<sup>20</sup> *Law Enforcement Review Act*, s. 12(6).

<sup>21</sup> *Ibid.*, ss. 12(7)-(8).

<sup>22</sup> C.C.S.M. c.E150.

<sup>23</sup> *Law Enforcement Review Act*, ss. 12(1)-(2).

<sup>24</sup> *Ibid.*, s. 12(5).

Following an investigation, a complaint may be resolved by informal resolution, through an admission by an officer, or by a hearing in front of a provincial court judge.<sup>25</sup> With the consent of the complainant and the officer, a matter can be informally resolved through mediation under the LERA Commissioner's supervision.<sup>26</sup> If a successful informal resolution is achieved, the matter is concluded without discipline being imposed and without notation of the incident in an officer's personnel file.<sup>27</sup> An admission of a disciplinary default by an officer results in the LERA Commissioner recommending a penalty after consulting with the appropriate chief of police.<sup>28</sup> If the respondent officer disagrees with the penalty, the issue is resolved at a hearing in front of a provincial judge.<sup>29</sup>

Penalties at a hearing can include dismissal, directed resignation, reduction in rank, suspension without loss of pay for up to 30 days, loss of pay for up to 10 days, loss of leave or days off for up to 10 days, a written reprimand, a verbal reprimand or an admonition.<sup>30</sup> Where a complainant wants legal assistance in a hearing, but is not eligible for legal aid, the LERA Commissioner can recommend that counsel be appointed by the relevant Minister of Justice to assist the complainant.<sup>31</sup>

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<sup>25</sup> *Ibid.*, ss. 15(1), 16(1), 17(1), 26.

<sup>26</sup> *Ibid.*, s. 15(1).

<sup>27</sup> *Ibid.*, s. 15(3).

<sup>28</sup> *Ibid.*, ss. 16(1)-(2)

<sup>29</sup> *Ibid.*, s. 16(5)

<sup>30</sup> *Ibid.*, s. 30(1)

<sup>31</sup> *Ibid.*, s. 24(8)

## ***Commission for Public Complaints Against the Royal Canadian Mounted Police (CPC)***

The Commission for Public Complaints Against the RCMP (CPC) was established by Parliament “to receive and review allegations of inappropriate conduct by RCMP members and to reinforce good police conduct.”<sup>32</sup> The Commission is not part of the RCMP. The CPC does not mete out discipline, but rather it makes findings and recommendations. The Commission acknowledges that its “effectiveness therefore depends on its ability to formulate persuasive recommendations that the RCMP Commissioner will accept and implement.”<sup>33</sup>

Members of the public with concerns about the on-duty conduct of sworn RCMP officers or other persons appointed or employed under the *RCMP Act* can complain to the CPC.<sup>34</sup> This includes third parties. The CPC Chair has the ability to initiate complaints independently where there are reasonable grounds to do so.<sup>35</sup> There is no time limit for filing a complaint. Upon contacting the CPC, informal resolution will be attempted with consent of both the complainant and the subject of the complaint.<sup>36</sup> The CPC has initiated an ADR process where CPC personnel act as facilitators in attempts to resolve disputes between complainants and RCMP personnel prior to the lodging of a formal complaint.

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<sup>32</sup> Canada, Commission for Public Complaints Against the RCMP, *Annual Report 2002-2003* (Ottawa: Minister of Public Works and Government Services, 2003) at 9 [hereinafter CPC 2002-2003].

<sup>33</sup> *Ibid.*, at 9.

<sup>34</sup> *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-10, s. 45.35(1).

<sup>35</sup> *Ibid.*, s. 45.37.

<sup>36</sup> *Ibid.*, s. 45.36(1).

The CPC's 2003-04 Annual Report indicates a very high level of successful resolution for cases routed through the informal resolution process.<sup>37</sup>

If a complainant still wishes to lodge a formal complaint following an unsuccessful attempt at informal resolution, the CPC will forward the complaint to the RCMP for investigation, although the CPC may conduct its own investigation in certain circumstances<sup>38</sup>. Following an investigation, the CPC forwards a summary of the investigation to the complainant, including the resolution. Complainants unsatisfied with the RCMP's handling of their complaint are entitled to request that the CPC review the complaint. If the CPC disagrees with the RCMP's handling of a complaint, an interim report is made and forwarded to the Commissioner of the RCMP and the Minister of Public Safety and Emergency Planning.<sup>39</sup> The RCMP Commissioner is then required to accept or reject this report and provide notice, including reasons if the Commissioner decides not to act on the recommendations, to the CPC and Minister, after which time a final report is released by the CPC.<sup>40</sup> The CPC may also decide to take further action such as holding a public hearing, investigating the matter itself, or asking the RCMP to investigate the matter further.<sup>41</sup> The public hearing option has been used infrequently, with only 17 such hearings taking place since the CPC's

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<sup>37</sup> Canada, Commission for Public Complaints Against the RCMP, *Annual Report 2003-2004* (Ottawa: Minister of Public Works and Government Services, 2004) at 16-17 [hereinafter CPC 2003-2004].

<sup>38</sup> *Royal Canadian Mounted Police Act*, ss. 45.36(4), 45.43(1).

<sup>39</sup> *Ibid.*, s. 45.42, 45.4, 45.42.

<sup>40</sup> *Ibid.*, s. 45.46.

<sup>41</sup> *Ibid.*, s. 45.42(3).

inception in 1988 and none during 2003-04.<sup>42</sup> Although it might be suspected that the RCMP public complaints process is ineffective because of its ability to make recommendations only, it has been reported that the RCMP agrees with the overwhelming majority of the Commission's recommendations.<sup>43</sup>

### **British Columbia**

The Office of the Police Complaint Commissioner is an independent agency that handles public complaints against municipal police forces in British Columbia. The Commissioner is appointed for a six year, non-renewable term by Cabinet, pursuant to a recommendation of the Legislative Assembly.<sup>44</sup> The Commissioner has a broad mandate to oversee complaints, with the authority to receive complaints, provide public education on the complaints process, conduct periodic complaints system reviews, and establish mediation procedures.<sup>45</sup> The Commission is required to report to the Legislative Assembly on an annual basis.<sup>46</sup>

Complaints can be made against police departments, sworn police officers, chiefs of police or deputy chiefs of police. Complaints can be made to the Commission, chiefs of police, or a senior officer on duty.<sup>47</sup> In the case of complaints against chiefs, deputy chiefs or departments, complainants may also

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<sup>42</sup> CPC 2003-2004, *supra* note 37 at 16.

<sup>43</sup> *Ibid.* at 24.

<sup>44</sup> *Police Act*, R.S.B.C. 1996, c. 367, s. 47.

<sup>45</sup> *Ibid.*, ss. 50(1)-(2).

<sup>46</sup> *Ibid.*, s. 51.1.

<sup>47</sup> *Ibid.*, ss. 52(1)-(2).



make complaints to the chair of the appropriate police board.<sup>48</sup> Under section 52.1(1), complaints are to be processed as “public trust”, “internal discipline”, or “service and policy” complaints.<sup>49</sup> Public trust complaints are those that allege conduct that would, if proved, constitute a breach of the Code of Professional Conduct “...and that (a) causes or has the potential to cause physical or emotional harm or financial loss to any person, (b) violates any person's dignity, privacy or other rights recognized by law, or (c) is likely to undermine public confidence in the police.”<sup>50</sup> An internal discipline complaint is a complaint related to an officer's conduct that is not a public trust complaint.<sup>51</sup> Service and policy complaints are those that relate to policies, procedures, standing orders, and supervision and management controls, among other things.<sup>52</sup>

Although third-parties do have the right to lodge public trust complaints, they do not have the same rights as other complainants. However, they do have the right to be notified if the complaint results in disciplinary or criminal proceedings.<sup>53</sup> Public trust complaints made more than 12 months after an incident are subject to summary dismissal, although such decisions are subject to review by the Commission who may allow the complaint on public interest grounds.<sup>54</sup>

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<sup>48</sup> *Ibid.*, s. 46(1): “disciplinary authority”.

<sup>49</sup> *Ibid.*, s. 52.1(1)

<sup>50</sup> *Ibid.*, s. 46(1): “disciplinary default”, “public trust complaint”, “public trust default”.

<sup>51</sup> *Ibid.*, s. 46(1): “internal discipline complaint”.

<sup>52</sup> *Ibid.*, s. 46(1): “service and policy complaint”.

<sup>53</sup> *Ibid.*, s. 53.1(2).

<sup>54</sup> *Ibid.*, ss. 54(1), 54(6)(a)(ii).

Provision for informal resolution of complaints and summary dismissal of complaints is provided for under the British Columbia *Police Act*.<sup>55</sup> However, if neither option is acted on, the complaint will be sent for investigation. This investigation is usually carried out by the police force involved, although the Commissioner or the police department can refer it to another police department.<sup>56</sup> Following an investigation, the discipline authority determines whether or not to take disciplinary action, which can be in the form of a formal proceeding or a confidential conference.<sup>57</sup> If either the complainant or the subject of a discipline hearing are unhappy with the discipline imposed, they can request that the Commissioner order a public hearing. Retired judges conduct the public hearings and have the authority to impose any discipline available to a discipline authority.<sup>58</sup> Public hearings are rare events, with only two occurring in 2003.<sup>59</sup>

### ***United Kingdom (England and Wales)***

Established pursuant to the *Police Reform Act, 2002*,<sup>60</sup> the Independent Police Complaints Commission (IPCC) has only been in existence since April 1, 2004 and has jurisdiction in England and Wales. Although the operations and policies

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<sup>55</sup> *Ibid.*, ss. 54, 54.1.

<sup>56</sup> *Ibid.*, ss. 55, 55.1.

<sup>57</sup> Ceyssens, *supra* note 19 at 7-70. *Police Act, supra* note 44, s. 46(1): note that the definition, “discipline authority” has a shifting meaning depending on who the subject of complaint is.

<sup>58</sup> *Police Act, Ibid.*, ss. 60.1(2)(a), 61(6).

<sup>59</sup> British Columbia, Office of the Police Complaint Commissioner, *Annual Report 2003* (Victoria: Office of the Police Complaint Commissioner) at 14.

<sup>60</sup> (U.K.), c. 30.

of this new organization are still being developed, its overall structure and role are primarily defined in the *Police Reform Act, 2002* and the *Police (Complaints and Misconduct) Regulations*.<sup>61</sup> The IPCC is established under Part II of the *Police Reform Act, 2002* and consists of a Chair, and at least 10 members appointed by the Secretary of State.<sup>62</sup> The IPCC is responsible for overseeing investigations into police complaints and other alleged misconduct. Although police carry out most complaints investigations, the IPCC has its own team of investigators (mostly civilian) to investigate complaints independent of the police where necessary. The IPCC will conduct independent investigations in cases involving serious injury or death.<sup>63</sup> Various other serious offences will be referred, on a mandatory basis, to the IPCC for possible investigation. These offences include serious sexual offences, serious corruption, and criminal behavior or offences liable to lead to a disciplinary sanction related to discriminatory behaviour on the grounds of race, sex, religions or other status.<sup>64</sup>

IPCC investigators have all the powers of police constables during investigations.<sup>65</sup> The IPCC can require the police to produce or give the IPCC access to any documents or material that it calls for.<sup>66</sup> It has a right of entry onto

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<sup>61</sup> *The Police (Complaints and Misconduct) Regulations 2004* (U.K.), S.I. 2004/643 [hereinafter *Complaints Regulation*].

<sup>62</sup> *Police Reform Act, 2002*, s. 9(2).

<sup>63</sup> UK, Independent Police Complaints Commission, 'IPCC Investigations', online: Independent Police Complaints Commission: <  
[http://www.ipcc.gov.uk/index/about\\_ipcc/investigations.htm](http://www.ipcc.gov.uk/index/about_ipcc/investigations.htm) > (date accessed: 24 November 2004).

<sup>64</sup> *Complaints Regulation*, *supra* note 61, s. 2(2)(a).

<sup>65</sup> *Police Reform Act, 2002*, Sch. 3, s. 19(4).

<sup>66</sup> *Ibid.*, s. 17.

police premises.<sup>67</sup> Short of conducting independent investigations, the IPCC also has the power to manage or supervise complaints investigations.<sup>68</sup>

After receiving a complaint, the IPCC or police authority determines if the complaint is suitable for 'local resolution'.<sup>69</sup> Local resolution is designed to bring complainants and the police together to resolve issues at an early stage, prior to a full investigation.<sup>70</sup> Local resolution is allowed provided that the conduct complained of would not justify bringing criminal or disciplinary proceedings.<sup>71</sup> It is also permitted in more serious cases, subject to IPCC approval, where criminal proceedings would not be warranted or where criminal or disciplinary proceedings would not be practicable.<sup>72</sup> Complainants may appeal to the IPCC about local resolution if they feel it was not properly carried out. In addition complainants can appeal to the IPCC if the local police carry out an investigation, but the complainant is dissatisfied with it.<sup>73</sup>

Any individual directly affected by the incident, or who physically witnessed alleged misconduct may launch a complaint. Distressed friends/relatives of

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<sup>67</sup> *Ibid.*, s.18.

<sup>68</sup> *Ibid.*, Sch. 3, s. 15(4).

<sup>69</sup> *Ibid.*, Sch. 3, s. 6(4).

<sup>70</sup> U.K., Independent Police Complaints Commission, *Making an appeal to the Independent Police Complaints Commission* (London: Independent Police Complaints Commission, 2004) at 1, online: Independent Police Complaints Commission <[http://www.ipcc.gov.uk/local\\_resolution.pdf](http://www.ipcc.gov.uk/local_resolution.pdf)> (date accessed 15 December 2004).

<sup>71</sup> *Police Reform Act, 2002*, Sch. 3, s. 6(3)(a).

<sup>72</sup> *Ibid.*, Sch. 3, s.6(4).

<sup>73</sup> *Ibid.*, Sch. 3, s. 25.

alleged victims of misconduct may also complain.<sup>74</sup> While the IPCC envisions independent 'gateway organizations' being equipped to take complaints, complaints can also be made at any police station, to the IPCC, and to Members of Parliament. Generally there is a 12-month time limit for making complaints, although that period can be extended if there is a good reason for the delay or if injustice would result from disallowing the complaint.<sup>75</sup>

In cases where investigations have been carried out, reports are made to police management who then decide on appropriate discipline. More serious cases go to hearings where appointed police officers decide the matter. Recent reforms now provide for an independent, non-police member to sit on these hearing panels.<sup>76</sup> Importantly, the IPCC can present a case on behalf of a complainant at police disciplinary hearings.<sup>77</sup>

### ***Northern Ireland***

In Northern Ireland, complaints may be made to the Police Ombudsman by any member of the public or by a third party on behalf of someone else, so long as that person consents to the third party registering the complaint.<sup>78</sup> The

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<sup>74</sup> U.K., Independent Police Complaints Commission, 'How To Make A Complaint Against The Police', Independent Police Complaints Commission website: < [http://www.ipcc.gov.uk/index/making\\_complaint.htm](http://www.ipcc.gov.uk/index/making_complaint.htm) > (last accessed: 13 December 2004).

<sup>75</sup> *Complaints Regulation*, *supra* note 61, 3(2)(a).

<sup>76</sup> U.K., Home Office, 'New Complaints and the IPCC', online: Home Office, < [www.policereform.gov.uk/docs/newcomplaintsysipcc.html](http://www.policereform.gov.uk/docs/newcomplaintsysipcc.html) > (date accessed: 15 December 2004).

<sup>77</sup> *Ibid.*

<sup>78</sup> *Royal Ulster Constabulary (Complaints etc.) Regulations 2000* (U.K.), S.R. 2000/318, s. 4(2) [hereinafter *Royal Ulster*].

Ombudsman is capable of receiving complaints in person, by phone, fax, e-mail or through an online form and endeavors to reply to letters within four working days of receiving them.<sup>79</sup> Complaints may also be submitted directly to members of the police force, however, complaints received by the police are immediately forwarded to the Ombudsman.<sup>80</sup> Complaints that are anonymous, repetitious, vexatious, oppressive or an abuse of procedure will be discarded at the Ombudsman's discretion.

Complaints cannot be made in relation to: the direction and control of the police force by the Chief Constable, off duty conduct (unless the fact of being a member is relevant to the complaint), civilian employees, or against officers of the Ombudsman.<sup>81</sup> Complaints must be filed within one year of the incident complained about, although exceptions can be made where new evidence comes to light, if its is believed a criminal offence was committed, or in grave or exceptional circumstances.<sup>82</sup>

A complaint is suitable for informal resolution if the complaint is not serious and the complainant consents.<sup>83</sup> These complaints are referred to the "appropriate disciplinary authority", which may appoint a member of the police force to resolve

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<sup>79</sup> Police Ombudsman for Northern Ireland, 'How To Complain', online: < <http://www.policeombudsman.org/howtocomplain.cfm>> (date accessed: 15 December 2004).

<sup>80</sup> *Police (Northern Ireland) Act 1998* (U.K.), c. 32, s. 52 (1)(b).

<sup>81</sup> *Police (Northern Ireland) Act*, s. 52(4); *Royal Ulster*, *supra* note 78, s. 5.

<sup>82</sup> *Royal Ulster Constabulary (Complaints etc.)* (U.K.), S.R. 2001/184, ss. 5, 6.

<sup>83</sup> *Police (Northern Ireland) Act*, s. 53.

the issue on its behalf.<sup>84</sup> If the appropriate disciplinary authority finds the issue impossible to resolve, the matter is referred back to the Ombudsman.<sup>85</sup>

The Ombudsman investigates serious complaints and non-serious complaints where informal resolution either failed or was not consented to by the complainant. The Ombudsman also has residual discretion to investigate, or refer to the Chief Constable for investigation, any complaint that the Ombudsman thinks fit.<sup>86</sup>

Where an investigation indicates a criminal offence has been committed, the Ombudsman must send a copy of the report to the Director of Public Prosecutions with a recommendation that the police officer be prosecuted. The Director of Public Prosecutions retains authority to decide whether or not the officer will be prosecuted.<sup>87</sup> Disciplinary proceedings will be considered where the Director does not initiate criminal proceedings, criminal proceedings have been concluded, or if there is no indication of a criminal offence and the matter is not suitable for mediation (or mediation is not consented to or has failed).<sup>88</sup>

To initiate disciplinary proceedings the Ombudsman sends the appropriate disciplinary authority a memo recommending that disciplinary proceedings be

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<sup>84</sup> *Ibid.*, s. 50(1).

<sup>85</sup> *Ibid.*, s. 53(6).

<sup>86</sup> *Ibid.*, s. 54.

<sup>87</sup> *Ibid.*, s. 58.

<sup>88</sup> *Ibid.*, s.59.

commenced.<sup>89</sup> If there is a hearing, the subject officer is entitled to representation and the case will be heard by three senior police officers appointed by the Chief Constable.<sup>90</sup> Allegations must be proved on a balance of probabilities and all decisions are based on a simple majority.<sup>91</sup>

If the Police Ombudsman and the Chief Constable disagree about whether the police officer should be brought before a misconduct hearing, the Ombudsman may direct the Chief Constable to bring disciplinary proceedings.<sup>92</sup> In these cases, the hearing is conducted by a panel of three, consisting of a barrister or solicitor who is the chair, a member of the Royal Ulster Constabulary, and another member of the Constabulary who is not a serving police officer.<sup>93</sup>

Disciplinary sanctions open to the Chief Constable include suspension, dismissal, required resignation, reduction in rank, reduction in pay, fine, reprimand or caution.<sup>94</sup> The Chief Constable then advises the Ombudsman of what action was taken. A complaints register is kept detailing the nature of the complaint, procedure followed and the outcome.<sup>95</sup>

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<sup>89</sup> *Ibid.*, s. 59(2).

<sup>90</sup> *The Royal Ulster Constabulary (Conduct Regulations)* (U.K.), S.R. 2000/315 at s. 18 [hereinafter *Royal Ulster 315*].

<sup>91</sup> *Ibid.*, s. 23(4)(b).

<sup>92</sup> *Police (Northern Ireland) Act*, s. 59(5).

<sup>93</sup> *Royal Ulster*, *supra* note 78, s. 28(1)(a).

<sup>94</sup> *Royal Ulster 315*, *supra* note 90, s. 31.

<sup>95</sup> *Royal Ulster*, *supra* note 78, s. 22.



Officers dismissed, ordered to resign may appeal within 21 days after receiving written notice of the decision.<sup>96</sup> Appeals are brought to an appeals tribunal consisting of three or four panel members appointed by the relevant police force. The panel will consist of one person from the police authority, one retired officer, one senior lawyer, and a person who was, in the last five years, a chief of police.<sup>97</sup>

### ***New South Wales***

In the Australian state of New South Wales (NSW), two separate bodies deal with police complaints. The New South Wales Ombudsman (NSWO) is mandated to handle less serious (Category 2) complaints, while the New South Wales Police Integrity Commissioner (PIC) handles more serious (Category 1) police complaints including complaints relating to the administration of justice, serious crimes, bribery, drugs, interfering with investigations, and improperly investigating complaints against other police officers.<sup>98</sup> The PIC was established following the report of the Royal Commission into the NSW Police Service which concluded that the level of corruption within the NSW police had outstripped the capacity of internal affairs personnel and the existing complaints structure to address. The Royal Commission also concluded that the existing system was unable to adequately sort serious complaints from less serious ones, and

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<sup>96</sup> *Royal Ulster Constabulary (Appeals) Regulations*, 2000, S.R. 2000/317 s. 5.

<sup>97</sup> *Ibid.*, s. 8.

<sup>98</sup> *Police Integrity Commission Act 1996 No. 28* (N.S.W.), ss. 67-75.; New South Wales, Police Integrity Commission, 'What type of complaints does the Commission investigate?', online: < <http://www.pic.nsw.gov.au/Complaints.asp> > (date accessed: 8 December 2004).

suggested a model of police investigation combined with external oversight for less serious allegations coupled with fully independent investigations for the most serious situations.<sup>99</sup>

Under the current complaints system, any person may make a conduct complaint against a police officer and complaints can be made anonymously.<sup>100</sup> Complaints may be directed to the PIC, the NSWO or the Police and must be in writing, although in exceptional circumstances, the NSWO and the PIC will accept oral complaints.<sup>101</sup> There are no express time limits for the filing of complaints although the PIC or NSWO may consider the length of time that has passed since the alleged conduct occurred when deciding whether or not to launch an investigation.<sup>102</sup>

Under the *New South Wales Police Act, 1990*, the less serious Category 2 complaints are investigated by the police, but are overseen by the NSWO. At any time, PIC may also intervene in a Category 2 complaint and order that it be investigated by PIC as Category 1.<sup>103</sup> The police must keep the NSWO informed of any decisions made with respect to a Category 2 complaint and the NSWO has authority to monitor the progress of the investigation, including the right to

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<sup>99</sup> New South Wales, *Royal Commission into the New South Wales Police Service: Final Report* (Sydney: The Government of the State of New South Wales, 1997) (Commissioner: The Hon. Justice JRT Wood).

<sup>100</sup> *Police Act 1990 No. 47* (N.S.W.), ss. 126 (1), 127 (6).

<sup>101</sup> *Ibid.*, s. 127.

<sup>102</sup> *Ibid.*, s. 141(1)(d).

<sup>103</sup> *Ibid.*, s. 168.

observe interviews conducted in the course of investigations.<sup>104</sup> More significantly, the NSW Ombudsman has broad power to conduct an independent investigation pursuant to the *Ombudsman Act, 1974*<sup>105</sup> at any time if the public interest necessitates it.<sup>106</sup>

Both the police and the NSW Ombudsman may decline to investigate a matter if remedial action has or will be taken to resolve the matter, if the matter is deemed “frivolous, vexatious or not made in good faith”, if the subject-matter is trivial, if the conduct “occurred too long ago to justify investigation”, or if alternative redress is available.<sup>107</sup> Complaint investigations may also be declined if, “the complainant does not or could not have an interest, or a sufficient interest, in the conduct complained of”.<sup>108</sup> However, the NSW Ombudsman retains residual authority to veto a police decision not to investigate a complaint, and can order the police to conduct an investigation.<sup>109</sup>

Following police investigations, the Police Commissioner must consult with the complainant if practicable and obtain a statement about the complainant’s satisfaction or dissatisfaction with any actions taken. This statement, along with a report of the investigation is provided to the NSW Ombudsman.<sup>110</sup> If the NSW Ombudsman believes

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<sup>104</sup> *Ibid.*, s. 146.

<sup>105</sup> *No. 68* (N.S.W.).

<sup>106</sup> *Police Act NSW*, s. 156.

<sup>107</sup> *Police Act NSW*, s. 141(1)(a)-(e).

<sup>108</sup> *Ibid.*, s. 141(1)(f).

<sup>109</sup> *Ibid.*, s. 139.

<sup>110</sup> *Ibid.*, ss. 150(a), 150(c)(iii).

complaints were handled inappropriately, the NSWOC may make a report to the Police Minister and the NSW Parliament.

The NSWOC is also obliged to inspect NSW Police records annually and has the power to do so at any time to determine compliance with the complaint handling requirements set out in the Act. It should also be noted that the NSWOC is given statutory responsibility for providing the public with information about the police complaints process.<sup>111</sup>

### ***Los Angeles***

In late 1999 widespread corruption in the Rampart Division of the Los Angeles Police Department (LAPD) came to light. Following this scandal, the United States Department of Justice (DOJ) investigated the matter and sued the LAPD alleging that it had engaged in unconstitutional patterns or practices. A provision of U.S. law allows for the DOJ to rely on the courts to compel the defendants to end such patterns and practices.<sup>112</sup> In 2001, the DOJ, the LAPD, the City of Los Angeles, and the Los Angeles Board of Police Commissioners entered into a voluntary court-approved agreement—known as a consent decree—requiring the LAPD to take a large number of steps to remedy the situation.<sup>113</sup> A significant portion of the consent decree relates to the handling of complaints. Among its

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<sup>111</sup> *Ibid.*, s. 161.

<sup>112</sup> 42 U.S.C. § 14141 (1994).

<sup>113</sup> *United States of America v. City of Los Angeles et al.*, (2001) consent decree, Central Dist. California (U.S. Dist. Ct.) [hereinafter consent decree].

provisions are those that relate to the appointment of an independent monitor to oversee the implementation of the consent decree.

Currently misconduct complaints regarding the LAPD are made to the police. However, the independent Office of the Inspector General (OIG), in existence since 1996, reviews police handling of complaints and, in turn, reports to the Board of Police Commissioners.<sup>114</sup> Conduct complaints can be made to any police station supervisor, to the Internal Affairs Group, or to the Office of the Inspector General, while policy and procedure complaints are made to police station supervisors. The consent decree specifically requires that third party complaints and anonymous complaints be allowed.<sup>115</sup>

After a complaint is lodged, either the Internal Affairs Group (IA) or an officer from a police division will investigate it. Investigations must be conducted in conformity with the provisions of the consent decree. The decree mandates that the IA investigate the most serious matters including unauthorized use of force and discrimination.<sup>116</sup> Following investigation, complaints will be reviewed by police management to determine whether or not they are substantiated. If the complaint is substantiated and a penalty is recommended by a commanding officer, the case will be reviewed by the Deputy Chief of police. Subsequently, the case is reviewed by the IA and presented to the Chief of Police and to the

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<sup>114</sup> Los Angeles Office of the Inspector General, *Annual Report 2001*(Office of the Inspector General, 2002) at 3.

<sup>115</sup> Consent decree, *supra* note 113 at para. 74.

<sup>116</sup> *Ibid.*, at paras. 93-94.

accused officer. Penalties less severe than a 22-day suspension can be accepted by the police officer without a Board of Rights hearing.<sup>117</sup> The imposition of more severe penalties requires that the case be directed to a Board of Rights hearing. Board of Rights hearings are made up of two sworn police officers and one civilian member.<sup>118</sup> The Board of Rights decides guilt or innocence and, if a finding of guilty is made, recommends a penalty.<sup>119</sup> The Chief of Police may accept or vary the recommended penalty. An appeal to the Superior Court is available from a finding.

While the LAPD complaints system continues to be primarily administered by the police, the OIG monitors the system and reports to the Board of Police Commissioners. The consent decree requires the Chief of Police to report to the OIG on a quarterly basis. These reports must include a summary of discipline imposed and details of variations between discipline imposed by the Board of Rights and final penalties imposed by the Chief. The reports must also explain why discipline was not imposed in cases where an officer plead guilty, a serious complaint was launched, or civil liability was found.<sup>120</sup> In reviewing the Chief's report, the OIG is required to analyze the appropriateness of the Chief's disciplinary actions.<sup>121</sup>

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<sup>117</sup> *Los Angeles Charter and Administrative Code* (1969 as amended), Art. X, s. 1070.

<sup>118</sup> *Ibid.*, s. 1070(h).

<sup>119</sup> *Ibid.*, s. 1070(n).

<sup>120</sup> Consent decree, *supra* note 113 at para. 88.

<sup>121</sup> *Ibid.*, at para. 89.

The independent monitor's work consists of acquiring statistically valid samples of data related to the various requirements of the consent decree and reviewing associated documents to ensure compliance with the decree. The independent monitor has reported less than full compliance with the complaint handling requirements of the consent decree.<sup>122</sup> In addition, "sting audits" where undercover police officers posed as complainants, went to police stations and attempted to register complaints, also suggest that proper complaint handling procedures are not always followed.<sup>123</sup>

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<sup>122</sup> Independent Monitor for the Los Angeles Police Department, *Report for the Quarter Ending September 30, 2004* (Los Angeles: Kroll/Independent Monitor for the Los Angeles Police Department, 2004).

<sup>123</sup> *Ibid.*; M. Lait and S. Glover 'Overseer Faults LAPD on Citizen Complaints; Sting Operations found officers to be dismissive. The federal monitor calls the results 'shocking'' *Los Angeles Times* (29 August 2003) A1.