

3. Background and History

Prior to the 1960's, little attention was given to systems for handling public complaints regarding police.⁴⁶ An early study in the United States noted that many cities had systems for processing civilian complaints against the police, but that these systems were generally administered by police personnel.⁴⁷

During the 1960s and 1970s, North Americans became increasingly focused on issues related to civil liberties.⁴⁸ Not surprisingly, civilian oversight of police also became an issue of increased interest in both the United States and in Canada.⁴⁹ During the 1970s, there was very significant public interest in the police complaints system in Ontario.⁵⁰ By the middle of that decade, the complaints system has come to be seen as closed and secretive, and there were major concerns about the lack of documentation regarding the complaints process.⁵¹

⁴⁶ H. Beral and M. Sisk, 'The Administration of Complaints by Civilians Against the Police' (1963-64) 77 Harv L. Rev. 499 at 499. [hereinafter Beral and Sisk]

⁴⁷ *Ibid.* at 500.

⁴⁸ S. Watt, 'The Future of Civilian Oversight of Policing' (1991) 33 Can. J. Crim. 347 at 349.

⁴⁹ P.C. Weiler, "'Who Shall Watch the Watchmen?' Reflections on Some Recent Literature About the Police' (1968-69) 11 Crim L. Q. 420. See generally Beral and Sisk, *supra* note 46.

⁵⁰ Ontario, Police Complaints Commissioner, *Civilian Oversight of Police Conduct: A Position Paper* (Toronto: Police Complaints Commissioner, 1996) (Commissioner: G. Lapkin) at 4.

⁵¹ C.E. Lewis, S.B. Linden and J. Keene, 'Public Complaints Against Police in Metropolitan Toronto – The History and Operation of the Office of the Public Complaints Commissioner' (1986-87) 29 Crim L. Q. 115 at 117.

In 1974, following a series of controversial incidents, the late Arthur Maloney Q.C. was appointed to study the Toronto police complaints system.⁵² Between 1974 and 1979, several reviews of the police complaints system were conducted. The history of these reviews has been recorded in detail elsewhere and will not be repeated here.⁵³ However, their general conclusion was that a civilian component beyond what existed had to be injected into the police complaints procedure.

The complaints system did see some changes in 1978 when a new complaint-handling procedure was voluntarily adopted by many local Boards of the Commissioners of Police (the predecessors of today's police services boards).⁵⁴ Under this procedure, complaints against a police officer were investigated by the officer's own police service and the chief of police was responsible for deciding the disposition of the complaint. After the complaint was disposed of, a complainant could request a hearing before the local Board of Commissioners of Police, which had the power to recommend that the chief take further action.⁵⁵ If dissatisfied with the result of such a hearing, the complainant could then apply to

⁵² *Ibid.* at 117.

⁵³ *Ibid.* at 117-119. See also M.W. McMahon and R.V. Ericson, *Policing Reform: A Study of the Reform Process and Police Institution in Toronto* (Toronto: University of Toronto Centre of Criminology, 1984); See generally A. Maloney, *Report to the Metropolitan Toronto Board of Commissioners of Police* (Toronto: Metropolitan Toronto Review of Citizen-Police Complaint Procedure, 1975); Ontario, *Royal Commission into the Metropolitan Toronto Police* (Toronto: Queen's Printer, 1976) (Commissioner: D.R. Morand); W. Pitman, *Now Is Not Too Late: Report of the Metropolitan Toronto Task Force on Human Relations* (Toronto: Task Force on Human Relations, 1977); Cardinal G.E. Carter, *Report to the Civic Authorities of Metropolitan Toronto and its Citizens* (Toronto: Office of the Cardinal, 1979).

⁵⁴ Lewis, *supra* note 51 at 118.

⁵⁵ *Ibid.* at 118-119.

the Ontario Police Commission (now OCCOPS), which could then order an investigation if it considered the matter to be of sufficient importance.⁵⁶ Still, these new procedures were considered inadequate, particularly within Toronto.⁵⁷

In 1981, the provincial government responded to the dissatisfaction in Toronto by enacting the *Metropolitan Toronto Police Force Complaints Project Act, 1981*⁵⁸ which established a unique complaints system in Toronto on a trial basis.⁵⁹ Under the *Act*, the Toronto Chief of Police was required to set up a Public Complaints Investigation Bureau to receive, record, and investigate complaints and inquiries.⁶⁰ A civilian Public Complaints Commissioner would monitor and review the Bureau's investigations. The Commissioner also had independent investigative powers.⁶¹ A Public Complaints Board conducted hearings of matters referred to it by the Toronto Chief of Police or the Commissioner.⁶²

This experimental system, with minor alterations, was made permanent in 1984. Six years later, the "Toronto System" became a Province-wide system with the passage of the *Police Services Act, 1990*.⁶³ Under this legislation, all police services in the Province were required to establish Public Complaints Investigations Bureaus (PCIB's), although police services with fewer than 20

⁵⁶ *Ibid.* at 119.

⁵⁷ *Ibid.* at 119.

⁵⁸ S.O. 1981, c.43 [hereinafter *Toronto Complaints Project Act*].

⁵⁹ P. Ceysens, *Legal Aspects of Policing*, vol.2, looseleaf (Saltspring Island, BC: Earls court Legal Press, 1994) at 7-3.

⁶⁰ *Toronto Complaints Project Act*, s. 5.

⁶¹ *Ibid.*, ss. 14(1)(b)-(d), 14(2)-(3).

⁶² *Ibid.*, s. 4, 18(3).

⁶³ S.O. 1990, c.10 [hereinafter *PSA S.O.1990*].

officers had the option to use the PCIB of another police service.⁶⁴ The Public Complaints Commissioner was renamed the Police Complaints Commissioner (PCC) and was given province-wide authority.⁶⁵ The Public Complaints Board, which had been replaced by *ad hoc* boards of inquiry in 1984, evolved into the permanent Board of Inquiry in 1992.⁶⁶

Members of the public were able to make complaints, including third-party complaints, either to the PCIB, PCC, or at any police station, bureau, or detachment.⁶⁷ In exceptional circumstances, the Attorney General could direct the PCC to make a conduct complaint about an officer.⁶⁸ Investigations were generally handled by PCIB's, which were required to send out an initial interim investigation report within 30 days of receiving a complaint and further interim reports on a monthly basis.⁶⁹ Reports were to be forwarded to the PCC, complainant, and the police officer who was the subject of the complaint. The PCC could investigate a complaint for any reason following the release of a PCIB's first interim report or 30 days after the making of a complaint.⁷⁰

⁶⁴ *Ibid.*, ss. 76(1), 76(3).

⁶⁵ *Ibid.*, s. 99.

⁶⁶ Ontario, Board of Inquiry (*Police Services Act*), *Annual Report 1993 and 1994* (Toronto: Board of Inquiry, 1995) at 1.

⁶⁷ *PSA S.O.1990*, s. 80. Where the complainant was neither directly affected by nor witnessed an incident, the PCC was obliged to locate a first-party and inform that person that he or she was entitled to complain. If the person did not pursue a complaint, the third party complaint would not be dealt with.

⁶⁸ *Ibid.*, s. 78.

⁶⁹ *Ibid.*, ss. 87(2), 87(3).

⁷⁰ *Ibid.*, s. 88(1)(a). Under ss.88(1)(b)-(d) the PCC could take over an investigation if the complainant commenced a court action in relation to the complaint. Further, the PCC could take over investigations if it was thought that unreasonable delay or unusual circumstances required such action. Finally, the PCC could take over investigations upon request of the relevant chief. The PCC, not the PCIB, was also required to

Following PCIB or PCC investigations, final reports were presented to chiefs of police for disposition. Chiefs were entitled to dispose of matters in a number of ways: by taking no further action, admonishing an officer, holding a disciplinary hearing, ordering a Board of Inquiry hearing, or laying criminal charges.⁷¹ A decision on disposition was required within six months of receiving a final report and notice was to be given to the PCC, complainant, and officer.⁷² If a chief did not provide notice of a decision within six months, he or she would be deemed to have taken no further action.⁷³

Disciplinary hearings were held by chiefs to determine if an officer was guilty of misconduct. Misconduct included breaches of the code of conduct, which listed offences such as discreditable conduct, insubordination, neglect of duty, deceit, breach of confidence, and corrupt practice.⁷⁴ Penalties available in disciplinary hearings included dismissal, direction to resign, demotion, suspension, forfeiture of pay, and reprimand.⁷⁵ Appeals from disciplinary hearing decisions went either to a municipal police services board or to OCCOPS unless the hearing stemmed from a public complaint, in which case appeals went to the Board of Inquiry.⁷⁶

conduct investigations in relation to complaints concerning more than one force pursuant to s. 88(3).

⁷¹ *Ibid.*, s. 90(3).

⁷² *Ibid.*, ss. 90(7), 90(5).

⁷³ *Ibid.*, s. 90(8).

⁷⁴ *Ibid.*, s. 56(a); J.F. Hamilton *et al.*, *The 1996 Annotated Ontario Police Services Act* (Toronto: Carswell, 1995) at 159.

⁷⁵ *Ibid.*, ss. 61(1), 61(3), 97(1), 97(3).

⁷⁶ *Ibid.*, s. 66.

Upon the request of the complainant, the PCC could review a chief's decisions to admonish or take no further action.⁷⁷ If a public complaint led to a disciplinary hearing, the PCC could review the hearing decision upon the complainant's request.⁷⁸ Following these reviews, the PCC had the option of taking no further action or ordering a Board of Inquiry hearing to determine whether there was misconduct.⁷⁹

The Board of Inquiry was a permanent tribunal with members appointed by Cabinet. Members were recommended for appointment by the Attorney General, the Association of Municipalities of Ontario (AMO), the Police Association of Ontario (PAO), and the Ontario Association of Chiefs of Police (OACP). A hearing panel would be composed of a chair, who was required to be a lawyer recommended by the Attorney General, a member recommended by AMO, and a member recommended by either the PAO or OACP.⁸⁰ Board of Inquiry decisions could be appealed to the Divisional Court.⁸¹

Informal resolution was available under the Act.⁸² A complainant and officer could have a complaint resolved by the head of a PCIB on consent of the chief of police prior to a final report being issued, or on consent of the PCC after a final report was issued. Informal resolution was also available after the Board of

⁷⁷ *Ibid.*, ss. 91(1)-(2).

⁷⁸ *Ibid.*, s. 91(3).

⁷⁹ *Ibid.*, s. 91(6).

⁸⁰ *Ibid.*, s. 93.

⁸¹ *Ibid.*, s. 98(1).

⁸² *Ibid.*, s. 83.

Inquiry began hearing evidence if the Board of Inquiry consented.⁸³ The PCC had the power to continue a complaint if it considered that the informal resolution process was entered into through misunderstanding, threat, or improper pressure.⁸⁴ The PCC could also proceed with a complaint despite a withdrawal if it considered that the withdrawal occurred for any of those reasons.⁸⁵

The PCC operated throughout Ontario between 1991 and 1996, with regional offices in Toronto, Ottawa, Windsor, Mississauga, Peterborough, Sudbury and Thunder Bay. Although the PCC did have the ability to conduct complaint investigations, that power was used sparingly. In 1996, the PCC's last full year of operation, the PCC conducted only 24 investigations out of 3549 complaints filed with the police.⁸⁶ The PCC did, however, review a significantly larger number of decisions made by chiefs of police and the OPP Commissioner. In 1996, it carried out 423 such reviews.⁸⁷

Throughout the 1990's a variety of public reports commented on the police complaints system in the Province. The Task Force on Race Relations and Policing was constituted in 1989 and issued its first report in April of that year, noting a lack of standardization across the Province for handling police

⁸³ *Ibid.*, ss. 83(1)-(2).

⁸⁴ *Ibid.*, s. 83(5).

⁸⁵ *Ibid.*, s. 84(6).

⁸⁶ Ontario, Police Complaints Commissioner, *Annual Report 1996* (Toronto: Police Complaints Commissioner) at 34.

⁸⁷ *Ibid.* at 34.

complaints.⁸⁸ In its subsequent 1992 report, the Task Force acknowledged the legislative changes to the police complaints system, and warned that the success or failure of the new Province-wide PCC would be dependent on adequate resources.⁸⁹ In the same year, Stephen Lewis, in his *Report of the Advisor on Race Relations to the Premier of Ontario*, recommended that the PCC be empowered to perform initial investigations of all public complaints of racist conduct by police officers. Lewis also recommended that the PCC should be required to perform mandatory reviews of chiefs' dispositions of such cases.⁹⁰ In 1995, the *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System* recommended that OCCOPS receive additional funding for inquiries into police conduct.⁹¹ The Commission also noted that "a new institution for police accountability with a specifically remedial mission" might be required to look at systemic issues, rather than merely individual complaints.⁹²

In October 1996, Rod McLeod, Q.C., was asked to review civilian oversight of police in Ontario with the goal of advising the Attorney General and Solicitor General on ways to make the system simpler, more efficient, and more

⁸⁸ Ontario, *Report of The Race Relations And Policing Task Force* (Toronto: Race Relations and Policing Task Force, 1989) (Chair: Hon. C. Lewis) at 184.

⁸⁹ Ontario, *Report Of The Race Relations And Policing Task Force* (Toronto: Race Relations and Policing Task Force, 1992)(Chair: Hon. C. Lewis) at 129.

⁹⁰ Ontario, *Report of the Advisor on Race Relations to the Premier of Ontario* (Toronto: Advisor on Race Relations, 1992) (Advisor: Hon. S. Lewis).

⁹¹ Ontario, *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System* (Toronto: Queen's Printer for Ontario, 1995)(Co-chairs: Hon. D. Cole and M. Gittens) at 388.

⁹² *Ibid.* at 389.

effective.⁹³ McLeod recommended streamlining various civilian oversight agencies (OCCOPS, SIU, PCC, and Boards of Inquiry) into one body with two branches: adjudication and investigation. He recommended that complainants be able to file complaints at local police stations, separate professional standards offices, or at community resource locations, and also recommend informal resolution of complaints.⁹⁴

Shortly after the McLeod Report was released, the government of the day introduced Bill 105⁹⁵, which brought in the current system of dealing with civilian complaints. Following the changes instituted by Bill 105, police complaints remained an issue of serious debate. In August 2002, the City of Toronto's Auditor issued a performance audit of the handling of complaints by the Toronto Police Service. The audit spoke approvingly of the conduct and timeliness of public complaints investigations by the Toronto Police Service, but made many recommendations for potential improvements to the process.⁹⁶ The audit also indicated concerns about the overall framework that allowed police to investigate public complaints, stating, "The lack of an investigative process independent of

⁹³ R.M. McLeod, Q.C. *A Report And Recommendations On Amendments To The Police Services Act Respecting Civilian Oversight Of Police* (Toronto: Queen's Printer for Ontario, 1996) at Appendix E. The report was issued on November 21, 1996. The Terms of Reference of the McLeod Review were broader than those of the present review and many of the recommendations proposed in the McLeod Report are beyond the scope of the issues considered here.

⁹⁴ *Ibid.* at 40, 34.

⁹⁵ Bill 105, *supra* note 3.

⁹⁶ City of Toronto, Audit Services, *Performance Audit: The Public Complaints Process Toronto Police Service* by Jeffrey Griffiths (Toronto: Audit Services, City of Toronto: August 2002).

the police is regarded as a significant impediment in regard to public confidence in the system.”⁹⁷

In December 2003, the Ontario Human Rights Commission released an inquiry report entitled *Paying the Price: The Human Cost of Racial Profiling*.⁹⁸ The report discussed racial profiling in the context of policing and indicated a lack of confidence in police complaints mechanisms.⁹⁹ The report recommended a public consultation on police complaints to ensure the independence and effectiveness of the system.¹⁰⁰

⁹⁷ *Ibid.* at 29.

⁹⁸ Ontario Human Rights Commission, *Paying the Price: The Human Cost of Racial Profiling* (Toronto: OHRC, 2003).

⁹⁹ *Ibid.* at 71.

¹⁰⁰ *Ibid.* at 71.