

4. The Current System

Part V of the PSA governs the handling of complaints about police. Members of the public are able to complain about the conduct of particular officers or the policies and services of a police service.¹⁰¹

Third-party complaints are not allowed under the legislation.¹⁰² Complaints may be hand-delivered or sent by mail or fax.¹⁰³ They must, however, be in writing and must be signed by the complainant.¹⁰⁴ Complaints may be made at police stations or detachments of the police service complained of or to OCCOPS. Complaints made to OCCOPS are forwarded to the chief of police of the police service to which the complaint relates for handling.¹⁰⁵

At any time before or during an investigation of the conduct of a police officer, the chief may resolve the complaint informally if the conduct does not appear to be of a serious nature and the police officer and complainant both consent to informal resolution.¹⁰⁶ Statements made during an attempt at informal resolution are not

¹⁰¹ PSA, s. 56 (1). Section 57(7) excludes the Solicitor General and OCCOPS members or employees from making complaints. It also prevents members of police forces and boards from making complaints related to their respective forces.

¹⁰² *Ibid.*, s. 57(1). Section 59(5) indicates that police chiefs "...shall not deal with any complaint made by a member of the public if he or she decides that the complainant was not directly affected by the policy, service or conduct that is the subject of the complaint."

¹⁰³ *Ibid.*, s. 57(2).

¹⁰⁴ *Ibid.*, s. 57(2).

¹⁰⁵ *Ibid.*, s. 57(5).

¹⁰⁶ *Ibid.*, s. 58(1).

admissible in a civil proceeding or at a subsequent PSA hearing except with the consent of the party who made the statement.¹⁰⁷

A chief may decide not to deal with a complaint that is frivolous or vexatious or made in bad faith.¹⁰⁸ A chief may also decide not to deal with a complaint made more than six months after the fact.¹⁰⁹ As previously noted, third party complaints are not allowed.¹¹⁰ Decisions not to deal with complaints on any of the foregoing grounds must be communicated to the complainant within 30 days, along with notice of the complainant's right to request a review by OCCOPS.¹¹¹

Generally, upon the receipt of a complaint, a chief of police is required to determine whether a complaint relates to policy, services, or conduct.¹¹² This characterization of the complaint must be given to the complainant who may ask OCCOPS to review it.¹¹³

Complaints regarding policy or service are treated differently from conduct complaints. Chiefs of police are responsible for reviewing policy and service complaints.¹¹⁴ As requested by police services boards, chiefs are required to submit written reports to their boards on every policy or service complaint,

¹⁰⁷ *Ibid.*, s. 58(3).

¹⁰⁸ *Ibid.*, s. 59(3).

¹⁰⁹ *Ibid.*, s. 59(4).

¹¹⁰ *Ibid.*, s. 59(5).

¹¹¹ *Ibid.*, s. 59(6).

¹¹² *Ibid.*, s. 59(1).

¹¹³ *Ibid.*, s. 59(2).

¹¹⁴ *Ibid.*, s. 61(1).

including its disposition.¹¹⁵ Chiefs are also required to notify a complainant of the disposition of the policy or service complaint and the complainant's right to request the police services board review that disposition.¹¹⁶ Reasons must be given if a chief has decided that no action is to be taken in regard to the complaint.¹¹⁷ If the chief has not notified the complainant of his or her disposition of the complaint within the time required, he or she is deemed to have taken no action in response to the complaint and to have so notified the complainant.¹¹⁸ Complaints about local OPP policies are dealt with in a similar way by local detachment commanders, while complaints about provincial OPP policies are made to the OPP Commissioner.¹¹⁹

Chiefs are responsible for ordering the investigation of conduct complaints.¹²⁰ In larger police services, professional standards branches will investigate the more serious complaints, while less serious complaints are assigned to unit commanders. Smaller services that do not have separate professional standards branches may have an officer specifically assigned to deal with complaints. In even smaller services, a senior officer may be assigned to investigate on an *ad hoc* basis. Chiefs, with the approval of their boards and on notice to OCCOPS, may also request that another police service carry out the investigation.¹²¹

¹¹⁵ *Ibid.*, s. 61(2).

¹¹⁶ *Ibid.*, s. 61(3).

¹¹⁷ *Ibid.*, s. 61(4).

¹¹⁸ *Ibid.*, s. 61(6).

¹¹⁹ *Ibid.*, ss. 62, 63.

¹²⁰ *Ibid.*, s. 64(1).

¹²¹ *Ibid.*, ss. 64(2)-(3).

Where it is determined after an investigation that a complaint cannot be substantiated, chiefs must notify the complainant and the officer of the finding, provide a copy of the written report, and provide notice that the complainant has 30 days to ask OCCOPS to review the finding.¹²² If a chief believes that an investigation reveals misconduct or unsatisfactory work performance¹²³, the PSA allows another opportunity for informal resolution provided that the matter was not of a serious nature and if the officer and complainant both consent to the informal process.¹²⁴

Where an informal resolution after an investigation has been attempted, but has failed, a chief may impose penalties ranging from forfeiture of three days' pay to direction to take part in a remedial program, without a hearing. A chief of police may note the penalty and the police officer's response in the police officer's employment record. However, such entries must be expunged within two years, provided that no new misconduct or unsatisfactory work performance notations are made during that time.¹²⁵ These penalties can only be imposed if the officer consents; otherwise, a chief is required to hold a hearing.

¹²² *Ibid.*, s. 64(6).

¹²³ P. Ceyssens, S. Dunn and S. Childs, *Ontario Police Services Act, Fully Annotated, 2002-2003 Edition* (Salt Spring Island: Earls Court Legal Press, 2002) at 133 notes that unsatisfactory work performance was introduced with Bill 105 and "represents an effort to treat work performance issues in a manner more akin to the traditional workplace response to some issues."

¹²⁴ PSA, s. 64(11). Section 72(5) of the PSA indicates that complainants are able to request that OCCOPS review decisions that conduct was not serious.

¹²⁵ *Ibid.*, s. 64(16).

Where a hearing is held by a chief of police, the chief is responsible for appointing a prosecutor who may be a police officer, lawyer or an agent. Parties to a hearing are the prosecutor, the police officer who is the subject of the hearing, and the complainant. In addition to the rules laid out in the PSA governing the hearing, the *Statutory Powers and Procedures Act*¹²⁶ also applies.

Upon the conclusion of a hearing, penalties ranging from admonishment to dismissal can be issued if misconduct or unsatisfactory work performance is found on clear and convincing evidence.¹²⁷ Between those two extremes, chiefs have a range of options such as directing forfeiture of no more than 20 days off, a forfeiture of up to three days' pay, suspension up to 30 days, a demotion, or a resignation.¹²⁸ Forfeiture of pay may be satisfied by working without pay or by applying it to vacation, overtime, or sick leave credits.¹²⁹

Both police officers and complainants may appeal decisions issued in disciplinary hearings to OCCOPS, with a further appeal to the Divisional Court.¹³⁰ In contrast, there is no ability to appeal OCCOPS' review decisions.¹³¹ In 2003, OCCOPS heard 26 appeals from disciplinary decisions.¹³² However, in the same

¹²⁶ R.S.O. 1990, c. S.22 [hereinafter SPPA].

¹²⁷ PSA, ss. 68(1), 64(10).

¹²⁸ *Ibid.*, s. 68(1).

¹²⁹ *Ibid.*, s. 68(4).

¹³⁰ *Ibid.*, s. 71(1).

¹³¹ *Ibid.*, s. 72(12).

¹³² OCCOPS 2003, *supra* note 8 at 31.

year, it conducted 488 reviews of decisions by chiefs of police that were made at the earlier stages of the complaints process.¹³³

¹³³ *Ibid.* at 45.