

6. Summary of Submissions

The overwhelming consensus among the groups with whom I met was that police officers are no more likely to engage in misconduct than any other group of professionals. In fact, most praised the work of the men and women who are willing to protect and serve their communities. This is consistent with evidence that Canadians generally have a high regard for the police. Canadians have expressed very high levels of confidence in police in comparison to both other sectors of the justice system and to various other professions and occupations.¹³⁷ Nevertheless, there was widespread agreement from the submissions I received that the system for dealing with public complaints requires improvement, not only for the benefit of those who feel aggrieved, but for everyone involved in the system, including individual police officers. All parties agreed that a fair, effective and transparent complaints system was essential for maintaining the integrity of the policing profession. Rather than a debate as to whether there needs to be changes to the system, the vast majority of the meetings were discussions regarding the degree of change necessary and more specifically the types of changes needed.

There appear to be two main perspectives on the type of changes that should be made to the existing system. From one perspective, there is the fear that the

¹³⁷ Public Safety and Emergency Preparedness Canada, *Public Confidence in Criminal Justice: A Review of Recent Trends 2004-05* (Ottawa: Public Safety and Emergency Preparedness Canada, 2004), online: Public Safety and Emergency Preparedness Canada < http://www.psepc-sppcc.gc.ca/publications/corrections/pdf/200405-2_e.pdf > (last modified: November 19, 2004) at 10-11, 19.

system is not working to effectively resolve complaints and is, in itself, a cause for mistrust of the police. Many said that this mistrust has led to unwillingness by some members of the community to contact or cooperate with the police even in situations where serious crimes have been committed. A fair, effective and transparent complaints system could be a step toward improving confidence and trust in the police. They suggest that this can only come from implementing a fully independent civilian complaints system starting, from the reception of complaints to the final adjudication and appeal of disciplinary decisions. This view was expressed most forcefully by racialized groups that have historically suffered from discrimination.

The second perspective, shared by many police groups, is that the system needs improvement, but does not require replacing. In this view, the system is operating fairly well, but like any system, could be more finely tuned. The fear in this case was that the current system would be sacrificed solely for the sake of change. According to this view, while improvements could be made to many aspects of the current system, an entirely civilian complaints system would be too bureaucratic, inefficient and would effectively remove responsibility from police managers to manage their officers. Many police managers felt that there needed to be changes to the legislation to allow them to be more effective in managing their officers.

The following summary is an attempt to encapsulate the views and comments made during the course of this review. Although I summarize what I have heard under the headings of community groups, police chiefs, police services boards and police associations, this is solely a matter of convenience for the reader and myself. It should be stressed that not everyone within each category share exactly the same views. Some may in fact have more in common with those grouped under another heading. However, these generalizations are necessary to provide an overview of the concerns that were raised and to form a basis for my recommendations.

Community Groups

Community groups expressed significant frustration with the current system. They considered the current system to be too complex and many admitted that they did not understand the role of OCCOPS. There were criticisms of the Commission for failing to effectively provide the needed oversight within the complaints system.

While it was felt the system fails complainants in a large number of areas, it was often noted that the system is inherently difficult to navigate. The police have made few attempts to make the complaints system user-friendly, and I was told that only the most educated and determined complainant would be able to successfully find their way through the process. Even those complainants who possess these characteristics told me they were surprised by the obstacles they

encountered. Many said that their experiences with the system have left them frustrated and angry. I have heard that most people have given up on the system and have instead sought redress through the civil court system or the Ontario Human Rights Commission.

Community groups submitted that a legitimate complaints system cannot be based on a process where a complaint about a police officer must be filed with the police. Not only are police stations intimidating, but I frequently heard that those who have wished to make a complaint have sometimes been discouraged by the police in doing so. Some complainants said that they were threatened with reprisals, and others reported that the police had warned them that they could be charged with public mischief if their complaint was determined to be unfounded. In a similar vein, some complainants stated that they became the subject of the investigation following the filing of a complaint. I was also told that other systemic barriers to the filing of complaints include requirements for written and signed complaints, the prohibition against third party complaints, the unnecessary characterization of complaints as policy or conduct complaints and the six-month limitation period in which to file a complaint.

The writing requirement, it was argued, discourages those who do not have the requisite writing or comprehension skills for making complaints. It is also a barrier for those who are not capable of communicating in English or French.

The prohibition against third-party complaints was raised as a significant problem. Although some acknowledged that it may not be appropriate for just anyone to file a complaint (for example, there were some doubts as to whether someone who read a newspaper report alleging police misconduct should be allowed to file a complaint), it was widely recognized that the right to complain should not be limited to those who are directly affected by the actions complained of. Most community groups proposed that any witness of police misconduct should be allowed to file a complaint. Others argued that advocacy groups should also be able to file a complaint especially in situations where the person or persons who are directly affected are unwilling or unable because of physical, mental, or other circumstances to file a complaint on their own behalf and where there appear to be systemic problems regarding policing practices. Still others argued that anyone should be able to file a complaint and it should be up to the persons receiving the complaint to decide on whether to act upon it.

Many expressed frustration regarding the need to characterize a complaint as one of policy or conduct. Many complainants are unable to make this distinction, and it was said that many complaints may be characterized as both conduct and policy and that this distinction should be eliminated. It was pointed out that complainants are interested in a resolution of their complaint and that the handling of the complaint should proceed with that in mind.

The current six-month limitation period to file a complaint was also the subject of criticism. Many thought that such a limitation period, commencing from when the facts on which the complaint is based occurred, was unfair to those who have been charged. Some lawyers who have acted for these complainants have stated that they would prefer a longer limitation period or that the limitation period commence running only from the time outstanding criminal charges have been disposed of so that potential reprisals for laying a complaint (such as the laying of additional charges) are avoided. Others argued that there should be no limitation period at all, noting that complaints to many professional bodies are not time-limited. Although there is discretion in the current legislation for chiefs to waive the limitation period, it was suggested this is rarely, if ever, done.

In addition to the barriers to access the system, most community groups said that the investigation of a complaint by the same police service as the subject of the complaint raises significant concerns over the legitimacy and integrity of the investigation. Many felt that investigators within the same police service cannot be objective in the investigation of civilian complaints and that a police culture of protecting fellow officers eliminates any capacity to carry out thorough investigations. Even where the investigations are rigorously conducted and are fair, the perception of taint and unfairness will always exist.

The same criticisms were also laid against the hearings process. As hearings of misconduct are administered by the police service, it was felt that the process could not be fair and could not be perceived to be fair.

The solution to these problems, proposed by many community groups, was the implementation of a civilian-based process. A number proposed that the investigators and adjudicators of public complaints should not be police officers or former police officers, although they may be trained by retired police officers. They also emphasized that these investigations are not criminal investigations and that police officers should not be the only group capable of conducting such investigations. Others stated that the most capable investigators for these cases are in fact police officers and what is necessary are safeguards to ensure that they conduct their investigations fairly. Some suggested the use of police officers seconded to a civilian body that would be responsible for the overall conduct of investigations. Others suggested the use of retired police officers in combination with civilian investigators, and still others suggested the Special Investigations Unit. Similar proposals were made about adjudicators, although there were some groups who thought that the adjudication system did not need any changes. Some felt that adjudication should be handled by the courts or by a panel consisting of appointees from the community, police managers and police associations.

Many groups offered detailed suggestions on the investigation and adjudication of complaints in addition to recommendations on who should be empowered to handle them. For example, they suggested that all officers should be required to cooperate with investigators and answer questions. Officer notes and other evidence should be secured immediately and the investigation should conclude in a timely manner. Furthermore, the standard of proof to be utilized at hearings should be the civil standard and it was inappropriate to use any other standard. Full disclosure of the investigative file should be provided to the complainant to allow complainants to be able to make informed decisions regarding appeals. Hearing decisions should be easily accessible to the general public, and the identities of parties should be published unless there is a legitimate reason for non-publication (e.g. names of sexual assault victims should not be published). Although appeals may continue to be heard by OCCOPS, OCCOPS needs to provide reasons for all of its decisions.

While there was significant concern regarding the specific aspects of the formal investigation and hearings process, almost everyone agreed that many complaints are of a nature that should be handled informally and quickly, and that this could often take place prior to any investigation. This could be a mediative process where it is understood that discussions are taking place without prejudice. However, this informal process should have the involvement of an independent body to ensure that no undue pressure to settle the matter was exerted and that records are kept.

Most community groups suggested that any new civilian complaints body should be able to perform annual audits of the complaints system to ensure that the system is operating appropriately and to make recommendations for changes where appropriate. It should also be responsible for broader five-year reviews of the system. Some groups further suggested that the new body should also be responsible for the investigation of complaints against all employees of a police service, such as special constables, and not just police officers. Many civilian employees of police services are special constables, appointed under the PSA to perform designated duties. Special constables working for police services undertake duties such as court security, prisoner escort, and technical support. Other special constables are appointed to work with specialized agencies such as university and transit “police”. Along similar lines, many groups were concerned with the regulation of private security guards. In addition, it was suggested that the new civilian body be given powers to set policing standards so that issues such as the identification of officers are addressed. Almost all community groups indicated that the new complaints body needs to be adequately resourced to undertake its new functions and have a proper complement of trained staff so that it can achieve its objectives.

Chiefs of Police and Senior Officers

Chiefs of police and senior officers are critical to the successful operation of the current complaints process. On the whole, most chiefs and senior officers indicated that the system is now working well to resolve complaints in a fair manner. Many chiefs of police and senior officers are concerned about the public's perception that the complaints system is not working and the impact this has on the general perception of the police. They wanted to add some perspective to the number of complaints they receive and noted that there are literally millions of contacts between civilians and police officers resulting in only a few thousand complaints each year. Many of these complaints, they argue, are resolved to the satisfaction of the complainant. However, they recognized that improvements could be made to the current system, but their views on what changes should be made varied significantly. Their suggestions were also very broad, ranging from potential changes to the handling of public complaints to specific substantive changes to the code of conduct and the creation of positive duties on the part of police officers to report misconduct.¹³⁸

Generally, this group emphasized that any changes should not result in a lengthy, expensive and overly bureaucratic process. Complaints need to be dealt with efficiently and they felt that allowing third-party complaints might risk

¹³⁸ Given the large number of recommendations that I have been provided by this group, I have decided to discuss only what are, in my opinion, the most important recommendations. I am of the opinion that my mandate would be exceeded if I were to engage in a review of the code of conduct and in the consideration of additional duties for police officers.

overwhelming the system with complaints that should not be pursued. Some had similar reservations over any extension of the limitation period. They also stressed the importance of the need for chiefs to retain their powers to discipline their officers. As the complaints process is tied to the internal disciplinary process, they argued that any changes to the complaints system should continue to respect their role as the managers of the police service.

Like community groups, this group did not see OCCOPS as effective in its role of administering oversight. As a key oversight body, it has not played a large enough role in educating the public on the complaints system. OCCOPS has also rarely used its powers to conduct investigations or order a police service to investigate a complaint. In addition, chiefs and senior officers were sometimes frustrated by the lack of reasons given in support of some of OCCOPS' review decisions. This lack of explanation in support of its decisions, it was argued, only fosters dissatisfaction with the system. They noted too that OCCOPS frequently reverses disciplinary penalties handed down by hearing officers – often lowering penalties.

It was suggested that the work of OCCOPS be examined closely to determine what precisely is needed in terms of changes to that organization to improve oversight before making any drastic changes to the current system. Caution should be exercised before there is a decision to revert back to the former system. It was pointed out that while the former system was perceived to be

independent, it in fact was not. The police in most cases still investigated themselves. The monitoring of investigations by the PCC only created a large amount of paperwork that slowed the process down, which in turn led to public dissatisfaction.

Police chiefs and senior officers explained the process of dealing with public complaints within their individual organizations. While the Act requires that a complaint be in writing and signed, they explained that as long as these minimum standards are met they would accept the complaint. I was told that complaints written on a napkin have been received and acted upon. At least one police service acknowledged that it may be difficult for many complainants to file their complaint at the police station and is considering opening a storefront office to receive complaints. Another police service suggested that a complainant should be permitted to file a complaint at any police service and not necessarily the police service complained of.

In smaller services, senior officers normally handle complaints. Larger police services have professional standards units that are staffed with individuals who deal with serious public complaints. Less serious complaints, in these larger police services, are handled directly at the divisional level by unit commanders. I note that there was some disagreement within the policing community as to whether this division of complaint handling responsibility is appropriate.

The use of informal resolution was strongly supported by police chiefs and senior officers. Apart from steering complainants away from a lengthy formal process, it was felt that an informal process was more responsive to the interests of both the police and the complainant, resulting in more satisfying results. I was told that precautions are taken by the police to have complainants consent in writing to resolving their complaints informally before they proceed in this fashion. Chiefs of police have argued that a third party should not be involved in the informal resolution process as this may cause the police to see the system as adversarial.

Where the formal process is engaged, it was explained that there are internal timelines set by the police service regarding investigations. Experienced senior officers who are very familiar with the police service are responsible for conducting the investigations of the more serious complaints and these investigations are conducted very efficiently. Some submitted that independent investigators or investigating officers from another police service would not be familiar with the intricate operations of individual police services to conduct their investigations as quickly and effectively. Once an investigation is concluded, investigative reports are provided to the complainant.

Where hearings are conducted, many of those with whom I spoke stated that the public interest is best served by the use of well-trained police adjudicators. Introducing a panel of adjudicators to conduct hearings was considered unnecessary and costly. Small police services would have the most difficulty

with such a change as they currently have trouble affording the services of even just a single adjudicator. Currently, only the Toronto Police Service and the OPP have full-time adjudicators. It was noted that hearings are open to the public and hearing decisions may be appealed to OCCOPS and that this provides significant public accountability. Some agreed that publication of hearing decisions would improve transparency.

Significant comments were received regarding when a hearing should take place. The current test for holding a hearing is whether there exists an “air of reality to the evidence” and was considered to be too low a threshold. This is of particular concern when one considers that the standard for finding misconduct or unsatisfactory work performance is “clear and convincing evidence”. It was argued that the low threshold for holding a hearing, as contrasted with the much higher standard that rests on the prosecution, has led to many unnecessary hearings that have not found misconduct or unsatisfactory work performance. These hearings have had a significant and negative impact on both police and public perception of the fairness of the system and on police budgets. It was suggested that hearings should only be held where the chief has reasonable grounds to believe serious misconduct has occurred.

Chiefs of police have also suggested that hearings should be reserved for only serious misconduct cases. A chief of police should be allowed to deal with minor issues through a summary discipline process without the need of a formal

hearing. Resolution of disputes in relation to the outcome of minor issues could be dealt with through the grievance process. Also, chiefs of police have argued for timelines to be set in the PSA in relation to the hearing and appeal process, with statutory consequences for not adhering to those timelines.

Some chiefs of police and senior officers have argued that the range of penalties against an officer who has been found guilty of misconduct is currently too limited. Additional penalties should be available, including restitution and loss of pay that cannot be applied to sick leave credits. Some police chiefs and senior officers were also concerned about the lack of ability to suspend officers without pay. By being forced to continue to pay officers who have been suspended pending the final outcome of the disciplinary process – a process that may take years as it winds its way through various avenues of appeal – a police service cannot add to its complement of officers. It was suggested that this compromises public safety and it was recommended that police chiefs should be permitted to suspend officers without pay, at least after a finding of misconduct by an adjudicator.

Some chiefs and senior officers also indicated that many complainants have launched civil lawsuits and filed human rights complaints with the Ontario Human Rights Commission, in addition to filing police complaints against officers. This was perceived to be vexatious in many instances and they requested that there be legislation to control such proceedings. They also wanted legislation to

prevent persons from filing frequent vexatious complaints as they were seen to be using up scarce resources.

Other matters that chiefs and senior officers were concerned about included the current number of opportunities for review during the processing of a complaint and the ability of an officer to avoid discipline by resigning and finding employment with another police service. It was suggested that any review should only be available after a final decision has been made regarding the complaint. It was also suggested that disciplinary proceedings should continue against an officer if that officer has chosen to find employment with another police service. Furthermore, an officer who has been dismissed from a police service in Ontario for discipline reasons should be prohibited from re-applying to another police service within a five-year period.

Police Associations

Police associations outside Toronto were concerned that the complaints system would be changed simply in response to recent events associated with Toronto and emphasized that any new system should be able to operate effectively and efficiently across the Province. They were particularly concerned that a system would be designed with Toronto in mind and then forced upon other police services in the Province. However, all police associations recognized that the system could be improved. Most did not suggest that radical changes were needed, although some police groups were of the view that greater

independence was necessary in cases involving serious complaints or those complaints involving domestic violence.

Police associations agreed with the view that a less formal process that involves mediation would improve the process. They stressed that minor complaints should almost always be dealt with informally and if there were to be disciplinary action taken for minor complaints, this action should be remedial in nature and not punitive.

Another area that they felt needed change was the standard that was applied for the ordering of hearings. They considered that the “air of reality” test sets too low a standard and should be changed so that hearings were not initiated in cases where there is not enough evidence to support a finding of misconduct. Police associations were opposed to any review of penalties.

The majority of police associations were sceptical of the need for independent investigators and thought that they may not be worth the cost. They pointed out that professional standards units in police services are already of high quality.

The police associations were also concerned about allowing third-party complaints. Their view was that formally allowing third-party complaints would open the door to a flood of frivolous and vexatious complaints. It was suggested that serious third-party complaints that are brought to the attention of a police

chief will be investigated, as chiefs have the responsibility for discipline and control of the police service.

Police Services Boards

Police services boards had a broad range of comments regarding the current system and provided me with many proposals for change and cautions against change. These comments reflect the various concerns and suggestions that have already been discussed above. There were also some very original recommendations that were made. One such recommendation dealt with the array of proceedings that may arise from a single incident involving the police such as police complaints, human rights and civil proceedings. It was suggested that these proceedings could be combined into one proceeding to effectively and efficiently resolve the underlying matters. Another recommendation dealt with the use of different standards of proof at hearings (either clear and convincing evidence or balance of probabilities) depending on the seriousness of the alleged misconduct.

Board members also provided me with comments regarding their role and responsibilities over the complaints system. Many board members emphasized that it would be unwise to burden the board with a significant role in the handling of complaints as most board members are essentially volunteers. Board members also noted that the composition of boards across the Province is not uniform. There are many smaller boards across the Province and resources vary

significantly from board to board. This has to be kept in mind when considering whether boards should have additional responsibilities dealing with complaints. However, I did hear from some board members who asked for an expanded role. Some felt frustrated by the lack of information regarding specific complaints coming to the attention of the board and felt that this information was necessary for them to carry out their general responsibilities related to the complaints system.

Many board members noted that they would like to see better training made available to them so that they are able to effectively carry out their mandate. Many told me that they are often faced with difficult issues that they feel ill-equipped to handle. One such issue was the often-difficult distinction between policy matters, which fall within the responsibility of the board, and operational matters, which fall within the responsibility of the chief of police.

Aboriginal Communities

I met with a host of Aboriginal groups from several different Aboriginal communities regarding the complaints system. I also met with many urban Aboriginal groups. Although many of these groups shared the same concerns that I have already listed in the Community Groups section, I have set out a distinct section to discuss their concerns given the long and difficult relationship that Aboriginal people have had, and continue to have, with government authorities and police and because of their unique status in society.

Access to the system was one of the concerns that was most heavily emphasized. It was stressed that many Aboriginal persons, particularly those from Northern Ontario do not have an understanding of the current systems in place and that many do not speak English. Information and services should be made available in a number of Aboriginal languages.

I was also informed that many Aboriginal persons choose leaders from their community as their first source for information and assistance when they have a problem. Despite this, there appear to be systemic barriers to the recognition of this role of community leaders. It was suggested that a community leader should be accepted as the agent of a complainant if the complainant has asked for this assistance, and should be kept apprised of developments in an ongoing investigation. A recommendation was also made that formal lines of communication should be opened between police services and leaders of Aboriginal communities.

In my conversations with Aboriginal groups, I heard a range of views regarding the appropriateness of having the complaints system extended to include First Nations constables. Interest regarding this issue varied significantly from one community to another. For some, oversight of First Nations police services was viewed to be a matter solely for the First Nations community to administer. However, there were others who argued that such oversight would be welcomed

and would enhance the accountability and the professionalism of a First Nations police service.